RECEIVED
DEC 0 3 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case Number: 2013-CP-10-3669
Appellate Case No.: 2014-001977

Eugene Magwood ..... Applicant/Appellant,

v.

J. Al Cannon, Jr. in his official capacity as Sheriff of Charleston County, Investigator Anderson, Investigator Antonio, Charles Ghent, and South Carolina Law Enforcement Division ..... Respondents,

---

INITIAL BRIEF OF THE APPELLANT

Jerry Leo Finney, Bar #64297
The Finney Law Firm, Inc.
2117 Park Street
Columbia, South Carolina 29201
Phone: (803) 254-7408

Attorneys for Appellant

December 3, 2014

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Facts 1

Standard of Review 3

Arguments 4

I. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS SUMMARY JUDGMENT ON ALL CAUSES OF ACTION AS THERE EXISTED A GENUINE ISSUE OF MATERIAL FACT..... 4

II. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS SUMMARY JUDGMENT ON ALL CAUSES OF ACTION AS THE DEFENDANTS ARE NOT ENTITLED TO IMMUNITY FROM SUIT DUE TO THEIR ACTIONS IN THIS MATTER..... 19

Conclusion 21

TABLE OF AUTHORITIES

CASES

Arthurs ex rel. Estate of Munn v. Aiken Cnty., 346 S.C. 97, 551 S.E.2d 579 (2001).....14

Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).....4

Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).....3

Charles v. Texas, 199 S.C. 156, 170, 18 S.E.2d 719, 724 (1942) (quoting 11 Am.Jur., at 578).....16,18

Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. at 479, 289 S.E.2d at 416.....7

Hampton v. Conso Products, Inc., 1992, 808 F.Supp. 1227., S.C. Code Ann. § 15-3-550.....15

Hanna v. Palmetto Homes, Inc., 300 S.C. 535, 537, 389 S.E.2d 164, 165 (Ct. App. 1990).....7

Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986).....5

Holtzscheiter v. Thomson Newspapers, Inc. 332 S.C. 502, 511, 506 S.E.2d 497, 502 (1998).....15,16

Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967).....9

Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987).....17

Jensen v. Anderson County Dep't of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991).....14

LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 69, 370 S.E.2d 711, 713 (1988).....16,18

Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961).....8,9

Miller v. Blumenthal Mills, Inc. (S.C.App. 2005) 365 S.C. 204, 616 S.E.2d 722.....3

Mixon v. Phoenix Landscaping Co., 136 Ga.App. 344, 221 S.E.2d 225 (1975).....17

Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).....3

Nottingham v. Wrigley, 221 Ga. 386, 144 S.E.2d 749 (1965).....17

Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965).....7

Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999).....14

Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999).....13

Todd v. S. Carolina Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981).....16

Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983).....3

Yaeger v. Murphy, 291 S.C. 485, 354 S.E.2d 393 (Ct.App.1987).....16

Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).....3

Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C.1975).....4

STATEMENT OF ISSUES ON APPEAL

1. **THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS SUMMARY JUDGMENT ON ALL CAUSES OF ACTION AS THERE EXISTED A GENUINE ISSUE OF MATERIAL FACT.**

2. **THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS SUMMARY JUDGMENT ON ALL CAUSES OF ACTION AS THE DEFENDANTS ARE NOT ENTITLED TO IMMUNITY FROM SUIT DUE TO THEIR ACTIONS IN THIS MATTER.**

STATEMENT OF THE CASE

This is an appeal of an Order granting the Defendants summary judgment on all causes of action from The Honorable R. Markley Dennis, Jr. dated and filed on August 14, 2014. Appellant received a copy of this Order on August 18, 2014 and timely filed a Notice of Appeal on September 8, 2014.

FACTS

Prior to May 7, 2009, Appellant was employed by Respondent Cannon as a highly successful member of the Charleston County Sheriff's Office having attained the rank of detective and having received various awards and decorations for his service. (Deposition of Eugene Magwood pg. 92). On January 7, 2007, Appellant, in the scope of his employment as a detective, was assigned a sexual assault case with a Ms. Catherine Boney as the alleged victim. (Deposition of Eugene Magwood pg. 34). In furtherance of that investigation, and at the direction of his supervisors, Appellant went to the residence of Ms. Boney, to interview her further as to the reported crime, and to show her a photographic lineup of potential suspects. (Deposition of Eugene Magwood pg. 34, 49). After being shown the photographic lineup, Ms. Boney identified the alleged suspect and initialed next to the picture. (Deposition of Eugene Magwood pg. 36). However, due to Ms. Boney's becoming hysterical and extremely distraught, following her initialing of the photo lineup, Appellant placed the date and time next to her initials.

(Deposition of Eugene Magwood pg. 34, 36). On October 7, 2008, correspondence was sent to SLED by the Assistant Sheriff at the Charleston County Sheriff's Department requesting that SLED conduct an investigation into complaints of possible misconduct of Appellant regarding Ms. Boney's case. (October 7, 2008 Letter to SLED). Appellant was placed on administrative leave as of October 7, 2008 and SLED's investigation was begun with Respondent Anderson of Internal Affairs at the Charleston County Sheriff's Office also being notified of the situation and SLED's involvement. (Deposition of Charles Ghent pg. 16, 17). Prior to the conclusion of the criminal investigation by Agent Ghent of SLED, an internal affairs investigation was begun on April 1, 2009 by Respondents Anderson and Antonio of the Charleston County Sheriff's Department. (Internal Affairs Memorandum, Deposition of Michael Anderson pg. 44). Although during both of the investigations performed by the Respondents it was discovered that allegations of Appellant signing Ms. Boney's initials were not supported by evidence, Appellant was arrested, charged with misconduct in office, and accused of being a liar and a criminal. (Arrest Warrants). Even after several instances of Catherine Boney stating that she may have signed the photo lineup, thus corroborating Appellant's consistent position in this matter, the Respondents continued and facilitated the prosecution of the Appellant without cause. (Deposition of Michael Anderson, pg. 66, Notes of Michael Anderson, Deposition of Roger Antonio pg. 24, Deposition of Charles Ghent pgs. 39, 40, 41). The Respondents also took great steps to ruin the Appellant's reputation in his community by making false and defamatory statements about the Appellant's handling of Ms. Boney's case and his character, all of which were published in local newspapers and online through local news outlets. (Deposition of Eugene Magwood, pg. 54). The Appellant was ultimately brought to a jury trial on the charge of misconduct in office on June 29, 2011 through June 30, 2011 where he was found NOT GUILTY of all charges by a jury of his peers. (Deposition of Eugene Magwood pg. 98). As a result of the actions of the actions of Respondents, Appellant has not only

suffered actual damages in the form of lost earnings and earning potential and attorney's fees, but he has also endured degradation of his good name, degradation of the his reputation in his trade and occupation, degradation of his personal reputation in the community; and embarrassment, fright, humiliation, indignity, and mental pain and suffering. (Deposition of Eugene Magwood pgs. 72, 74, 75, 114, 117, 118).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), South Carolina Rules of Civil Procedure, Miller v. Blumenthal Mills, Inc. (S.C.App. 2005) 365 S.C. 204, 616 S.E.2d 722. "In determining whether any triable issues of fact exist, all inferences from the facts in the record must be viewed in the light most favorable to the party opposing the summary judgment motion." Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Id. at 545. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). If triable issues exist, those issues must go to the jury. Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).

ARGUMENTS

I. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS SUMMARY JUDGMENT ON ALL CAUSES OF ACTION AS THERE EXISTED A GENUINE ISSUE OF MATERIAL FACT

The most important portion of Appellant's argument in the case at hand, as is true for most suits of this nature at the summary judgment stage, is the interpretation of the facts and evidence present in a light most favorable to Appellant. Unfortunately, this portion of Appellant's argument was summarily ignored by the trial court in granting Respondents summary judgment on all causes of actions without examining the facts as presented by the Appellant. A review of the Order Granting Summary Judgment to Respondents reveals that the facts used by the Court in making a decision are the facts as presented by the Respondents and not the facts presented by Appellant. (Order Granting Summary Judgment). Although the Appellant presented evidence through a written brief with attachments of deposition transcripts and other supporting documents as well as presented oral arguments at the July 30, 2014 summary judgment hearing, all of which contradicted Respondents' recitation of the facts in the case, none of this appears to have been taken into consideration in the court's decision to grant summary judgment to Respondents on all causes of action. As the South Carolina Supreme Court has held that "summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues,'" it is axiomatic that the trial court should take great caution in examining the facts as presented in a light most favorable to the non-moving party so that the non-moving party is given every opportunity to demonstrate the necessity of a jury hearing the disputed factual testimony. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) *citing* Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C.1975); *see also* Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986)

("an extreme remedy to be cautiously invoked"). This holding has great importance in regards to the Appellant as his lawsuit rested on the interpretation of the facts presented, specifically Respondents' behavior in investigating and prosecuting the charges against Appellant. In examining the evidence in a light most favorable to Appellant, several disputed factual issues arise that go to the heart of the matter; whether the Respondents had probable cause to arrest and prosecute Appellant for forging Ms. Boney's initials on a photo lineup and then lying about it to his superiors and to the assistant solicitor. A review of the Appellant's position in opposition to Respondents' request for summary judgment demonstrates that Ms. Boney made it very clear to the Respondents as well as to multiple other people connected with the prosecution of Appellant that she may have signed the photo lineup given to her by Appellant but she was so upset and hysterical she could not remember. (Criminal Trial Transcript pg. 5, lns. 21-25, Deposition of Michael Anderson pg. 66, lns. 9-23, Deposition of Charles Ghent pg. 11, lns. 12-14). She even goes so far as to tell Respondent Anderson that she did sign something with Magwood and that he told her to sign her initials. (Notes of Michael Anderson) This detail, while it may appear small, creates a gigantic factual dispute in light of the fact that the issue that brought about the investigation and prosecution of Appellant was the allegation of his forging of Ms. Boney's initials. (Deposition of Michael Anderson, pg. 33, lns. 21-25, pg. 34, lns. 1-3, Deposition of Charles Ghent pg. 19, lns. 18-23). However, even when armed with the knowledge that Ms. Boney thought she signed the photo lineup, and thus was not accusing Appellant of any wrongdoing, the Respondents continued with the arrest and prosecution of Appellant and the submission of a misleading report indicating Appellant had violated policy by lying to a public official and forging Ms. Boney's signature. It is important to note that these actions by the Respondents were performed while maintaining to the court that Ms. Boney had **denied** signing

the photo lineup while in truth, she was never sure whether she signed the photo lineup or not. (Deposition of Michael Anderson, pg. 66, Notes of Michael Anderson, Deposition of Roger Antonio pg. 24, Deposition of Charles Ghent pgs. 39, 40, 41). Respondent Ghent even admitted in his deposition that he was not surprised by Ms. Boney's testimony at Appellant's criminal trial where she reiterates on several occasions that she does not remember signing the photo lineup because she was so emotional, that she could have signed it because she does remember signing something. (Criminal Trial Transcript pg. 10, lns. 9-17, Deposition of Charles Ghent pg. 74, lns. 22-24). In fact throughout Ms. Boney's testimony at Appellant's criminal trial, where she was testifying as a witness for the State, she repeats again and again that she does believe she signed the photo lineup. (Criminal Trial Transcript pgs. 2-20). Respondents Anderson and Antonio even submitted their findings as to their internal investigation stating that Appellant placed Ms. Boney's initials on the lineup as well as that Appellant lied to Assistant Solicitor Voight and Internal Affairs regarding the initials although they undisputedly were aware of multiple instances where Ms. Boney admitted she was too hysterical to remember whether she signed or not but felt like she had signed something, thus confirming Appellant's position that he had not forged her initials. (Internal Investigation Report, Deposition of Michael Anderson, pg. 66, Notes of Michael Anderson, Deposition of Roger Antonio pg. 24, Deposition of Charles Ghent pgs. 39, 40, 41). While the parsing of Ms. Boney's position becomes tedious at times, the entire investigation and prosecution of Appellant relies on her testimony as it is undisputed that the only two people who truly knew whether Ms. Boney signed the photographic lineup was Appellant and Ms. Boney. (Deposition of Charles Ghent pg. 33, lns. 24-25, pg. 34, lns. 1-3). This complex factual dispute as to what the Respondents knew at each stage of the investigation and prosecution and whether they willfully mislead the Judge signing the arrest warrant and

presiding over the preliminary hearing presents a genuine issue of material fact that cannot be ignored and must be submitted to a jury for determination. Hanna v. Palmetto Homes, Inc., 300 S.C. 535, 537, 389 S.E.2d 164, 165 (Ct. App. 1990) (stating "in a law case, the credibility and weight to be accorded evidence is solely for the fact finder to determine.) In taking the facts in a light most favorable to the Appellant, Mr. Eugene Magwood was fired from his job, arrested and prosecuted for a crime he did not commit and for which there was no reliable evidence demonstrating differently. Due to the actions of the Respondents, Mr. Magwood lost not only two years of his life while these charges were pending, but also endured emotional distress, lost wages, loss of employment opportunities, degradation of his name and reputation, stress, and embarrassment. (Deposition of Eugene Magwood pgs. 72, 74, 75, 114, 117, 118) As Appellant has proven the elements of all causes of action, the trial court's grant of summary judgment to Respondents on all causes of action was an abuse of discretion and should be reversed with the case being remanded for a trial.

Malicious Prosecution and Abuse of Process

It is clear that the Appellant has articulated a case for malicious prosecution and abuse of process based on the facts and trial testimony in this matter. "[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965). Malice is defined as "the deliberate intentional doing of an act without just cause or excuse." Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. at 479, 289 S.E.2d at 416. Malice may also be inferred from a want of probable cause to institute the prosecution.

Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967) details the essential elements of abuse of process as, "first, an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding."

It is undisputed that Respondent SLED and Respondent Ghent, with assistance of Respondents Cannon, Anderson and Antonio, participated in the institution and continuation of the proceedings against Appellant in their arrest and detainment of the Appellant for a charge he was later acquitted of by a jury of his peers. It is also undisputed that due to the internal investigation performed by Respondent Anderson and Respondent Antonio on behalf of Respondent Cannon, as well as their failure to notify Respondent Ghent and Respondent SLED of Ms. Boney's continued assurance that she had signed the photo lineup, Appellant's arrest and prosecution continued. Finally it is undisputed that the Appellant was fully acquitted of the charge and the arrest expunged off of his record. (Deposition of Eugene Magwood pg. 98). Based on these undisputed facts, this element of the proceeding being adjudicated in Appellant's favor is satisfied. Finally, it is apparent by the evidence presented in this matter that the Appellant has endured emotional and monetary damages due to his unlawful arrest and prosecution. (Deposition of Eugene Magwood pg. 74, lns. 16-25, pg. 75, lns. 17-25, pg. 78, lns. 3-15, pg. 114, lns. 16-22, pg. 117, lns. 14-22, pg. 118, lns. 1-16). Mr. Magwood was fired from his employment, arrested, and due to the ongoing prosecution, continuously blocked from enjoying even the simplest pleasures as well as causing him to be denied job opportunities, employment and wages to assist in providing for his family. (Id.) Even if the Respondents were to dispute Appellant's damages, any arguments about the validity of damages would constitute a genuine issue of material fact and should be presented to the jury. As such, Appellant would

argue that, even if the Court finds a dispute regarding the elements of malicious prosecution, when taken in a light most favorable to the Appellant, there exists a material issue of genuine fact and the issue must be submitted to a jury. As such, the trial court erroneously granted summary judgment to Respondents and that decision should be reversed and the case remanded for a trial.

Regarding the issues of malice and lack of probable cause in the institution of the proceedings, review of the facts and circumstances of the charges in question in a light most favorable to the Appellant demonstrate that there existed no probable cause whatsoever for the arrest or prosecution of Appellant. South Carolina supports the contention that the malice requirement can be satisfied through want of probable cause, allowing for both remaining elements of malicious prosecution to be satisfied through the Respondents' failure to have probable cause for the arrest prosecution. Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Additionally, as discussed above, although the Respondents were aware that Ms. Boney states that she signed the photo lineup, they continued on with the arrest and prosecution of Appellant for Misconduct in Office. (Deposition of Michael Anderson, pg. 66, Notes of Michael Anderson, Deposition of Roger Antonio pg. 24, Deposition of Charles Ghent pgs. 39, 40, 41). Specifically looking at the arrest warrant sworn out by Respondent Ghent, he states under oath that the Appellant knowingly and willingly provided false information in his investigative report and to the Solicitor's Office in the form of a photo lineup purported to have been signed by a witness (Boney), even after he has been aware of that Ms. Boney does not deny signing the lineup. (Arrest Warrant of Eugene Magwood). This misstatement of the facts and evidence in the basis for the arrest warrant demonstrates that the Magistrate did not have the proper information prior to making the determination of probable cause in this matter. This also

rings true in discussing the preliminary hearing in this matter where Respondent Ghent admits he simply read the arrest warrant/affidavit. (Deposition of Charles Ghent pg. 46, lns. 20-25, pg. 47, ln. 1). Again, the magistrate hearing the evidence at the preliminary hearing was not afforded the opportunity to hear the true evidence and facts of this case which is the Ms. Boney did not deny signing the photo lineup. This failure of the Respondents to provide truthful evidence calls into question every decision that has been made as to the existence of probable cause for the arrest and prosecution of Appellant and presents a genuine issue of material fact that cannot be ignored and must be presented to a jury. Appellant would thus respectfully request that this Court reverse the trial court's grant of summary judgment to Respondents and remand this case for a trial.

It is not only Respondents Ghent and SLED, however, who were armed with the statement of Ms. Boney that she signed the photo lineup, and willfully chose to not disclose this information but instead cover it up. Respondents Cannon, Anderson and Antonio, also refused to notify the court or prosecuting authorities of the truth of the matter, as well as participated in Appellant losing his job and being arrested and prosecuted. (Deposition of Eugene Magwood pg. 116, lns 4-9). Respondents Anderson and Antonio, as the investigators for the internal investigation of Appellant, had full access to the SLED investigation and file, even attending meetings regarding the SLED investigation. (Deposition of Michael Anderson pg. 34, lns. 18-23, pg. 44, lns. 14-22, pg.45, lns. 21-23, Deposition of Charles Ghent pg. 18, lns. 2-19) In fact, through their own investigation, they interviewed many of the same witnesses as SLED, including Ms. Boney. During that interview of Ms. Boney, where both Respondent Anderson and Respondent Antonio were present, Ms. Boney admitted that she remembered signed something with Magwood, and that Magwood told her to sign her initials. (Notes of Michael

Anderson). This admission by Ms. Boney appears to have been made several times in response to different questions, each time being stated clearly that she did remember signing the lineup. (Id.). However, as detailed above, Respondents Anderson and Antonio took no action in regards to alerting the proper authorities as to this discovery of evidence, and instead filed a report sustaining the false allegations of forgery and deceit that had been lodged against Appellant as well as continued to assist the remaining Respondents in the prosecution of Appellant. (Internal Investigation Report). Respondent Anderson's and Respondent Antonio's report also falsely accused Appellant of being untruthful regarding writing the date and time on the photo lineup, although Respondent Antonio openly admitted in his deposition that Mr. Magwood remained consistent with the dating and only denied writing the initials. (Deposition of Roger Antonio pg. 33, lns. 17-20).

In further support of the argument that the main evidence of probable cause for Appellant's arrest and prosecution was Ms. Boney's statement, although Respondents interviewed many of Appellant's superiors, all of the statements collected conceded that Appellant had never given them any indication he would forge initials as well as concede that they had no direct information as to what happened that day between Ms. Boney and Appellant as all of their information came from alleged statements of Mr. Magwood which he vehemently denied making. (Deposition of Charles Ghent, pg. 57, lns. 19-25, pg. 58, lns. 1-6). Of note is that many of these statements gave conflicting theories of how the alleged crime occurred, none matched with what Ms. Boney or Appellant stated occurred, and strangely any incriminating information in these statements was allegedly provided to the person after Appellant was placed on administrative leave. The affidavit of Agent Ryan Kelly and Assistant Solicitor Voight also fail to mention that Agent Kelly conducted a recorded interview with Ms. Boney during which

time she stated several times that she may have signed the lineup. (CD recording of Catherine Boney Interview). Again, this constant misstatement of facts from the only eyewitness to the events of that day by the Respondents and their associates continues to be a prevalent theme in this case and create a genuine issue of material fact which must be decided by a jury. As such, Appellant would respectfully request that the trial court's grant of summary judgment to Respondents be reversed and this case remanded for a trial.

Additional support for the existence of a genuine issue of material fact in the case at hand is present in the fact that even with the technology and expertise that SLED possesses in their document analysis department, the results of Respondents' handwriting analysis in this matter gave no conclusive evidence of Appellant signing Ms. Boney's initials. (Handwriting Analysis Results). Furthermore, as testified to at trial by Ms. Boney and as told previously on numerous times to the Respondents, when she initialed the photo lineup, she was hysterical and her handwriting was different from when she was calm and had time to properly write her name on the paper, thus preventing a completely accurate result of the analysis. (Criminal Trial Transcript pg. 14, lns 14-25, pg. 15, lns. 1-18). Based on this evidence along with all prior evidence detailed above, especially the sworn testimony of Ms. Boney at Appellant's criminal trial where she repeats many of the answers she had already given the Respondents, all of which they ignored, it is widely apparent that there does not exist even the slightest bit of probable cause to charge Appellant with misconduct in office for forging signatures, and to fire Appellant for violation of policy for the same false allegations. The Respondents, fueled by what can only be described as an intense desire to push forward with the prosecution of Appellant no matter the costs, ruined Mr. Magwood's life and reputation knowing the truth the whole time. Upon a cursory review of the background, previous statements, and circumstances surrounding this

charge, it is obvious and clear that this demonstrates not only a lack of probable cause but also a definite decision of malice, fraud or intent to harm. Therefore, when viewing all of the evidence in a light most favorable to the Appellant, a genuine issue of material fact exists as to the Appellant's cause of action for malicious prosecution and the trial court's grant of summary judgment to Respondents should be reversed and the case remanded for trial.

The same arguments espoused above in support of Appellant's cause of action for malicious prosecution would also apply to Appellant's cause of action for abuse of process. An examination of the transcript of Appellant's criminal trial demonstrates a genuine issue of material fact as to the Respondents' purpose in continuing this action against Appellant. As there existed no probable cause to arrest, prosecute, and fire the Appellant, the motives of Respondents Ghent, Anderson, and Antonio appears to be based solely in malice, fraud, or other ulterior and improper purposes. Furthermore, as supported by the reports, trial transcript and statements in this matter, Respondents Ghent, Anderson, and Antonio assisted in withholding information from the court in furtherance of their improper purpose. Therefore, when viewing all of the evidence in a light most favorable to the Appellant, a genuine issue of material fact exists as to the Appellant's cause of action for abuse of process, and the trial court's grant of summary judgment to Respondents should be reversed and the case remanded for trial.

Negligence

South Carolina courts have held that in order to establish liability in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). Statutes, relationships formed in contract, status, property interests, or some other special circumstances have been found to create a legal duty on the part

of a defendant towards a plaintiff. Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Jensen v. Anderson County Dep't of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991). In the case at hand, Appellant contended that the Respondents acted negligently in the investigation, arrest, prosecution and firing of Appellant by failing to procure any probable cause for his arrest, prosecution and firing. Examination of the South Carolina Tort Claims Act, as explained in Arthurs ex rel. Estate of Munn v. Aiken Cnty., 346 S.C. 97, 551 S.E.2d 579 (2001), demonstrates that, "the State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages contained herein." South Carolina Tort Claims Act, Section 15–78–40. The Tort Claims Act goes further and states that, "... [l]iability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty." South Carolina Tort Claims Act, Section 15–78–20(a). This theory of recovery set out in the Tort Claims Act specifically creates a duty for the Respondents, in situations such as this case, to act prudently in their execution of their duties. Appellant would thus contend that the above detailed actions of the Respondents demonstrate the breach of the Respondents' duty of care and resulting damages incurred and endured by the Appellant. As detailed above, Appellant bases his cause of action for negligence against the Respondents on far more than just a negligent investigation or a negligent arrest, but instead on multiple ignored attempts to properly investigate and prosecute this case properly which includes ignorance of exculpatory evidence which pointed to Appellant's innocence, and a purposeful misleading of the Court as to the evidence against Appellant. As such, when viewing all of the evidence in a light most favorable

to the Appellant, a genuine issue of material fact exists as to the Appellant's cause of action for negligence, and the trial court's grant of summary judgment to Respondents should be reversed and the case remanded for trial.

Defamation and Defamation Per Se

South Carolina Courts have held that in an action for defamation, "one must allege and prove that a statement was made which, either on its face or by reason of extrinsic facts, tends to impeach the reputation of the plaintiff; that the statement was published to a third person, other than the plaintiff; and that a result of the statement the plaintiff suffered either special or general damages." Hampton v. Conso Products, Inc., 1992, 808 F.Supp. 1227., S.C. Code Ann. § 15-3-550. Holtzscheiter v. Thomson Newspapers, Inc. distinguishes defamation and defamation *per se* in that "slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. 332 S.C. 502, 511, 506 S.E.2d 497, 502 (1998). In the case at hand, Respondents Anderson, Antonio, and Ghent disseminated information to the media identifying that the Appellant was under arrest for misconduct in office and had been fired from the Charleston County Sheriff's Department. These news articles informed the public that Appellant, a long-standing member of the community and police officer, forged a witness' lineup and lied to prosecutors about a 2006 rape case. (News Articles). This assault of character of Appellant was published to all persons with access to the internet or television, a fact that is especially harmful due to Mr. Magwood's involvement in the community and as a police officer, a position in which a person must hold a particular type of character. (Deposition of Eugene Magwood pg. pg. 74, lns. 16-25, pg. 75, lns. 17-25, pg. 78, lns. 3-15, pg. 114, lns. 16-22, pg. 117, lns. 14-22, pg. 118, lns. 1-16). This type of

slander against the Appellant a well-known and respected member of society, not only damaged Mr. Magwood's reputation in the community and prevented him from finding employment, but also caused him emotional injuries that were manifested through physical and mental hindrances following this event. (Id). Furthermore, as the statements made by the Respondents were that of a crime of moral turpitude, this slander also constitutes defamation *per se*. Based on Holtzscheiter v. Thomson Newspapers, Inc., "if a defamation is actionable *per se,* then under common law principles the law *presumes* the defendant acted with common law malice and that the plaintiff suffered **general** damages." 332 S.C. 502, 510, 506 S.E.2d 497, 501 (1998). Therefore, under the theory of defamation *per se*, Appellant is only required to present evidence that the statements were made and that they were disseminated; both requirements satisfied through the Appellant's testimony and the news articles as published. Therefore, when viewing all of the evidence in a light most favorable to the Appellant, a genuine issue of material fact exists as to the Appellant's cause of action for defamation and defamation per se and the trial court's grant of summary judgment to Respondents should be reversed and the case remanded for trial.

Civil Conspiracy to Commit Fraud

The South Carolina Supreme Court has defined civil conspiracy as, "a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damage to the plaintiff." LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 69, 370 S.E.2d 711, 713 (1988) *citing* Todd v. S. Carolina Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981) *see also* Charles v. Texas Co., *supra,* and Yaeger v. Murphy, 291 S.C. 485, 354 S.E.2d 393 (Ct.App.1987). As further espoused above, Respondents Ghent, Anderson, and Antonio worked together with the purpose of not only injuring Mr. Magwood, but in not revealing

exculpatory evidence to the court and their superiors, continuing of a theory of lies against Appellant. While Appellant would concede that Defendant Ghent headed up the criminal investigation whereas Respondents Anderson and Antonio were involved in the internal affairs investigation, it is clear from the evidence that the Respondents had interactions together that would lead a person of common knowledge to believe that they were working together with the same purpose. (Deposition of Eugene Magwood pg. 116, lns. 4-9). Although the trial court found that Appellant had not proven a conspiracy between Respondents Anderson and Antonio and Ghent due to the Appellant not producing enough evidence to prove this conspiracy, this conclusion does not fall in line with prior South Carolina caselaw. (Order Granting Summary Judgment). While Appellant would concede that he does not have a "smoking gun" to prove the conspiracy such as a written agreement to conspire against Appellant or a recorded phone call, South Carolina courts do not require such a high burden of proof. Instead, the courts have held that, "conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators and other circumstances." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987) *citing* Nottingham v. Wrigley, 221 Ga. 386, 144 S.E.2d 749 (1965). Island Car Wash, Inc. v. Norris continues on to state that, "civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence; concert of action, amounting to a conspiracy, may be shown by circumstantial as well as direct evidence." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987) *citing* Mixon v. Phoenix Landscaping Co., 136 Ga.App. 344, 221 S.E.2d 225 (1975). In keeping with the logic of these South Carolina cases, it is clear from the testimony of the Respondents and Appellant as well as the examination of the Respondents' investigation that the parties all shared the same goal. Both the SLED

Investigation and the Internal Investigation shared the exact same goal of investigating the allegations of forgery and untruthfulness as well as they shared information and worked together in their investigations. (Deposition of Michael Anderson pg. 34, lns. 18-23, pg. 44, lns. 14-22, pg.45, lns. 21-23, Deposition of Charles Ghent pg. 18, lns. 2-19). While the Respondents have conveniently denied the existence of an ulterior purpose or a common scheme or plan, as already discussed, the complete lack of probable cause and blatant disregard for Appellant's rights during the Respondents' investigation support Appellant's belief and testimony that the Respondents worked together to injure the Appellant. As such, Respondents are not entitled to summary judgment on Appellant's cause of action for civil conspiracy to commit fraud and the trial court's grant of summary judgment must be reversed and the case remanded for trial.

Even assuming *arguendo* that this Court does not believe Appellant has properly presented evidence of an unlawful act on behalf of the Respondents, South Carolina courts have held that, "lawful acts may become actionable as a civil conspiracy when the "object is to ruin or damage the business of another." LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988) *citing* Charles v. Texas, 199 S.C. 156, 170, 18 S.E.2d 719, 724 (1942) (quoting 11 Am.Jur., at 578). As the Respondents knew the consequences of charging, arresting, prosecution, and firing the Appellant as well as alerting the entire county of Charleston that the Appellant was a liar while knowing that Ms. Boney signed the lineup, the only logical reason for their actions appears to be that the Respondents' object was to ruin the Appellant.

As such, when viewing all of the evidence in a light most favorable to the Appellant, a genuine issue of material fact exists as to the Appellant's cause of action for civil conspiracy to commit fraud, and the trial court's grant of summary judgment to Respondents should be reversed and the case remanded for trial.

II. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS SUMMARY JUDGMENT ON ALL CAUSES OF ACTION AS THE DEFENDANTS ARE NOT ENTITLED TO IMMUNITY FROM SUIT DUE TO THEIR ACTIONS IN THIS MATTER.

While the South Carolina Tort Claims Act provides governmental agencies significant immunity from suit in many aspects, the Act is clear in that there are exceptions to this immunity. In the case at hand, Respondents and the trial court have relied on S.C. Code Ann. §15-78-60(25), Gross Negligence; S.C. Code Ann. §15-78-60(5), Exercise of Discretion, and S.C. Code Ann. §15-78-60(3), Execution of a Court Order in order to cloak the Defendants in immunity from suit and dismiss the Appellant's Complaint, however this reliance is misplaced. Although Respondents attempt to posit S.C. Code Ann. §15-78-60(25) as a ban to suits against governmental entities, this subsection actually creates an exception to the overall immunity of governmental entities in that it specifically states that a governmental entity is not liable for a loss, "except when the responsibility or duty is exercised in a grossly negligent manner." (S.C. Code Ann. §15-78-60(25)) as detailed above, the actions of the Respondents are based in their conscious disregard for Appellant's rights. Although all Respondents were made aware on numerous occasions by Ms. Boney that she recalled signing something with Appellant, but could not remember what it was, Respondent Ghent provided no indication whatsoever of this evidence to the Magistrate signing the arrest warrant nor to the Judge presiding over Appellant's preliminary hearing, nor did they . (Deposition of Charles Ghent pg. 57). Respondents Anderson and Antonio did include this information in their internal investigation report, however they then contradicted themselves by sustaining the allegations and stating Appellant did forge Ms. Boney's signature with no evidence supporting this statement whatsoever as the only two eyewitnesses to this signature, Ms. Boney and Appellant, each provided substantial evidence that

Ms. Boney signed the photo lineup. (Internal Investigation Report, Deposition of Michael Anderson pgs. 74-75). In fact, taking the facts in a light most favorable to Appellant, there exists no evidence to support the allegation that Appellant forged Ms. Boney's signature. At all points in the investigation, Respondents, when confronted with information that contradicted their opinion of Appellant's guilt, it was ignored and discarded. This behavior embodies the definition of gross negligence according to South Carolina case-law and therefore denies Respondents the benefit of immunity from suit. As such, this subsection should not be applied to allow Respondent immunity and serves to support Appellant's contention that Respondents have no immunity under the South Carolina Tort Claims Act.

In regards to S.C. Code Ann. §15-78-60(5) and S.C. Code Ann. §15-78-60(3), these subsections and attempts at immunity for Respondents are inapplicable in the case at hand as they are overridden by S.C. Code Ann. §15-78-70(b) which states that:

> Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

As can be clearly seen by the arguments and evidence presented above, the Respondents acted with malice, fraud, and intent to harm in their dealings with Appellant, and would therefore not be entitled to immunity under the South Carolina Tort Claims Act.

Although the above arguments were presented to the trial court judge through Appellant's written brief as well as attempted to be presented to the trial court at the summary judgment hearing, the trial court erroneously ignored these arguments and granted summary judgment to Respondents on all causes of action, finding the Respondents immune from suit. (Order Granting Summary Judgment).

CONCLUSION

As the trial judge erroneously granted Respondents summary judgment on all causes of action as there exists genuine issues of material fact as to all causes of action as well as Respondents are not entitled to immunity under the South Carolina Tort Claims Act, the trial court's decision should be reversed and the case remanded for trial.

Respectfully submitted,

Jerry L. Finney, Esquire
THE FINNEY LAW FIRM, INC.
2117 Park Street
Columbia, South Carolina 29201
Phone: (803) 254-7408
Fax: (803) 254-1941
Email: jlfinney@bellsouth.net

Attorneys for the Appellant

Columbia, South Carolina
December 3, 2014

RECEIVED
DEC 03 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case Number: 2013-CP-10-3669
Appellate Case No.: 2014-001977

Eugene Magwood ..... Applicant/Appellant,

v.

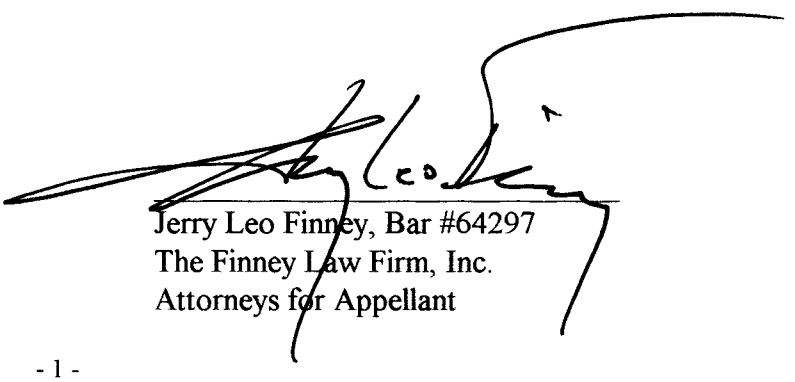
J. Al Cannon, Jr. in his official capacity as Sheriff of Charleston County, Investigator Anderson, Investigator Antonio, Charles Ghent, and South Carolina Law Enforcement Division ..... Respondents,

---

PROOF OF SERVICE

I certify that I have served the **Initial Brief of Appellant** and the **Designation of Matter to be Included in the Record on Appeal** in the above matter on opposing counsel of record, by depositing a copy of the same in the United States Mail, postage prepaid, on December 3, 2014, addressed as follows:

Robin L. Jackson, Esquire
Senn Legal, LLC
Post Office Box 12279
Charleston, SC 29422



Jerry Leo Finney, Bar #64297
The Finney Law Firm, Inc.
Attorneys for Appellant