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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas, 15th Circuit

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

COMMON PLEAS 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.

RESPONDENT'S FINAL BRIEF

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RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Respondent filed this action on March 25, 2019, bringing eight (8) claims against Appellants Marshall Alexander Chapman ("Alex Chapman") and Chapman Dental, P.A., as well as Brooke I. Chapman ("Brooke Chapman"), as follows: (i) Defamation Per Se (Alex Chapman and Brooke Chapman); (ii) Constructive Fraud (All Defendants); (iii) Malicious Prosecution (All Defendants); (iv) Abuse of Process (All Defendants); (v) False Imprisonment (Alex Chapman and Brooke Chapman); (vi) Intentional Infliction of Emotional Distress – Mrs. Chapman and Chapman (Alex Chapman and Brooke Chapman); (vii) Interference with Contract / Prospective Contract(Alex Chapman and Brooke Chapman); and (viii) Civil Conspiracy (Alex Chapman and Brooke Chapman). (R. pp. 28-45).

On Dec. 11, 2020, Respondent moved to amend her Complaint to add as Defendants the following parties: (a) Douglas P. Schmieding, CPA, (b) Jennings Cook & Co., CPA's, PA, and (c) Earl A. Simmons, CPA.[1] On Dec. 14, 2020, Appellants filed their Return in Opposition to the Motion to Amend. Respondents' 1st Amended Complaint was entered by order dated Jan. 8, 2021. On April 16, 2021, the trial court issued an order clarifying treatment of some of the claims in the 1st Amended Complaint. That same day, Respondent filed her 2nd Amended Complaint. (R. pp. 131-163). This 2nd Amended Complaint then became and remained the operative Complaint for all claims in the action.

Respondent's claim for Intentional Interference with Contract against Alex Chapman, Brooke Chapman and Chaman Dental was dismissed under Rule 12 by order dated Feb. 21,

[1] Under S.C. Code Ann. § 15-36-100(G)(3), since Respondents' added claims were against "certified public accountants," Respondent had to obtain and file an expert affidavit.

2021. In a subsequent order dated May 9, 2022, Respondent's claims against Earl Simmons, CPA for defamation, constructive fraud, intentional infliction of emotional distress, malicious prosecution and negligent misrepresentation were dismissed under Rule 56. (R. pp. 9-14). In that same order, Respondent's claims for constructive fraud, abuse of process, intentional infliction of emotional distress, and defamation as to Brooke Chapman were dismissed under Rule 56. Also in the May 9, 2022 order, Respondent's claims against Chapman Dental for constructive fraud, and claims against Alex Chapman for constructive fraud, abuse of process, intentional infliction of emotional distress were dismissed.

In an order dated Feb. 25, 2021, the trial court dismissed Respondent's 7th, 9th and 12th Causes of Action. (R. pp. 1-5). In a subsequent order dated April 16, 2021, the trial court ruled Respondent could amend her pleading to address issues in the 9th and 12th alleged claims. (R. pp. 6-8). On May 9, 2022, the trial court granted summary judgment on several of Respondent's claims, leaving the following four (4) claims against Defendants / Appellants Marshall Allexander Chapman ("Alex Chapman") and Chapman Dental, P.A. ("Chapman Dental"), and Brooke I. Chapman ("Brooke Chapman"), as follows: (1) Malicious Prosecution; (2) False Imprisonment; (3) Defamation Per Se (by Slander); and (4) Civil Conspiracy. (R. pp. 9-14).

Before the start of the trial on April 22, 2024, Respondent had resolved all of her other claims against the newly added "CPA" Defendants. Trial of this matter took place from April 22 to 25, 2024. Prior to the trial, on Nov. 20, 2023, Appellants filed their motion to bifurcate the case under S.C. Code Ann. § 15-32-520(A). At trial, the lower court granted Appellants' motion for a directed verdict on Respondent's Civil Conspiracy claim, and dismissed Brooke Chapman from the case. (R. p. 696, lines 12-13).

On Wednesday, April 24, 2024, the jury returned verdicts in favor of Respondent, as follows: (1) Malicious Prosecution - $49,001.00; (2) False Imprisonment - $30,616.00; and (3) Defamation Per Se (by Slander) - $22,800.00. (R. p. 792, lines 4-25; and R. p. 24-25). Neither Appellants or Respondents took issue or challenged the jury's verdicts issued on April 24, 2024, during the "first stage of the bifurcated trial" under S.C. Code Ann. § 15-32-520(B). (R. p. 794, line 24 to p. 797, line 12).

On Thursday, April 25, 2024, in the "second stage of the bifurcated trial," under S.C. Code Ann § 15-32-520(E), the jury returned punitive damages verdicts in favor of Respondent as follows: (1) Malicious Prosecution - $75,000.00; (2) False Imprisonment - $70,000.00; and (3) Defamation Per Se (by Slander) - $30,000.00. (R. p. 914, line 21 to p. 915, line 25; and R. p. 26-27). Neither Appellants or Respondents took issue or challenged the jury's verdicts issued on April 25, 2024. (R. p. 916, lines 2-6).

On May 7, 2024, Appellants filed their Motion for Setoff (R. 199), and their Motion for Judgment Notwithstanding the Verdict or Alternatively for a New Trial Absolute or New Trial Nisi Remittitur. (R. p. 200-209). Respondent filed her opposition to the post trial motions on May 8, 2024. (R. p. 210-216). On May 16, 2024, the lower court denied the post-trial motions, but did order a set-off in an amount of $40,000.00 and entered judgment to that effect on June 3, 2024, reducing Respondents' judgment amount to $237,417.00. (R. p. 18-23). Appellants filed their Notice of Appeal in the Circuit Court and in this Court on June 4, 2024. Appellants filed their letter requesting the transcript on June 19, 2024. (R. p. 1069). The Court Reporter stated in an email dated July 21, 2024, "I have the request date as July 5, 2024, because that is the date that I received payment from him." (R. p. 1071-1073).

STANDARD OF REVIEW

"In ruling on a JNOV motion, the trial court construes all reasonable inferences and ambiguities in the evidence in favor of the non-moving party as to each element of the claim and must deny the motion if more than one reasonable inference emerges. If, however, the evidence could only produce one reasonable conclusion, the motion must be granted. We use the same yardstick as the trial court." *Carter v. Bryant*, 429 S.C. 298, 314, 838 S.E.2d 523, 532 (Ct. App. 2020) (citing *Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016)

"The decision to grant or deny a new trial absolute based on the excessiveness of a verdict rests in the sound discretion of the trial court and will not ordinarily be disturbed on appeal." *Elam v. S.C. DOT*, 602 S.E.2d 772, 781, 361 S.C. 9, 27 (2004) (citing *South Carolina State Highway Dep't v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (1976) "The trial court must provide 'compelling reasons' to warrant invading the jury's province by granting a new trial nisi." *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 226, 865 S.E.2d 910, 916-917 (Ct. App. 2021) (citing *Curtis v. Blake*, 392 S.C. 494, 501, 709 S.E.2d 79, 82 (Ct. App. 2011)

"A trial judge may grant a new trial nisi additur when a jury's verdict is inadequate." *Green v. Fritz*, 590 S.E.2d 39, 41, 356 S.C. 566, 570 (Ct. App. 2003). "However, to grant such relief, the trial judge must state compelling reasons for invading the province of the jury." *Id.* (citing *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996)). "When considering the trial court's ruling on motions for a new trial or new trial nisi remittitur, this court 'employ[s] a highly deferential standard of review.'" *Mills v. Ports Auth.*, 865 S.E.2d at 917.

STATEMENT OF FACTS

Respondent was employed with Appellant Chapman Dental from late 2013 to approximately February 28, 2017. (R. p. 451, lines 6-16; R. p. 452, lines 2-4). In or around September 2016, Appellant Alex Chapman and Brooke Chapman were married. (R. p. 459, lines 10-14). Appellant Alex Chapman terminated Respondent on or about Feb. 28, 2017, asserting she had stolen from the practice. (R. p. 461, lines 2-23).

At trial, Appellant Chapman Dental employee, Angela Hawthorne testified she was still employed with Chapman Dental. (R. p.325, lines 23-24). She testified she was told by Respondent that Respondent was fired on or about Feb. 28, 2017, and told it was for stealing from the practice. (R. p.327, lines 12 to p. 328, line 5). Hawthorne testified she did not believe Respondent had stolen anything (R. p. 333, lines 2-13) and she went in to speak to Appellant Alex Chapman to "make him say it to her face," or words to that effect. (R. p. 328, lines 2-5). Hawthorne's testimony also confirmed Respondent took off every Wednesday at 1:00 PM to work another job, that Respondent was out for family vacations, an eye surgery, and further that people were in the Appellants' offices on the weekends (R. p. 329, line 20 to p. 330, line 3) when neither she nor Respondent were present. (R. p. 328, line 6 to p. 329, line 2). Hawthorne also testified that she was usually the one to do the Eaglesoft data entry when Respondent was out of the office. (R. p. 329, lines 3-10).

In addition, a former employee of Appellant Chapman Dental, Althea Holland, testified she was employed as a Dental Hygienist with Appellant during part of the time that Respondent also worked there. (R. p.538, lines 13-23). Holland testified that she would treat patients for cleanings and other related treatments, and then she would mark how the patient was treated in

Eaglesoft so it could be paid when the patient checked out at the front desk where Respondent worked. (R. p. 540, lines 7-23). Holland's testimony regarding Respondent not being in control of the cash envelope 24 hours a day, seven days a week was consistent with Angela Hawthorne's testimony recounted above. (R. p. 541, line 7 to p. 542, line 23; p. 544, lines 2-6). Holland also testified that anyone with access to Eagelesoft could make revisions or modifications to the data after it was entered, and further that Respondent did not make all Eaglesoft entries. (R. p. 542, lines 3-16).

Defendant Earl Simmons, CPA, is the "Uncle" of Defendant Brooke Chapman. (R. p. 582, lines 17-23). His identity and involvement was discovered during the deposition of Brooke Chapman on May 26, 2020. Based on the newfound knowledge of the intimate involvement of this CPA and how that led to the Nov. 14, 2017, letter from Doug Schmieding, CPA (R. p. 975-977), Respondent moved to amend her complaint on Dec. 11, 2020, as set forth in the Statement of the Case. Earl Simmons, CPA's primary involvement is shown by Plaintiff's Trial Exhibits 4-7 (R. pp. 924-974), consisting of emails and attachments transmitted from between Oct. 22, 2017, to Nov. 13, 2017, while Appellants were preparing their "binder" to report Respondent to law enforcement. (R. p. 585, line 15 to p. 589, line 13). Simmons testified about coming to the Appellants' offices once to get some information to look into the accounting discrepancies as they were reported to him by Brooke Chapman and Appellant Alex Chapman. (R. p. 583, lines 16 to p. 584, line 9). Simmons testified about the emails he sent to and received from Brooke Chapman or Chapman Dental included as Plaintiff's Trial Exhibits 4-7 (R. pp. 924-974), sent from between Oct. 22, 2017 to Nov. 13, 2017. (R. p. 585, line 15 to p. 589, line 13). In his Nov. 13, 2017 email to Brooke Chapman at 1:59 PM (Pltf. Tr. Ex. 6), Defendant Earl Simmons, CPA, stated:

> Here is everything. A signature is not going to determine if the authorities choose to take action. Everything is laid out perfectly if they care to look at documentation. As I have told Alex, this is not typically a police issue at this level. it will give him a basis to call here current employer and inform him of her behavior. He just needs for them to tell him they pass due to the amount of money involved.

(R. p. 954). (underline emphasis added).

Brooke Chapman testified about her role in the emails described above with Uncle Earl Simmons, CPA, and also Investigator Elliott Turner. (R. p. 642, line 17 to p. 646, line 7). She also testified about her coming to work for the dental practice in late 2016 and early 2017, and working with Respondent at the front desk. (R. p. 623, line 25 to p. 624, line 3; R. p. 648, lines 7-23; R. p. 624, lines 18-24). She acknowledged Respondent could not have had sole control over the cash envelope or the Eaglesoft data entry and all modification opportunities within the Eaglesoft software. (R. p. 648, line 7 to p. 650, line 8; R. p 651, lines 11-21). She testified she found discrepancies in the practice's financials and she concluded Respondent had been stealing from the practice. (R. p. 625, line 19 to p. 626, line 1).

Appellant Alex Chapman testified and he admitted firing Respondent for stealing. (R. p. 659, line 10 to p. 660, line 11; R. p. 662, line 3 to p. 662, line 18). He admitted he and Respondent had a personal "dating" relationship in or around New Years Eve 2013, when Respondent first started working for the practice. (R. p. , lines). He testified she did not have any dates with Respondent while she was employed with the practice. (R. p. 450, line 14 to p. 452, line 6). Alex Chapman testified he did not urge or request Investigator Turner to have Respondent arrested and suggested it was only a request that the GCSO investigate. (R. p. 662, line 21 to p. 666, line 7; R. p. 671, lines 3-20; R. p. 673, line 5 to p. 676, line 3; R. p. 676, line 23 to p. 677, line 8).

GCSO Investigator Elliott Turner testified about being approached by Appellant Alex Chapman and Brooke Chapman for the purposes of having Respondent arrested. (R. p. 341, line 25 to p. 345, line 8). He testified and confirmed his sworn testimony at the Preliminary Hearing on March 26, 2018 ((R. p. 345, lines 9-25; R. p. 1009-1027), wherein the phrase "forensic audit" (R. p. 348, lines 2 to p. 349, line 7) was used repeatedly to describe Plaintiff's Trial Exhibit 9 (R. p. 977), the Nov. 14, 2017 one-page / two-page letter (R. p. 984, item 9; pp. 1004-1005) from Doug Schmieding, CPA. *See also* Pltf. Tr. Ex. 13, at p. 9-10 (Investigator Turner testifying at Preliminary Hearing, as follows: "It was multiple pages from what I recall, It's a -- I would say it was maybe a handful of pages that the audit consisted of."). (R. p. 348, lines 2-19; R. p. 1017, line 14 to p. 1018, line 12). Investigator Turner testified he was told by Appellant Alex Chapman that Respondent was solely responsible for the discrepancies and convinced him that no one else at the practice was responsible, as is shown in the Preliminary Hearing transcript. (Pltf. Tr. Ex. 13). (R. p. 1017, lines 3-9; R. p. 351, lines 15-24).

Doug Schmieding, CPA ("Schmieding") testified his Nov. 14, 2017, letter was misused by Appellants without his knowledge until he got an email from out of the blue from 13th Circuit Assistant Solicitor Alexa Kluska on June 27, 2018. (R. p. 1028; R. p. 393, line 4 to p. 395, line 4; R. p. 387, line 17 to p. 388, line 24; R. p. 400, lines 11-18; R. p. 403, line 23 to p. 404, line _); (Pltf. Trial Ex. 15). Schmieding testified further that his "original" letter was only one-page and it did not identify Respondent or any other employee by name. (R. p. 977 (Pltf. Trial Ex. 9; *see also* R. pp. 984 (item 9), and 1004-1005 (p. 1, and 21-22 of Pltf. Trial Ex. 12).[2] (R. p. 389, line 9

[2] The 13th Circuit Solicitor's Office *Brady* / Rule 5 response letter to Respondent's criminal trial counsel described Schmieding's letter as follows: "Letter from Douglas Schmieding, CPA 2 pages." *Id.* Schmieding testified at trial Appellants "misused" his letter and further that it was a one-page letter. The 2nd page to Schmieding's letter as provided to the GCSO, added by Appellants, states: "Note: Client

to p. 391, line 22).

Respondent testified about what happened in Feb. 2018 when she was contacted by law enforcement and eventually arrested. (R. p. 469, line 9 to p. 472, line 9). She testified emotionally it was the worst day of her life. (R. p. 472, line 5). She testified about having to hire criminal defense attorneys (David Seay, Esq. and Ryan Beasley, Esq., each of the Greenville Bar) to keep her from being prosecuted and sent to jail. (R. p. 467, line 10 to p. 469, line 8; R. p. 479, line 5 to p. 480, line 4). She testified about losing her Concealed Weapons Permit, about not being allowed to go on field trips with her elementary and middle school aged children. (R. p. 473, line 11 to p. 474, line 14). She testified about the notification to her employer and how she was sent to work in Spartanburg and had her hours cut and had to pay extra for gas and time. (R. p. 489, line 2 to p. 490, line 7). Respondent testified emotionally about having to tell her young children she had been arrested and why it occurred. (R. p. 467, lines 18-23; R. p. 472, line 17 to p. 473, line 7).

Respondent further testified about meeting Mike O'Shea, who agreed to do forensic accounting analysis of the Appellants' Eaglesoft data and bank records from Southern First Bank. (R. p. 476, line 13 to p. 479, line 4). She testified about Appellant Alex Chapman sending her the text entered as Plaintiff's Trial Ex. 18 on the day or day after her charges were finally dismissed in late October, 2018. *Id.* (stating, "Yo Sam, let's catch up over a beer or 2. I'll buy ;)"). (R. p. 1029). She also testified about her medical care from her primary physician who treated her with medications for the emotional stress and anxiety caused by the arrest. (R. p. 474,

Records and Bank Deposits were Maintained Solely by Samantha Katchick." Apart from this addition of the alleged 2nd page to his letter, Schmieding's letter did not refer to Respondent or anyone by name.

line 18 to p. 476, line 12). She testified about her mug shot being in the papers. (R. p. 919; R. p. 482, lines 9-22). Respondent testified about the payment plan Appellant Chapman Dental had with some former in-laws of hers, named Burras. (R. p. 455, line 21 to p. 456, lines 21-25; R. p, 1067-1068). Appellant Chapman was upset when he lost the collections case against this family, and Turner also testified about this being a motivating factor for Appellants to pursue criminal charges against Respondent. (R. p. 349, line 13 to p. 350, line 4).

Mike O'Shea, a licensed private investigator and certified forensic analyst (R. p. 547, lines 10-19), testified about being introduced to Respondent at a lunch place in Mauldin. (R. p. 548, line 23 to p. 552, line 21). A mutual friend introduced them because he knew Mike could help with financial analysis. (R. p. 549, lines 7-11). Mike testified he agreed to look into the data, and how he prepared his first report on May 25, 2018, criticizing the accuracy of the "analysis," that led to the conclusion that $3,505.19 was missing from the practice's cash envelope. (R. p. 554, line 4 to p. 558, line 25). He also testified his analysis showed a much lower amount, around $2,000.00. (R. p. 560, lines 18-24). O'Shea also testified about his credentials and experience working with the White Collar Prosecutors in the 13th Circuit Solicitor's Office on other cases. (P. p. 546, line 10 to p. 548, line 16). He testified about the large amount of additional information that Appellants provided to law enforcement in response to his first report from May 2018, and how he went through that as well, and then prepared his 2nd Report, dated October 1, 2018. (R. p. 558, line 20 to p. 560, line 15). He testified about the facts that he said made the Eaglesoft data unreliable, specifically including the way in which Appellants used that software, and further including lack of End of Day ("EOD") reports, lack of End of Week ("EOW") reports and End of Month ("EOM") reports prepared by Appellant Chapman Dental. (R. p. 556, line 10 to p. 558, line 25; R. p. 560, line 2).

Sarah McGuire, a licensed counselor and therapist, testified about her treatment of Respondent. (R. p. 516, line 15 to p. 520, line 8). She testified that she had met with Respondent on many occasions. (R. p. 516, line 18 to p. 519, line 1). In these initial meetings, McGuire testified she was using a number of different evidence based evaluation and treatment methods to learn as much as she could about the trauma experienced by Respondent, and how best to treat it. (R. p. 511, line 20 to p. 512, line 14). McGuire testified about her providing Respondent with analysis and various non-medication related therapies, such as Eye Movement Desensitization and Reprocessing (EMDR). McGuire testified she assessed Respondent's conditions as including Panic Disorder, Adjustment Disorder, and Major Depressive Episode in Partial Remission. McGuire's billing records were entered into evidence. (R. p. _, line).

Jim Nasim, an owner of the dental practice that employed Respondent after she was fired by Appellants, testified he received a telephone call from Appellant Alex Chapman out-of-the-blue, advising him that Respondent stole from Appellant. (R. p. 318, lines 22-25). Nasim also testified about moving Respondent to Spartanburg and confirmed her hours were likely reduced at that time as well. (R. p. 319, lines 8-16).

Brian Smith was a friend of Appellant Alex Chapman. (R. p. 412, lines 1-18). He testified Appellant told him Respondent stole from him in 2020 (R. p. 415, lines 5-19), a year or more after Respondent's charges were dismissed and expunged (R. p. 1030-1034), and after Alex Chapman sent Respondent the text entered as Plaintiff's Exhibit 18. (R. p. 1029; R. p. 871-872). Brian Smith stated the defamatory statement was made while they were at Appellant Alex Chapman's house by the pool. (p. 415, lines 5-19).

In the punitive damages phase of the trial, Althea Holland testified again. (R. pp. 865-871). This time, she recounted specific stories of Appellant Alex Chapman paying her in cash, and telling her how he had also revised the data entered into Eaglesoft to delete the data showing payment by other means, such that the payments would not be reported anywhere in the practice's accounting records. (R. p. 868, line 10 to p. 870, line 25). Althea Holland was subject to cross examination, as was every other witness called by Respondent or Appellants. (R. p. 871-872).

ARGUMENT

False Imprisonment

As a summary of Appellants arguments in Part I of their Initial Brief regarding Respondent's False Imprisonment verdicts, four separate arguments are presented in Sections I.B to I.E, as well as 3 sub-arguments under Section I.D. In Section I.B, Appellants present a legal argument regarding what Appellants refer to as the "facially valid warrant" exception to a False Arrest claim. *Id.* at 13 (stating, "The lower court failed to apply the long-held doctrine that one arrested pursuant to a facially valid warrant has no cause of action for false arrest." (citing *Carter*, *Seabrook*, and *Bushardt*)). This is the same argument rejected by the trial court in its May 16, 2024 Order denying Appellant's Post Trial Motions. The remaining Appellant's arguments in Sections I.C through I.E all rely upon "no reasonable inference" arguments.

I.A. Appellants' argument re: "facially valid warrant," mis-states the law.

As set forth in Respondents' Response in Opposition to Post Trial Motions, filed, May 8, 2024, Appellants' efforts to read *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (Ct. App. 2020) as somehow overruling *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 826 S.E.2d 609 (2019 must fail. To the extent *Carter* is relevant to any analysis of a False Imprisonment claim, it is not

applicable to the facts of this case for at least the reason that this case involves only claims against private individuals or entities, and also does not involve a so-called "facially valid warrant."

As set forth in pages 13 to 17 of Appellants' Initial Brief, Appellants purport to rely on citations within *Huffman* in support of their argument that "[t]he lower court failed to apply the long-held doctrine that one arrested pursuant to a facially valid warrant has no cause of action for false arrest." (citing *Carter*, *Seabrook*, and *Bushardt*)). These four (4) cases, "cited favorably" in *Huffman*, according to Appellants, were decided many years ago, as follows:

(i) 1922 (p. 13, *Bushardt v. United Inv. Co.*),[3]

(ii) 1944 (p. 14-15, *Wingate v. Postal Tel. & Cable Co.*),[4]

(iii) 1931 (p. 16, *Whitmire v. Publix Theatre Corp.*);[5] and

(iv) 1921 (p. 17, *Falls v. Palmetto Power & Light*).[6]

On page 14 of Appellants' Brief, it is acknowledged 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.'" *Id.* (citing *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 272, 826 S.E.2d 609, 615 (2018)) (underline emphasis added). As referenced above, Appellants next argue that because *Huffman* cites "favorably" to several very

[3] Appellants argue "Respondent … overlooks the fact that *Carter* favorably cites *Bushardt*." *Id.* at 13.

[4] Appellants argue "Unlike *Wingate*, no evidence was presented in this case that Appellants instructed Investigator Turner to detain Respondent or to have her arrested." *Id.* at 15 (underline emphasis added).

[5] Appellants argue "Unlike *Whitmire,* Appellants did not instruct Investigator Turner to detain Respondent." *Id.* at 17 (underline emphasis added).

[6] Appellants acknowledging, "The court found there was abundant evidence from which the jury might have inferred that Hodges was the effective manager of the entire proceedings, thus binding Palmetto." *Id.* at 17. Appellants next argue, "Appellants did not take Investigator Turner to arrest Respondent, nor did they request that she be detained or taken in for questioning." *Id.* (underline emphasis added).

old cases, that *Carter v. Bryant* is the controlling case and not *Huffman*. Appellants also argue "No Reasonable Inference Can be Drawn that Appellants Requested, Directed, or Commanded an Unlawful Arrest." *Id.* at 14 (Section I.D).

In their motion for a new trial / JNOV at page 4 (arguing against the verdict in favor of Respondent for False Imprisonment), Appellants also cited *Carter v. Bryant*, 429 S.C. 298, 307, 838 S.E.2d 523, 528 (Ct. App. 2020) (citing *McConnell v. Kennedy*, 29 S.C. 180, 186-87, 7 S.E.2d 76, 78 (1888)) (Motion for JNOV, at p.4, filed May 7, 2024). Appellants cited *Carter v. Bryant* for the proposition that, "[i]f a plaintiff suing for false arrest 'has shown the arrest was made under legal process that was lawfully issued and executed, [she] has proved [her]self out of court.'" *Id.* No claims were brought against law enforcement in this case, and, because the Arrest Warrant (R. p. 920 (Pltf's Tr. Ex. 2)), was obtained based on false information, there is no "facially valid warrant" exception to apply. *See e.g.,* S.C. Code Ann. § 16-17-725(B) (identifying the crime of "knowingly mak[ing] a false complaint to a law enforcement officer concerning the alleged commission of a crime by another.").

As set forth in Respondent's' Response in Opposition to Appellants' Post trial Motions (filed May 8, 2024), "*Carter* is distinguished from the facts of this case for at least the reason that the Malicious Prosecution and False Imprisonment claims brought by Carter were against law enforcement only." (R. p. 211) (citing *Carter*, 838 S.E.2d at 526). In *Carter*, "[f]ollowing the *nolle pros* dismissal of an assault and battery of a high and aggravated nature (ABHAN) charge against him, Russell Shane Carter sued former York County Sheriff Bruce Bryant, in his official capacity as York County Sheriff, for false arrest and malicious prosecution." *Id.*

Further review of the facts at issue in *Carter* shows the incident involved an unknown man, Mr. Faile, attempting to gain entry into Carter's residence at night in April 2012. *Id.* at 526-

527. Carter eventually used a baseball bat to defend himself in the ensuing "fracas [that] occurred on his front porch." *Id.* at 527. The trial court in *Carter* found the warrant issued for Carter's arrest was facially valid. *Id.* at 529 (stating, "We agree with the trial court that the arrest warrant was facially valid."). Carter's contentions had nothing to do with any allegations of false information provided to law enforcement by third-parties. *Id.* (stating, Carter contended, *inter alia*, "Deputy Gwinn inadvertently or deliberately omitted material facts during the warrant application process that bore on probable cause, specifically facts related to Faile's aggression towards Carter while Carter was in his dwelling."). *Carter* did not involve any allegations of any third-party in support of the arrest or prosecution of Carter.

The cases relied upon by Appellants in their arguments against the Respondent's jury verdict on her False Imprisonment claim involve fact situations wherein the accused were the subject of eye-witness accounts, or (second hand) verbal reports of criminal activity, and not an alleged "embezzlement" occurring from 2013 to 2017, as was alleged by Appellants here. The evidence shows Appellants first accused Respondent of stealing and fired her on or about Feb. 28, 2017, and told employees she stole from the practice. Appellants then got upset when a collection action against some ex-in laws of Respondent was rejected by the Simpsonville Magistrate and they were told they had to abide by the payment plan that was in place. (R. p. 1067-1068) (Pltf. Tr. Exs. 33-34)). Then, as shown in Plaintiff's Trial Exhibits 4-7 (R. p. 924-965), from October 22, 2017 to November 13, 2017, Appellants were preparing paperwork to present in their "binder" to law enforcement identifying Respondent as the person "solely" responsible for all "Client Records and Bank Deposits."

On November 13, 2017, Appellants sent selected parts of their paperwork generated from Plaintiff's Trial Exhibits 4-7 (R. p. 924-965) to their tax preparer, Doug Schmieding. (R. p. 975-

976 (Plaintiff's Tr. Ex. 8)). In this transmission and the additions made to Schmieding's letter prior to including in it their "binder" to law enforcement, which was presented as a "forensic audit," Appellants added page 22 of Plaintiff's Trial Exhibit 12 (R. p. 1005), tricking the GCSO Investigator (Turner) and the 13th Circuit Solicitor into thinking Schmieding's letter included references to Respondent specifically. At trial, Doug Schmieding, CPA, testified his letter (R. p. 977) was misused by Appellants without his knowledge until he got an email from out of the blue from 13th Circuit Assistant Solicitor Alexa Kluska on June 27, 2018 (R. p. 1028 (Pltf. Trial Ex. 15)), and further that his "original" letter was only one-page and it did not identify Respondent or any other employee by name. (R. p. 977 (Pltf. Trial Ex. 9)); *see also* R. p. 984, and 1004-1005 (Pltf. Trial Ex. 12).

Bushardt v. United Inv. Co. (1922)

In *Bushardt v. United Inv. Co.*, 121 S.C. 324, 326, 113 S.E. 637, 638 (1922), it is stated: "On or about the 20th of January, 1921, F.S. Strickland, a police officer, the chief of detectives of the City of Columbia, received a report of the commission of a robbery at a store in Washington Street in said City." *Id.* (stating further, "The information was conveyed to [Strickland] by a … boy who worked 'in the front of the Regal Drug Store' as a 'soda jerker.'"). Officer Strickland is quoted in *Bushardt* as follows: "On the strength of that identification, I took him to jail. The boy identified the man--that was all. Upon his saying that was the man and to hold him, I did so." *Id.* (underline emphasis added). The judgment for the Plaintiff in *Bushardt* against "the corporation that owns and operates the Regal Drug Store," where the "soda jerker" worked, was ruled a non-suit, stating, "[a] peace officer may arrest without a warrant one whom he has reasonable and probable grounds to suspect of having committed a felony, even though the suspected person is innocent." *Id.* at 640.

The holding in *Bushardt* is limited further because the Supreme Court also found the facts did not support holding the employer liable for the actions of its employee, the "soda jerker," stating, "[t]here is not a scintilla of evidence that any agent or servant of the defendant corporation other than the negro boy employed as a 'soda jerker' had anything whatever to do with the arrest or detention of the plaintiff." *Id.* at 641. Here, there is no question regarding Appellant Alex Chapman's ability to bind Appellant Chapman Dental, which he owns.

Wingate v. Postal Tel. & Cable Co. (1944)

In *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 523, 30 S.E.2d 307, 308-309 (1944), the facts are set forth as follows: "During the early part of the evening, on May, 23, 1940, [Wingate] sent two young men in her Buick car to a place of business in Charleston for two bags of rice." *Id.* Robert Jones, a "messenger" for Postal Telegraph and Cable, "testified that when he was near the office of [his employer, Postal Telegraph and Cable], two to four men, whom he did not know, passed along the street in a Buick car and 'hollered' across the street, saying 'take that damn message in.'" *Id.* at 309. "[Jones] said the car stopped and backed about two feet. He further testified that after going into the office to deliver a message, he came back and secured the license number of the car." *Id.* Wingate was later mistakenly arrested for the actions of her employees the day before because the "license [plate] number" on her Buick came back to her as the owner. *Id.* at 310 (noting officer who "had known [Wingate] for many years [said], 'I am not going to arrest you, but we had orders to pick up car with license Number E-2092, and I will ask you to go to the police station and straighten it out.'").

In *Wingate*, the Supeme Court held, "[w]ith the conflicting evidence on the question, we think the jury was properly allowed to determine whether the arrest of respondent was made under the instigation and direction of appellant, or whether the police authorities acted on their

own initiative and volition." *Id.* at 311. Accordingly, *Wingate* is also not applicable to any "facially valid warrant" exception because it also involved claims against only the private individuals or entities responsible for the wrongful detention of Mrs. Wingate, the owner of the grocery store whose vehicle was being used by "two young men in her Buick car to a place of business in Charleston for two bags of rice." *Id.* at 309.

Whitmire v. Publix Theatre Corp. (1932)

In *Whitmire v. Publix Theatre Corp.*, 164 S.C. 487, 489, 162 S.E. 753, 754 (1932) (the facts were stated as follows:

> The evidence shows that plaintiff entered the theater of defendant and went into the rest room for ladies. She was seen to enter the rest room by Miss Trussel, cashier, and by Trammel, the ticket taker, but no objection was made. In a few minutes complaint was made to the cashier that a man dressed as a woman was in the rest room for ladies. Campbell, a prominent figure in this case, then inquired what the trouble was. Campbell seemed from his subsequent conduct to understand the complaint, and this case depends largely upon whether or not Campbell was an agent or representative of the defendant and whether or not his conduct was approved.

Id. (underline emphasis added).

In *Whitmire*, it is also reported that, "After the ticket taker had gone out for his investigation, Campbell went out into the street, called a policeman … and pointed out to him the plaintiff, who was nearly a block away, told him about the complaint, and asked him to tell her he wanted to see her." *Id.* at 754. "Campbell was there and told the plaintiff that complaint had been made that she was a boy dressed in a woman's clothes. The plaintiff then showed him her hand, took off her cap, and Campbell said, 'I am sorry this happened, lady, but we will let it drop.'" *Id.* at 755.

The facts in *Whitmire* are further distinguished from what Appellant wishes to present in that the Plaintiff, Lela Whitmire, a female whose suit was brought by her guardian, E.E. Styles,

prevailed in her claim for False Imprisonment against the defendant movie theatre, and was awarded $750.00 in actual damages and $250.00 in punitive damages. *Id.* at 754. The False Imprisonment claim upheld in *Whitmire* is consistent with Respondent's claim here in that a third-party, namely Mr. Campbell, as agent of the Defendant Publix Theatre Corporation, provided false information to law enforcement which resulted in the detention of the minor female patron of the theatre, Lela Whitmire, for allegedly being a male in the women's restroom. *Id.* Still further, the facts of *Whitmire* do not involve any warrant for arrest, or any so-called "facially valid warrant," as the officer detained the plaintiff on or near the scene of the alleged crime. *Id.* at 755 (noting, "To all intents and purposes, this was an arrest. If the policeman was merely the bearer of a message and nothing more, why did he take plaintiff along the streets and remain at the theater?"); *see also id.* at 754 (citing legal authority in preamble as follows: "Officer must have warrant unless on the scene at time of offense: [citations omitted].").

Falls v. Palmetto Power & Light Co. (1921)

In *Falls v. Palmetto Power & Light Co.*, 117 S.C. 327, 328, 109 S.E. 93 (1921), the facts involved allegations of stolen electric fan from Palmetto Power & Light in Florence, South Carolina on June 5, 1919. *Id*. at 93. A report was made of the theft to the police. There was also a report of persons selling fans in the city that night, including offering a fan to a restaurant owner named Howard. *Id.* Howard reported a description of the person that offered him the fan for sale. *Id.* Another person, Allowas, purchased a fan that night, and "upon examination the fan purchased by [Allowas] was identified as that stolen from the electric company, and it was forthwith restored to that company by the police authorities." *Id*.

On June 8, 1919, Howard the restaurant owner saw "whom he believed to have been the party who had offered to sell him two fans on the night of the robbery." *Id.* "[Howard]

telephoned the office of the company, and advised the general superintendent, the defendant Hodges, that the man who had tried to sell him a fan was at the depot, and if they would secure an officer they would get him." *Id*. Hodges called the police and drove a police officer to the railroad depot, where Howard "advised them that the man had gone off but that his baggage was there indicating the same." *Id.* Plaintiff Falls was the owner of the "baggage," and he was then arrested by the officer brought to the scene by Hodges.

Falls brought claims against Hodges and Palmetto Power & Light only, not law enforcement. *Id.* "The jury found for the plaintiff $500 actual, and $2,000 punitive damages. A motion for a new trial was made and refused. The defendant thereupon gave notice of an appeal to this Court." *Id.* at 94. The Supreme Court affirmed, stating, "There was abundant evidence to show that the arrest was procured, instigated, and participated in by Hodges." *Id.*

"Citing Favorably" Summary

The above analysis shows that each of these four (4) old cases involved either eye-witness accounts of crimes or verbal reports of crimes second hand. These cases are not similar to the facts in this case wherein Appellants, having known and employed Respondent for over three years, solicited two different CPA's to procure the Schmieding letter of Nov. 14, 2017 (R. p. 977), and then attached Respondent's name to the letter, with the following statement: "Client Records and Bank Deposits were Maintained Solely by Samantha Katchick." (R. pp. 1004-1005). Several witnesses testified of facts such that Respondent could not have been solely responsible for all cash records. Investigator Turner testified Appellant Alex Chapman convinced him Respondent was the only person that could have been responsible. (R. 344, lines 4-17).

In contrast, and a fact Appellants wish to forget or ignore, Respondent in this action did not bring any claims against the prosecuting / law enforcement officers, namely the Greenville

County Sheriff's Office ("GCSO"). Still further, in *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 272-273, 826 S.E.2d 609, 615 (2019), our Supreme Court stated:

> The notion that a private individual may face potential liability for false imprisonment is recognized in South Carolina. *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) ("The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may cause, instigate or procure an unlawful arrest."). As this Court definitively stated in *Wingate*, it is "well settled that where a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment." *Id.*; *see Whitmire v. Publix Theatre Corp.*, 164 S.C. 487, 162 S.E. 753 (1931) (finding evidence justified the jury's conclusion theater representative's actions caused plaintiff's arrest by requesting police return plaintiff to the theater for an investigation); *Falls v. Palmetto Power & Light Co.*, 117 S.C. 327, 109 S.E. 93 (1921) (holding sufficient evidence from which the jury could conclude power company's general manager acted unreasonably and without ordinary prudence in calling for the arrest of plaintiff who sold similar goods as those stolen from power company).

Id. at 615 (underline emphasis added).

Not only has *Sunshine* not been overruled by *Carter* or any other case, but the four cases Appellants argue were cited favorably in *Sunshine* 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.

In *Bushardt*, as noted above, the holding is of little use to any False Imprisonment case because the Court found there was no agency relationship between the store and its employee who made the incorrect report of who attempted to rob the store the next day. *Id.* at 638. In *Wingate*, the arrest was made (without a warrant) of the female grocer because her young employees allegedly committed a crime while driving her vehicle to pick up rice the day before. *Id.* In *Whitmire*, the unknown Mr. Campbell (theatre employee or agent) detained the young female theatre patron for allegedly entering the women's bath room as a male. *Id.* Finally, in *Falls*, the arrest was made of a man at the railroad dept because he had allegedly offered a fan for

sale three days earlier, even though the stolen fan had already been recovered. *Id.* at 94 (noting, "The warrant named the person to be arrested as 'John Doe.' That means that the person who made the affidavit and the officer who issued the warrant were uncertain as to the person to be arrested. The warrant itself bespoke caution.").

Seabrook and False Statement Acknowledgement

Appellants continue to cite to and rely upon *Seabrook v. Town of Mt. Pleasant* in their Initial Brief at page 13 regarding the Respondent's False Imprisonment claim. *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 443, 853 S.E.2d 508, 509 (Ct. App. 2020). In Appellants' post trial motions, they also cited *Seabrook*, and argued before the citation:

> A facially valid warrant, not based on any false statements, cannot be the basis for a false imprisonment cause of action in South Carolina. The police would need to have recklessly or intentionally omitted facts from their warrant application, and even under that scenario it would be law enforcement who was liable for the damages.

Id. at 4-5 (underline emphasis added).

So, it turns out Appellants have acknowledged, and presumably still do acknowledge, a warrant based on "false statements," is actionable as against those persons providing the false statements to law enforcement. In this case, the evidence of such falsity and intent to have Respondent arrested was overwhelming. The jury recognized this in its findings of a lack of probable cause at every stage. *See e.g.*, R. pp. 954-974 (transmitting alleged accounting performed by Brooke Chapman and Earl Simmons, CPA to Doug Schmieding, CPA, with Respondent's name added as follows, "Note: Client Records and Bank Deposits were Maintained Solely by Samantha Katchick"). In his Nov. 13, 2017 email to Brooke Chapman at 1:59 PM (R. p. 954), Defendant Earl Simmons, CPA, stated:

> Here is everything. A signature is not going to determine if the authorities choose to

> take action. Everything is laid out perfectly if they care to look at documentation. As I have told Alex, this is not typically a police issue at this level. it will give him a basis to call here current employer and inform him of her behavior. He just needs for them to tell him they pass due to the amount of money involved.

(R. p. 954) (underline emphasis added). The logical inference from this email is, Brooke Chapman's Uncle Earl does not want to put his signature on it, but he suggests Dr. Chapman could. (R. p. 956). Instead, Appellants sent the work prepared and compiled by Brooke Chapman and Earl Simmons, CPA, to their tax preparer, Doug Schmieding, CPA, via email, and eventually tricked him into sending his "original" Nov. 14, 2017 letter, the one-page version. (R. p. 977). Appellants then added page 22 of Pltf. Tr. Ex. 12 (R. p. 1005), to Schmieding's letter, creating the two-page version as identified in item 9 of the 13th Circuit Solicitor's Brady letter to Respondent's criminal trial counsel. *See also* (R. p. 1017-1018) (Investigator Turner testifying at Preliminary Hearing, as follows: "It was multiple pages from what I recall, It's a -- I would say it was maybe a handful of pages that the audit consisted of.").

As shown by Pltf. Tr. Ex. 7[7] (R. p. 966-974), Brooke Chapman then flipped this email over to Doug Schmieding, CPA, at 2:48 PM that same day, leaving off the attachments showing it was from another CPA. The next day, Schmieding sent them Pltf Tr. Ex. 12. (R. p. 977). As noted herein, Appellants then submitted Schmieding's letter to the GCSO as a two-page letter and referenced it as a "forensic audit." (R. p. 1012, lines 1, 2, 10; (ii) R. p. 1014, lines 3, 4, 12; and (iii) R. p. 1014, lines 14, 20; (iv) R. p. 1018, lines 1, 16-19; and (v) R. p. 1019, lines 9-10).

At trial, Appellants attempted to lay blame for Respondent's arrest on the GCSO's

[7] On pages 2, 4, and 6 of Pltf. Tr. Ex. 7, it is stated, "Note: Client Records and Bank Deposits were Maintained Solely by Samantha Katchick." On page 8 of Pltf. Tr. Ex. 7, it is stated, "Note: Client Records and Bank Deposits were Maintained Solely by Samantha Katchick Until March 2017 When She was Terminated." (underline emphasis added).

Investigator Turner. However, Turner testified the information he relied upon for the warrant was provided "solely" by Appellant Marshall Alexander Chapman. (R. p. 2, Arrest Warrant No. 2018A2330201067, stating, *inter alia*, "complainant, Alexander Chapman reported that the defendant who is a previous employee that was solely responsible for collecting money from patients and making bank deposits from January 2014 to February 2017, took $3,505.19 from the practice. The affiant has documented evidence implicating the defendant as the subject who took the cash." (underline added)).

S.C. Code § 16-17-725. Slander and Libel False Statement to Law Enforcement

Chapter 17 or Title 16 of the S.C. Code is entitled, "Offenses Against Public Policy." S.C. Code Ann. § 16-17-725(A) provides:

> It is unlawful for a person to knowingly make a false complaint to a law enforcement officer concerning the alleged commission of a crime by another, or for a person to knowingly give false information to a rescue squad or fire department concerning the alleged occurrence of a health emergency or fire.

Id.

Appellants' Brief does not address this statutory provision, even though it was argued at trial and charged to the jury.[8] It is difficult, if not impossible, to reconcile what constitutes a "facially valid warrant," in view of S.C. Code Ann. § 16-17-725(A). Instead, Appellants declare on page 14 of their Brief, "Appellants presented undisputed evidence at trial of a facially valid warrant." *Id.* The facts showed otherwise and the jury found a lack of probable cause, false statements to law enforcement and the verdicts show Appellants' version of the facts, and how to

[8] As noted on page "v" of Appellant's Brief, Appellants cite to only three provisions of the S.C. Code, as follows: (i) S.C. Code § 15-32-520 (on page 36); (ii) S.C. Code § 15-32-135 (on page 33), and (iii) S.C. Code § 22-3-710 (on page 14).

interpret the facts, were rejected.

The Evidence Must be Viewed in the Light Most Favorably to Respondent

The evidence Respondent provided at trial was overwhelming in establishing facts from which the jury could have concluded, and did conclude, Appellant Alex Chapman provided false information to Investigator Elliott Turner of the GCSO, and further that Turner relied on that information. By way of example, the Arrest Warrant (R. p. 920), Investigator Turner's testimony at trial, as well as at the Preliminary Hearing on March 26, 2018, wherein the presiding Judge concluded by stating, "Okay. Being that it's stated that Miss Katchick is and has sole control of receiving and making deposits, I deem that probable cause has been met today." (R. p. 1026) (underline emphasis added).

Other evidence presented at trial also showed Appellants Alex Chapman and Chapman Dental convinced and manipulated Investigator Turner to believe Respondent was the only person that could have been responsible for the discrepancy between the knowingly unreliable and unaudited EagleSoft data, and the bank statements showing cash deposited. Appellant Alex Chapman took it one step further and convinced Elliott Turner that the discrepancy was theft by his use / misuse of the Doug Schmieding letter of Nov. 14, 2017, even going so far as to include a second page to Schmieding's letter with the Respondent's name on it. (R. pp. 1004-1005). Doug Schmieding testified unequivocally that he was not Appellants' "expert," his "one-page" letter was not an "audit," that the Chapman's "misused" his letter, and further that he was "shocked" in June 2018 to receive the "battle of the experts" email from Assistant Solicitor Alexa Kluska asking him about his "forensic audit." (R. p. 1028).

Appellants' arguments continue to involve viewing selected bits of evidence in the light most favorable to Appellants (the moving party). That is not the standard to be applied at any

stage of a lawsuit. The jury heard, saw and rejected Appellants' evidence and characterizations of it provided by counsel to Appellants in two Opening Statements and Two Closing Arguments, as Appellants requested a bifurcated trial under S.C. Code Ann. § 15-32-520.

Appellants argument that "no reasonable juror" could have concluded Appellants directed, requested and / or commanded Respondent be arrested ignores the evidence.

Each time it is argued "no reasonable juror" could have possibly [insert factual finding adverse to Appellants], Appellants acknowledge there is evidence in the record from which the jury could make an inference, but suggest this jury was just unusually and consistently unreasonable. Appellants make this type of argument on at least five (5) separate parts of their Initial Brief. These arguments are found in Appellants' Initial Brief as follows in Sections:

(a) I.C - did not "request, direct, or command unlawful arrest" (pp. 14-18);
(b) I.D - did not "provide knowingly false information" (pp. 18-19);
(c) I.D.2 - only inference "negative discrepancy" (pp. 22-23);
(d) II.A - were not "active in institution of proceedings" (pp. 25-26);
(e) II.B - did not "lack probable cause" (pp. 26-28); and
(f) II.C - could not have "acted with malice" (p. 28).

Id.

In each of these instances, Appellants apparently wish to overlook the requirement that the trial court must "construe all reasonable inferences and ambiguities in the evidence in favor of the non-moving party as to each element of the claim and must deny the motion if more than one reasonable inference emerges." *See e.g.*, *Carter v. Bryant*, 838 S.E.2d at 532. As set forth herein, and as admitted by Appellants, there is evidence in the record to support all these factual findings by the jury. In addition, Appellants' Brief fails to set forth facts in support of how the jury's verdicts must be viewed as unreasonable, and this Court must give deference to the trial court's discretion in not accepting Appellants' arguments for a new trial, etc.

Appellants appear to have formulaically cropped these words / phrases from the opinion in *Huffman*. For example, Appellants declare on page 8, "Dr. Chapman did not request, direct, or demand that Respondent be arrested or even brought in for questioning. (R. p. 664, lines 11-16)." *Id.* (Appellants' citation to transcript included in quoted portion). Instead, "Dr. Chapman only conveyed to Investigator Turner he was 'eager to have it looked at' [the discrepancy]. (R. p. 348, line 20; p. 133, line 1)." *Id.* (Appellants' citation to transcript included in quoted portion). Presumably, Appellants' argument is that since these selectively quoted portions of the trial transcript do not contain the words "request, direct, demand or command," that the jury just mistakenly viewed the entirety of the evidence presented at trial. Instead, the jury should have relied *solely* on Dr. Chapman's testimony that he merely "conveyed" this incriminating information to Investigator Turner that somehow resulted in Respondent being arrested.

Each of Appellants' "no reasonable juror" arguments should be treated as an admission of the existence of sufficient evidence to support the jury's verdicts.

Appellants argument that "no reasonable juror" could have concluded Appellants provided knowingly false information regarding Respondent ignores the evidence, and mis-states the law.

The evidence shows Appellants knew the Eaglesoft data was never reconciled during the three plus years Respondent worked for Appellant Chapman Dental, P.A. Respondent's forensic accounting expert, Mike O'Shea, testified how the data was completely unreliable and further that the same analysis of Appellants' data for "discrepancies" related to checks and credit card payments was off by tens of thousands of dollars. Chapman Dental's former employee, Dental Hygienist Althea Holland, testified about how she was to be paid on a commission basis and that Appellant Alex Chapman would come to her and pay her in cash for those friends and family of his that he allowed to pay in cash, because he took those payments off the books in Eaglesoft

after she entered them in there. Still further, the evidence showed Respondent was off work every Wednesday at 1:00 PM to work her second job at the KanPai Tokyo steakhouse, and further she did not work Saturdays when Dr. Chapman was treating selected patients and taking payments or hosting social events, Respondent was off for some family trips for several days (including one to see family in Pennsylvania), and she was out for eye surgery. In each of those instances, persons other than Respondent not only had access to the cash in the envelope in the unlocked drawer, but were also recording the entries in Eaglesoft.

The evidence presented at trial was not only overwhelming that Respondent could not have been physically "solely responsible" for all cash run through the practice for over three years, but further that the Eaglesoft data standing alone was unverified and unreliable. At trial, it was established that neither the cash envelope nor the Eaglesoft data entry were handled by Respondent 24/7 from late 2013 to early 2017. In addition, other persons, including Appellant Alex Chapman, had access to the cash envelope in the unlocked drawer, and those other persons performed the Eaglesoft data entry while Respondent was not present. Still further, the Eaglesoft data was subject to alteration by anyone with access to it at anytime, such as Appellant Alex Chapman or Brooke Chapman, who he married in 2016, and she then came to work for the practice, and shortly thereafter, found the data / discrepancies that were used, first, to accuse Respondent of stealing from the practice and fire her in or around March 2017, and later have her arrested on Feb. 7, 2018.

Appellant argues, "solely responsible" was reckless at best and knowingly false, at worst, and the evidence supports either conclusion.

As noted herein, the jury found Appellants lacked probable cause to seek an arrest of Respondent. Not only was the use of the phrase "solely responsible" reckless and / or malicious,

but here Appellants put those words in the letter of Doug Schmieding, CPA. (R. pp. 1004-1005). Appellants' own words fall short of even making a *prima facie* argument to distinguish "primarily responsible" from "solely responsible," and then wish for the reader to conflate these two very different labels. Appellants state, "Even if Appellants used the term 'solely responsible,'[9] it was used in good faith as Respondent's role as Office Manager made her the person [primarily] responsible for receipt and deposit of funds." *Id.* at 21.

Still further, at trial, Respondent acknowledged she was primarily responsible for the financial bookkeeping and bank deposits. Appellants attempt to equate their conduct in the record in this trial with the "unwitting" report to law enforcement in *Huffman* denies the testimony and exhibits showing Appellants had accused Respondent of stealing in early 2017, fired her on that alleged premise, and then took steps from at least as early as October 22, 2017 (R. pp. 924-953)[10] to Feb. 7, 2018 (R. p. 2, Arrest Warrant), to see to it Respondent was arrested. In *Huffman*, the complete reference to that unwitting person reads as follows: "However, we find punishing an individual who **mistakenly identifies a criminal suspect or** unwittingly provides what is later discovered to be incorrect information in a criminal investigation serves no purpose." *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 274, 826 S.E.2d 609, 616 (2019) (wherein the added bold and underlined text is the portion cropped from Appellants' Initial Brief on p. 21.).

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[9] Despite this phrase being in evidence, including in numerous documents created and used by Appellants (*E.g.*, R. p. 966-974), their Brief continues to present use of the phrase as an uncertainty.

[10] In his email back to Brooke Chapman on Oct. 31, 2017, her Uncle Earl Simmons, CPA, states, "If not prosecuted by the DA, they can still be taken to Small Claims Court. Your main purpose is to be able to tell employers about her behavior without being sued for defamation." (R. p. 943). As shown by the testimony of Jim Nasim, Respondent's new employer as of 2017, Appellants not only had her arrested but also called Nasim and told him she stole from Chapman Dental, but only after they had her arrested. Respondents maintain this was all done in good-faith, and the jury just mis-understood their motives.

There can be no "unwitting" report to law enforcement under these circumstances, which do not involve a mistaken eye-witness account as did the reference to the unwitting reporter in *Huffman*, cited from *Jones v. Autry*, 105 F. Supp. 2d 559, 561 (S.D. Miss. 2000) (stating, "Considering first plaintiff's claims of negligence, gross negligence and recklessness, the Mississippi Supreme Court recognizes that 'the law allows a wide latitude for honest action on the part of the citizen who purports to assist public officials in their task of law enforcement.'").

The actions of Appellants showed a concerted attempt to ruin Respondent for allegedly having taken $3,505.19 from Appellant Chapman Dental's cash drawer over a 3-year period. The jury saw through Appellants' attempts to misconstrue and confuse the evidence.

a. ***"Discrepancies" ignores evidence that Appellants never took steps to check Eaglesoft records against actual cash deposited, including by not doing End of Day, End of Week or End of Month Reports***.

Appellants next argue on p. 22, "The only reasonable inference the jury could draw was that a negative discrepancy existed between the Eaglesoft reports and bank deposits and that the discrepancies ceased after Respondent was terminated." *Id.* This hypothetical "only reasonable inference" further shows Appellants refusal to take responsibility for their actions, which Appellants' counsel told the jury they would do in closing arguments in the punitive damages phase of the trial. In support of this position, Appellants state:

> There is no evidence that Dr. Chapman knew or believed the Eaglesoft data was unreliable when he took the information to Turner. Appellants sought confirmation from two outside CPA sources regarding whether money may have been missing from the account. CPA Simmons testified he was asked to compare bank records with printouts from Eaglesoft.

Id. at 22 (underline emphasis added).

The evidence showed Appellant Alex Chapman knew how the Eaglesoft data was entered, saved, stored, and modified, and further that he had access to the cash and ability to

modify the Eaglesoft data. In fact, Appellant Alex Chapman did modify the Eaglesoft data when he paid Althea Holland in cash. There is also testimony in the record about Appellant Alex Chapman providing dental services to friends and family for cash, much of it on the weekends when no other employees were present. For Appellants to suggest this amounts to "no evidence," of knowledge is hard to fathom. Respondent's expert, again, testified about how the Eaglesoft data was inherently unreliable because it was never verified or checked with End of Day ("EOD"), End of Week ("EOW") or End of Month ("EOM") reports, which Appellants did not ask or instruct Respondent to do. Working at Appellant Chapman Dental was Respondent's first job after getting her associate's degree in Science and Medical Office Administration. If Appellants wanted her to reconcile the books, as apparently most all other dental practices do via EOD, EOW and EOM reports, she could have done it. A reasonable inference from the evidence in the record is that Appellant Alex Chapman desired and enjoyed this loose "accounting" system as it enabled him to take cash from the drawer, and avoid reporting it as income.

Assumption by Investigator Turner mis-states facts and misleads on law.

Appellants attempt to misconstrue Investigator Turner's testimony as mistaken assumptions he made along the way, whereas Appellants actions were all in good-faith. Juries are very perceptive as collective bodies to determine which parties are acting in good-faith and which are not. The jury did its job here and listened to the testimony and the cross-examinations of Appellants' counsel. Turner testified he got all information from Appellants and Appellants convinced him only Respondent could have been responsible. In fact, this is exactly what the Judge at the Preliminary Hearing relied upon, stating on page 168, as follows, "Being that it's stated that Miss Katchick is and has sole control of receiving and making deposits, I deem that probable cause has been met today." (R. p. 1026). Turner also testified at the Preliminary

Hearing, he was not told Respondent left every Wednesday at 1:00 PM. (R. p. 1022, lines 6-11). He was told by Appellant Alex Chapman from the beginning, however, that "[Respondent] she had sole control over the payments," and "making the deposits." (R. p. 1017, lines 3-9).

Malicious Prosecution

Appellants arguments that "no reasonable juror" could have concluded Appellants were affirmatively active in instituting the prosecution of Respondent ignores the evidence.

As set forth above with respect to the "no reasonable juror" arguments made by Appellants on Respondent's other claims, these arguments must fail, not only because of the high burden of proof set on Appellants, but because of the large amount of evidence in support of all of Respondent's claims. To convince a judicial body that a jury got it wrong on so many points speaks volumes by itself, but to make such an argument successfully, Appellants would first have to argue correctly that of all the evidence in the record in this four day trial, only X, Y and Z could possibly have been considered in determining issues A, B or C. Appellants have failed to do that, and, instead, their arguments selectively pick out evidence of Appellants' choosing and argue it is all that the jury could look at on the issue for which it is presently arguing "no reasonable juror."

Here, Appellants contend their actions were not affirmatively taken. Yet the evidence shows Appellants employed two CPA's, tricked the second one to using his letter, altered and enhanced his letter, then took a binder down to the Sheriff's Office that had only Respondent's name on it, and included knowingly false, and in fact ridiculous statements, such as, "Client Records and Bank Deposits were Maintained Solely by Samantha Katchick." (R. p. 985).

Next, Appellants argue probable cause existed. Had Appellants statement regarding Respondent been true, perhaps probable cause would have existed, but the evidence said

otherwise, and the jury rejected every factual assertion proposed by Appellants at trial.

Finally, with respect to Malicious Prosecution, Appellants argue lack of malice. Appellants testified at trial and tried to explain how this was all just their curiosity to ask Investigator Turner if Respondent stole from them. That argument understandably failed miserably, not just because Investigator Turner did not testify in conformity with it, but also because of all the other evidence, including specifically the Schmieding letter, and the addition to it of page 22 in Pltf. Tr. Ex. 12. (R. p. 1005). If Appellants were acting in good-faith, why not just ask Doug Schmieding to send the letter directly to the Sheriff's Office? Right, because he would not have done it, and if he did, it would not have had Respondent's name on it.

Defamation

Appellants wish that *all publications were by Respondent* ignores evidence.

As noted by the trial court in its order denying Appellants' post-trial motions, Jim Nasim and Brian Smith each testified about Appellant Alex Chapman telling them Respondent stole from his practice. The testimony from Nasim was that he received a telephone call with that information. The testimony from Brian Smith was that Appellant Alex Chapman told him Respondent stole in 2020, a year or more after Respondent's charges were dismissed and expunged, and after Alex Chapman sent Respondent the text entered as Plaintiff's Exhibit 18. (R. p. 1029). Brian Smith stated the defamatory statement was made while they were at Appellant's house by the pool. Angela Hawthorne also testified that she wanted to make Appellant Alex Chapman "say it to her face," so she asked why Respondent was fired and he told her that she stole from the practice. Hawthorne also testified she did not believe Respondent stole from the practice. The statement to Hawthorne, as an employee of the practice, was *arguably* subject to a qualified privilege, but the statements to Jim Nasim and Brian Smith have

no basis for a claim of a privilege, and Appellants' Brief fails to establish the elements of a qualified privilege for either of these statements. In addition, the jury was charged with the law on qualified privilege, and it did not find the statements privileged.

Appellants suggestion that *all publications were privileged* ignores the evidence, and mis-applies the law

Appellants cite to *Conwell v. Spur Oil Co. of Western S.C.*, S.C. 170, 125 S.E.2d 270 (1962), for the law on qualified privilege. However, Alex Chapman and Jim Nasim had no common interests at that time. Appellant Alex Chapman had no ownership in Respondent's new employer. The jury certainly did not find any of Appellants' actions to have been taken in good-faith. In fact, as shown by Pltf Tr. Exs. 5 and 7 (R. pp. 954), the Uncle Earl Simmons emails, Appellants were doing this to create a false premise of being able to accuse Respondent of stealing without being subject to being sued for defamation.

In *Conwell*, the Court noted, "it must be remembered that although the occasion may be privileged, it is not every communication made on such occasion that is privileged. It is not enough to have an interest or duty in making a communication; the interest or duty must be shown to exist in making the communication complained of." *Id.* at 275. The jury believed the statement to Nasim was to get Respondent fired or otherwise punished in her job, and that is exactly what it did, as Respondent was sent to work in Spartanburg for months, costing her hours at work and increasing her travel expenses to get to and from work.

Punitive Damages - Bifurcated

Appellants chose to bifurcate the trial, as was their right to do under S.C. Code Ann. § 15-32-520. Appellants now wish to quarrel with one witness that provided testimony on punitive damages issues, after having prevented any evidence or arguments on punitive damages for the first three days of the trial. This witness's testimony was subject to cross-examination by

Appellants' very capable and experienced trial counsel. Yet, the jury still awarded punitive damages thoughtfully on all three claims.

Punitive Damages - Directed Verdict

For the same reasons as set forth above in analysis of Respondent's actual damages awards, Appellants merely restate the same arguments that the evidence is insufficient or has been misunderstood by everyone but Appellants.

Punitive Damages – Former Employee

As set forth above, Althea Holland's testimony in the punitive damages portion of the trial, which was of Appellants' choosing, and was in no way prejudicial or unfair to Appellants. (R. pp. 865-868). She was employed by Appellants for years after Respondent was terminated. This is once again, Appellants just don't like the facts of this case, and they don't like that every single witness gave testimony that was unfavorable to their defenses and desired story lines.

Punitive Damages - Excessive

The jury's award of punitive damages complies with dues process as set forth in *Mitchell* and does not warrant a reduction.

"The practice of awarding punitive damages originated in principles of common law 'to deter the wrongdoer and others from committing like offenses in the future.'" *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 584, 686 S.E.2d 176, 183 (2009) (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964)). To determine if a punitive award is reasonable, a trial court must conduct a post-trial review that considers the following factors set forth by the Supreme Court in *B.M.W. of North America, Inc. v. Gore* and adopted in *Mitchell*: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages

award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Gore*, 517 U.S. 559, *Mitchell*, 385 S.C. at 587–88, 686 S.E.2d at 185–86. Additionally, the eight *Gamble* factors should also be considered. *See Mitchell*, 385 S.C. at 70; 686 S.E.2d at 176; *Gamble v. Stevenson*, 305 S.C.104, 406 S.E.2d 350 (1991). Here, after consideration of these factors, the Court should confirm that the jury's award is reasonable.

Degree of reprehensibility

In making that threshold assessment, the "most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *State Farm Mut. Auto. Ins. Co.,* 538 U.S. 408, 419 (2003). As set forth in *Mitchell*, in determining the degree of Appellants' reprehensibility, the following should be considered: (1) whether the harm caused was physical as opposed to economic; (2) whether the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) whether the target of the conduct had financial vulnerability; (4) whether the conduct involved repeated actions or was an isolated incident; and (5) whether the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185 (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003)).

Considering these factors, Appellants' course of conduct exhibited a high degree of reprehensibility. It is not even a close question, and the jury found that as well. There is ample evidence that Appellants' misconduct was reprehensible and evidenced a conscious indifference and reckless disregard for the rights and dignity of Respondent, and anyone else who might be treated similarly in the future. Appellants knowingly pursued this course of conduct, enticing and

tricking third-parties such as Doug Schmieding, CPA, with the knowledge and the plan to have Respondent arrested and hopefully get her fired from her new job, and then when the charges were dismissed, acting like it was all just fun and games, sending the text that read, "Yo Sam, let's catch up over a beer or 2. I'll buy :)." (R. p. 1029). Appellants deceptively masqueraded Doug Schmieding's one-page letter as a two-page letter, adding in the name of Respondent and the incriminating "solely" statement repeated throughout Appellants documents. (R. pp. 1004-1005). This evidence of trickery and deceit satisfies the fifth factor.

The additional *Gamble* factors also further support that the punitive damages award is reasonable. The eight *Gamble* considerations include: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble*, 305 S.C. at 111-12, 406 S.E.2d at 354.

As to culpability, 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. As to the duration and concealment of the misconduct and existence of similar past conduct, the evidence establishes that Appellants' plan to accuse and destroy Respondent went on for months, and the identity of Uncle Earl Simmons, CPA, was not disclosed even after the case was over a year old and written discovery responses had been exchanged by the parties. As to providing a deterrent effect, imagine the lack of a deterrent effect if Appellants had done this and not been called to answer for their actions by Respondent's successful lawsuit.

Likewise, because the punitive awards intend to deter such conduct, it is most certainly reasonably related to that significant form of harm so as to satisfy the sixth *Gamble* factor. As to the remaining *Gamble* factor, the defendants' ability to pay, the jury was provided with Appellants' net worth statement as Plaintiff's Trial Exhibit 30, showing a net worth of over $2,400,000.00. (R. p. 1063). The evidence in this case supports nearly every *Gamble* factor and factors in the reprehensibility test of *Mitchell / Gore*. There is strong evidence of Appellants' reprehensibility, culpability, and reckless indifference, there certainly is an essential need for deterrence**.**

ii. Ratio

As to the ratio of punitive damages to actual damages, this factor also merits a finding of reasonableness. In determining the reasonableness of the ratio, the Court may consider: the likelihood that that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay. *Mitchell* at 588, 686 S.E.2d at 185. Further in *Garrison v. Target Corporation* 435 S.C. 566, 869 S.E.2d 797, 807-08 (2022), the South Carolina Supreme Court held that in conducting its ratio calculation constitutionality review, the trial court should consider any potential harm, including the harm to others. "[I]t is appropriate to consider the magnitude of the potential harm that the defendant's conduct would have caused to its intended victim if the wrongful plan had succeeded, as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred." 435 S.C. 566, 869 S.E.2d 797, 807-08 (2022) (citing *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 460 (1993)).

The punitive damages award being less than the actual damages award is per se reasonable. Appellants argue that the reverse ratio in this case somehow suggests excessiveness

or lack of reasonableness but there is nothing to suggest that the award of punitive damages is anything but reasonable in light of the other *Mitchell* factors. Given that the punitive damages award is less than the award of actual damages supports the reasonableness of the award.

iii. Comparable cases

To further justify the reasonableness of the jury's punitive damages award, the guideposts urge consideration of the award in this case to comparable cases. As an initial matter, there are no directly comparable cases or civil penalties in which a defendant has blatantly violated the privacy rights of countless others for decades. Considering the *Mitchell* guideposts and *Gamble* factors, the Court should affirm the punitive damages awards as reasonable and in accordance with the Due Process Clause of the Fourteenth Amendment.

New Trial Absolute and (VI) Nisi Remittitur

a. Because the verdicts are not excessive and there are no compelling reasons for a new trial nisi remittitur, the Court should also deny Appellants' alternative request to order a new trial nisi remittitur.

If the Court declines to grant a new trial absolute, Appellants alternatively ask the Court to grant a new trial nisi remittitur if the Court finds the verdicts merely excessive. In determining whether any verdict is inadequate or excessive, however, the court must give "substantial deference" to the jury's determination of damages. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993) (citing *Brabham v. S. Asphalt Haulers, Inc.*, 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953)). The South Carolina Supreme Court recently addressed a new trial nisi and recognized that:

> [t]he necessity of giving this deference arises from article I, section 14 of the South Carolina Constitution, which provides, "The right of trial by jury shall be preserved inviolate.'" S.C. Const. art. I, § 14. Thus, every party to a civil jury trial "is entitled to the constitutional privilege of the fair judgment of a jury" and a

> court must "not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate." *Brabham* 223 S.C. at 430, 76 S.E.2d at 306.

Jolly v. Fisher Controls Int'l, LLC, 905 S.E.2d 380, 387, 443 S.C. 511, 524 (2024). The Court then held that if a trial court determines that the jury's verdict is excessive, it must explain the reasons it made that determination, and those reasons must be compelling reasons for invading the jury's province. *Jolly*, 905 S.E.2d 380, 386. Appellants do not set out any compelling reasons for the court to grant a new trial nisi remittitur for good reason - there are none. To the extent that Appellants are relying on the same arguments made in support of their motion for a new trial absolute, Respondent incorporates her opposition as set out above. In sum, there are no compelling reasons to invade the jury's province in this case. Accordingly, the Court should deny Appellants' request for New trial Nisi Remittitur.

Special Damages exceed requested amount

Rule 49, SCRCP, requires any party desiring to challenge the jury's verdict(s) to raise those objections before the jury is excused. In *Camden v. Hilton*, 360 S.C. 164, 171-172, 600 S.E.2d 88, 91-92 (Ct. App. 2004), this Court stated:

> In finding the trial court erred in granting the medical provider's motion for JNOV, the supreme court noted, "this court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the jury has been discharged, claim advantage of the error, thus invited by acquiescence." *Id.* at 554, 560 S.E.2d at 896 (citations omitted).
>
> We find the trial court erred in entertaining Respondent's post-trial motion, as the motion was not presented to the court prior to the jury being discharged.

Id. (underline emphasis added)

In another case addressing issue with a special verdict form, this Court and the S.C. Supreme Court made it abundantly clear that any issues to be raised with regard to a special verdict form must be raised before the jury is discharged. In *Stevens v. Allen*, 342 S.C. 47, 50, 536 S.E.2d 663, 664 (2000), the Supreme Court affirmed this Court's reversal of the trial court's

refusal to resubmit the issue of an inconsistent verdict to the jury, stating, "we now hold that, when the issue is raised, a trial judge should resubmit a [inconsistent] verdict … to the jury with instructions …" In *Stevens*, the Supreme Court also stated, "[t]his Court subsequently reversed *Johnson* to the extent it imposed a duty on the trial judge to reject such a verdict in the absence of an objection by either party." *Id.* at 664. Appellants lost their opportunity to challenge the verdict when they failed to raise the objection before the jury was dismissed, and there was no "duty on the trial judge" to make Appellants' objections for them.

In closing arguments on the punitive phase, Appellants' counsel, already knowing the actual damages verdict was over $100,000.00, all but begged for mercy. (R. pp. 862-865; R. pp. 908-910). In fact, Respondent's counsel did not even use the opportunity to make a reply argument in the punitive damages phase. (R. p. 910, lines 7-8). As noted in *Camden v. Hilton* above, a "party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the jury has been discharged, claim advantage of the error, thus invited by acquiescence. *Id.*

Excessive Damages Awards

For each of the three claims in which Respondent prevailed, namely False Imprisonment, Malicious Prosecution and Defamation, Appellants argue the jury's awards were excessive. Appellants admittedly rely on their same prior arguments for these positions. Namely, for False Imprisonment, the facially valid warrant" argument again, even stating in this attempt to reduce the verdict, arguing "there is no cause of action for false imprisonment under these circumstances." App. I.B. at 46. This is not an argument that the verdict is excessive, but rather a second try to argue the entire claim is improper.

With respect to Malicious Prosecution, Appellants try again to argue there was "probable

cause" for the arrest of Respondent. The facts are in and the jury rejected that argument every time. Appellants state, "there is no evidence Appellants objected to the dismissal of the charges," but they did double down on Mike O'Shea's first report dated May 25, 2018, and they never even told Doug Schmieding they made his letter a two-pager and added Respondents' name to it. The evidence was overwhelming that Appellants got exactly what they wanted when Respondent was arrested and punished by her new employer. Again, these are not arguments for excessiveness, but the same old arguments to reject the claim in its entirety.

For Defamation, Appellants go back to the same self-publication argument and privilege arguments. These issues were presented to the jury and the jury rejected them both and correctly found there was no applicable privilege. Appellants' complaints about the special verdict form are not preserved as set forth herein under Rule 49.

CONCLUSION(S)

Because the circuit court properly allowed Respondent's claim for False Imprisonment to go to the jury and there is no basis to apply the "facially valid warrant exception, the damages award was supported by the evidence and within the jury's province. Because the circuit court properly allowed Respondent's claim for Malicious Prosecution to go to the jury, the award was supported by the evidence and within the jury's province. Because the circuit court properly allowed Respondent's Defamation claim to go to the jury, and because no qualified privilege applied to the statements of Jim Nasim or Brian Smith, the award was supported by the evidence and within the jury's province.

Because Appellants did not preserve certain issues raised in their brief, such as complaints about the special verdict form or elements of punitive damages in the actual damages

awards, the verdicts are not subject to attack on appeal for those reasons. Because the jury's awards of punitive damages comport with due process and are well within the parameters set forth in *Mitchell / Gore*, and *Gamble v. Stevenson* and S.C. Code Ann. § 15-32-530. For all of these reasons, the jury's verdicts in favor of Respondent should be affirmed.

Respectfully submitted,

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Greenville, South Carolina
August 26, 2025

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Aug 26 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas, 15th Circuit

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

COMMON PLEAS 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.

WESLEY D. FEW, LLC

/s/Wesley D. Few

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PROOF OF SERVICE

On behalf of Respondent Samantha Katchick the undersigned hereby certifies that on August 26, 2025, Respondent's Final Brief was served on all counsel of record and the Court of Appeals Clerk of Court via E-File/ Email/ Hand-Delivery as follows:

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August 26, 2025

Via E-File:

The Hon. Jenny Abbott Kitchings, Clerk of Court
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RE: Samantha Katchick v. Chapman et al
Case No.: 2019-CP-23-01522
Appellate Case No. 2024-000931
Our File No.: 00267-001

Dear Ms. Kitchings:

Enclosed for filing is Respondent's Final Brief and Proof of Service for same.

Sincerely Yours,

Wesley D. Few

Enclosures

WDF/cgy

CC: Counsel of Record (*Via E-File)*
Client (*Via email)*