THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,

v.

Sunshine Recycling, LLC and
Aiken Electric Cooperative, Inc.....Respondents,

APPELLANT'S INITIAL REPLY BRIEF

Robert F. Goings, Esquire
Goings Law Firm, LLC
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
(803) 350-9230

J. Todd Rutherford, Esquire
The Rutherford Law Firm, LLC
2113 Park Street
P.O. Box 1452
Columbia, South Carolina 29202
(803) 256-3003

Attorneys for Appellant

Columbia, South Carolina
December 19, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENTS 1

I. THE FACTS MUST BE CONSIDERED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF 1

II. RESPONDENTS' ARGUMENTS THAT HUFFMAN MISSTATED THE FACTS IS WHOLLY WITHOUT MERIT 3

III. REPLY TO RESPONDENTS' FALSE ARREST ARGUMENTS 9

IV. THE STATUTE OF LIMITATIONS DOES NOT BAR THE CLAIM FOR FALSE ARREST AS TO AIKEN ELECTRIC 13

V. REPLY TO RESPONDENTS' MALICIOUS PROSECUTION ARGUMENTS 13

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 1

Burnett v. Family Kingdom, 387 S.C. 183, 691 S.E.2d 170 (Ct. App. 2010) 10

Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002) 3

Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 615 (Ct. App. 1999) 12

Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (S.C. 1990) 12

Law v. S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006) 11, 13, 15

Madison v. Babcock Ctr., Inc., 371 S.C. 147, 638 S.E. 2d 650 (2006) 10

Melton v. Williams, 281 S.C. 182, 186, 314 S.E.2d 612, 614-15 (Ct. App. 1984). 12

Shirley's Iron Works, Inc. v. City of Union,
387 S.C. 389, 693 S.E.2d 1 (Ct. App. 2010) 1

Vaughn v. A.E. Green Co., Inc., 277 S.C. 392, 287 S.E.2d 493 (1982) 1

Wingate v. Postal Tel. & Cable Co.,
204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944). 9

Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992) 12

ARGUMENTS

I. THE FACTS MUST BE CONSIDERED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF

The Statement of Facts presented by the Respondents ignores the standard of review on a Motion for Summary Judgment. The facts Respondents chose to present are heavily slanted in favor of the Respondents, often omitting critical details that support the presence of a genuine issue of material fact. As this Court is well aware, the documents, testimony, and record must be viewed in the light most favorable to Huffman and all reasonable inferences construed in her favor, not the Respondents. See Rule 56, SCRCP.

"At the summary judgment stage of litigation, **the court does not weigh conflicting evidence** with respect to a disputed material fact." *Shirley's Iron Works, Inc. v. City of Union*, 387 S.C. 389, 397, 693 S.E.2d 1, 4 (Ct. App. 2010) (emphasis added); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) ("At the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."). Summary judgment should be granted **only** where it is **perfectly clear** that no issue of fact is involved." *Vaughn v. A.E. Green Co., Inc.*, 277 S.C. 392, 393, 287 S.E.2d 493, 494 (1982) (emphasis added).

The Respondents' version of the facts is best to be presented before a jury, but for purposes of this appeal, this court should only view the facts in Huffman's favor as true. The significant divergence between the facts presented by the parties demonstrates that summary judgment was not proper.

In Respondents' attempt to paint the facts favorable to them instead of Huffman, they fail to mention or even address the following significant facts:

a) A black male looks nothing like a while female;

b) The metal that Huffman brought into Sunshine Recycling did not match *at all* the same type, shape, color, or amount of the alleged stolen metal (Offense Report p. 3; Huffman Invoice; Huffman Depo. p. 14);

c) Respondents utter disregard to review the surveillance video before accusing Huffman;

d) The sale documents and invoice clearly establish that Huffman was not in possession of the stolen metal (Id);

e) Mr. Goss was lying when he claimed he spoke personally with Huffman while at Sunshine Recycling and she was physically carrying the stolen metal. Mr. Goss told the police he spoke with Huffman while she was selling Aiken Electric's metal to Sunshine Recycling, but, in his deposition, admitted this did not occur. This admitted false statement to the police helped provide a reason for the police to arrest her for the crime. (Offense Report pp. 2, 4; Goss Depo. p. 49-50; Ethridge Depo. pp. 26-28; Ethridge II Depo. pp. 56-57)

f) The Sheriff's Department refused to prosecute because the witnesses from Sunshine Recycling and Aiken Electric gave the police "false information the first time." (Offense Report p. 4);

g) The Respondents admit in their depositions that any reasonable person who watched the video would clearly see Huffman did not have the stolen metal. (Goss p. 63-67, 71, 73, 79). Sunshine told the Sheriff's Department that Huffman was shown on the video with the stolen metal (Ethridge p. 34). Yet, Respondents had the video and chose not to view it or disregard what they saw (Goss Depo. p. 80, 107; Rich Depo. 24-25, 27-28, 30; Huffman Depo. p. 5).

h) The owner of Sunshine Recycling demanded to "come and testify [against Huffman] in court after all physical evidence, including the video, fully exonerated Huffman. (Etheridge Depo. p. 46);

i) Aiken Electric expressed with a great "sense of urgency," the desire to have Huffman arrested when it was in possession of physical evidence that proved she was not involved; and

j) Probable cause cannot be based on unsubstantiated hearsay from an unnamed "Hispanic" employee who did not give a statement.

II. RESPONDENTS' ARGUMENTS THAT HUFFMAN MISSTATED THE FACTS IS WHOLLY WITHOUT MERIT.

Respondents argue throughout their Briefs that Huffman has "repeatedly misstated and/or misquoted the record" and "mischaracterized the facts" (See generally Aiken Electric Brief; Sunshine Recycling Brief). Respondents would have this Court believe that Huffman just made up facts that do not have evidentiary support. The facts of this case are heavily disputed, which is why summary judgment was not proper. *Conner v. City of Forest Acres*, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002) ("Since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues."). Respectfully, Huffman did not misstate the facts, but, rather, properly presented the facts in the light most favorable to her.

In particular, Aiken Electric devotes a section of its Brief captioned "Appellant's Incorrect Factual Statements and References to the Record." (Aiken Brief, p. 7-11). Aiken Electric outlines eight (8) "incorrect" and "misstated" factual positions asserted by Huffman. As set forth below, Aiken Electric is simply wrong about the eight (8) points that it believes are not supported in the record. The points below will show that Respondents' repeated urging to the Court that Huffman's position is belied in "misstatements" and lacks evidentiary support rings hollow and untrue. Huffman will address these eight (8) arguments in the order as presented in Aiken Electric's Brief.

1. It is not a misstatement that Mr. Goss stated he identified metal that Huffman brought in as stolen from Aiken Electric. The record fully supports this fact in numerous places. Some of the specific references to the record to support this assertion are as follows:

Deputy Ethridge testified as follows:

> Q: "Who told you that Meredith Huffman was the individual that came in with the stolen property of Aiken Electric?
>
> A: "I'm pretty sure it was Mark Goss.....Mark had actually talked with her. He was actually there because he made the comment, I see here in my notes that he -- he had actually spoke with her in line and she was obtaining payment for the property. So he -- he had saw her and spoke to her on the property of Sunshine."[1]

(Ethridge Depo. pp. 26-28).

Deputy Ethridge further testified as follows:

> Q: "Who provided you, if anyone, the name Meredith Huffman?
>
> A: "Mark Goss and Sunshine Recycling."

Deputy Ethridge further testifies that Mr. Goss and Sunshine Recycling both identified Huffman as the person in possession of the stolen metal.

(Ethridge Depo. pp. 28-30).

In the Offense Report completed by Deputy Ethridge, he states Goss advised him as follows:

> "While [Goss] was there he actually spoke and carried on a conversation with Huffman while she was waiting to get paid for the items that she had

[1] Again, Mr. Goss lied to the police about talking to Huffman when she sold the metal. Mr. Goss and Huffman were not at Sunshine at the same time, and Mr. Goss finally admitted in his deposition that he did not see or speak with her. (Goss Depo. P. 49).

just brought in. Goss said that he viewed the items after she left and identified them as being theirs."

(Offense Report p. 2)

"Mr. Rushton stated that Mark Goss spotted their wire at Sunshine. They have the identity of the woman who sold the wire"

(Offense Report p. 4).

In the May 17, 2010 Incident Report of Deputy Aldridge, Deputy Aldridge describes Mr. Goss identifying the metal and Huffman as the suspect.

(5/17/10 Aldridge Incident Report).

In Goss' deposition, he testifies as follows:

Q: You thought she was a suspect?

A: I had no way of knowing that she was not.

(Goss Depo pp. 75-76).

In Deputy Ethridge's deposition, he testified as follows:

"[Goss and Rich] were guaranteeing that the metal that she brought in was the metal – Mr. Goss was saying this is 100 percent our metal from Aiken Electric and the ticket was showing the weights, everything, was -- everything was looking the same. And they had the ticket."

(Ethridge Depo. pp. 24-26; Ethridge II Depo. pp. 56-57, 68-69).

2. It is not an incorrect statement that "Mr. Goss and Mr. Rich identified Appellant as the person who sold the stolen metal from Aiken Electric to Sunshine." Again, the facts before this Court fully support this statement. The references to the record set forth in the paragraph above support factual statements. The deposition

testimony from the sheriff's deputies, the police records, and the deposition testimony of Mr. Goss and Mr. Rich fully support that they identified Huffman. Furthermore, Deputy Ethridge testified that Sunshine Recycling told him that Huffman was shown on the video with the stolen metal. (Ethridge Depo. pp. 34-35).

3. Respondents claim the following factual statement by Huffman in her Brief is "yet another misstatement" as follows: "Mr. Goss told the deputies that he 'actually spoke and carried on a conversation with Huffman while she was waiting to get paid for the items that she had just brought in...[and] viewed the items after she left and identified them as being [from Aiken Electric].' " (Aiken Electric Brief p. 8). While Respondents boldly accuse Huffman of making "incorrect factual statements," they apparently did not comprehend the record. The very statement that Respondents claim, "yet another misstatement," was in fact cited *verbatim* from Deputy Ethridge's Offense Report. (Offense Report p. 2; see also Ethridge Depo. pp. 26-28; Ethridge II Depo. pp. 56-57).

4. Respondents take issue with the sentence in Huffman's Brief that says "An employee of Aiken Electric, Charles Rushton, also told the Sheriff's Department that Mark had the identity of the woman who sold the wire, referring again to Huffman. (Aiken Electric Brief p. 8). Respondents claim "this is a misstatement. No reference is made to this in the record to support the statement." (Aiken Electric Brief p. 9). Again, this is not a misstatement and the substance of this statement is nearly identical to Deputy Huggins' interview note of May 18, 2010. (Huggins 5/18/10 Note). Deputy Huggins' note states, "I talked to Mr. Rushton on 5/18/10. Mr. Ruston statement [sic] that Mark Goss spotted them while at Sunshine. They have the identity of the woman who sold it."

This statement is also reflected on the final page of the Offense Report. (Offense Report, p. 4). Again, Respondents fail to appreciate the record.

5. Respondents claim that Huffman's statement in her Brief that "Deputy Aldridge testified that Sunshine Recycling and Aiken Electric express a great 'sense of urgency' to arrest Huffman" is a "mischaracterization of the record." (Aiken Electric Brief p. 9). There is nothing incorrect about this statement, either. This was Deputy Aldridge's actual testimony. In his deposition testimony, Deputy Aldridge was asked "Do you recall anything that you haven't told us that was said by Mr. Goss of Aiken Electric?" (Aldridge Depo. p. 42). He answered, *"The one thing that does stick out in my head as far as my interaction with Mr. Goss was that he imposed a sense of urgency on the case."* (Id. emphasis added; see also Aldridge Depo. pp. 61-62, 65).

6. Respondents complain about Huffman stating in her Brief that all Sunshine Recycling and Aiken Electric had to do was to review the video surveillance to determine that she was innocent. (Aiken Electric Brief p. 9). Again, there is nothing incorrect about this statement. The video completely debunks any thought that Huffman was responsible for this crime. Mr. Goss admitted in his deposition that any reasonable person who watched the video would absolutely know that Huffman did not have the stolen metal. (Goss Depo. pp. 63-67, 71, 73, 79, 80, 107). Mr. Goss testified that he was in possession of the video but chose not to review it. (Id.). Mr. Goss conceded that nothing prevented him from reviewing the video. (Goss Depo. p. 71). Yet, the Respondents told the Sherriff's Department that Huffman was shown on the video with the stolen metal. (Ethridge Depo. p. 34).

7. Respondents assert that Huffman's position that the Sheriff's Department secured a warrant "based upon accusations of Sunshine Recycling and Aiken Electric" is not supported by the evidence. (Aiken Electric Brief p. 9-10). Respondents then argue that the Sheriff's Department had the responsibility to determine whether to seek a warrant. The Respondents miss the point. Of course the Sheriff's Department made this determination, but that determination was solely based on false information provided by Sunshine Recycling and Aiken Electric. Yet again, there is nothing incorrect about Huffman's factual statement. Deputy Ethridge unequivocally testified that he pressed charges based on "what [he] was told at Sunshine by Sunshine Recycling and what Mark Goss was giving me [as] information." (Ethridge Depo. pp. 40-41). Deputy Ethridge testified that he believed what Sunshine Recycling and Aiken Electric told him, and relied on their assertions. (Id.) Mr. Goss of Aiken Electric also attempts to blame Sunshine Recycling for providing the false information to the Sheriff's Department. (Goss Depo. pp. 59-61). Then, Mr. Goss was asked: "If you didn't tell Orangeburg County Sheriff's Department that Meredith Huffman was a suspect, the only other person would have been or entity would have been Sunshine Recycling, correct?" His answer, "Yes, sir." (Goss Depo. p. 61). However, Sunshine Recycling attempts to place blame on Aiken Electric. Rich testified the Sheriff's Department arrested Huffman because "the weights that Mr. Goss provided [the Sheriff's Department] coincided with Huffman's ticket somewhat and that's how he did his investigation." (Rich Depo. p.36). But now after reviewing Huffman's ticket, it does not match what was stolen. (Huffman Depo. p. 14; Huffman Invoice). Thus, the totality of the record fully supports a genuine issue of

fact that Huffman's arrest was based upon accusations of Sunshine Recycling and Aiken Electric.

8. Finally, Respondents assert that Huffman "misstates the record" by stating that "Deputy Ethridge's report stated, 'At this time I am not comfortable with this case due to the witnesses gave [sic] me false information the first time.'" (Aiken Electric Brief p. 10-11). This again lacks all merit. In fact, this statement is an exact quote from Deputy Ethridge's Offense Report that was made contemporaneously in June 2010. Instead of acknowledging the plain language of this statement in the record, Respondents try to impunge Huffman as "misstating the record." While the Respondents would like to rely on Deputy Ethridge's deposition to soften this statement after litigation is filed, this is an argument for the jury, not as to whether a genuine issue of material fact exists.

III. REPLY TO RESPONDENTS' FALSE ARREST ARGUMENTS.

Respondents argue that Huffman "has failed to produce any evidence" that they "deprived her liberty." (Aiken Electric Brief p. 12; Sunshine Brief p. 11). They contend that "no evidence" was produced that either Respondents physically restrained or constructively restrained her. These arguments simply lack merit, in part because the Respondents are misinterpreting the law. The well-established law of this state holds **"[t]he 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.**" *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) (emphasis added). **"[W]here a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment.**" *Id.*

The evidence is overwhelming, and in fact, uncontroverted that the arrest was based on information provided to the Sheriff's Department by the Respondents. Huffman's arrest was caused, instigated or procured by the Respondents, and at their request. Not only is there a "mere scintilla" of evidence to support this finding, but the totality of the evidence is overwhelming to this fact. This evidence is demonstrated through the investigation reports, the depositions of Deputies Ethridge and Aldridge, and the admissions of Mr. Goss and Mr. Rich. (cite to record on point #2). To this point, Deputy Ethridge was directly asked "The information that you based your decision to swear that warrant out was based on information that you'd received from Aiken Electric and Sunshine Recycling. Isn't that correct?" Deputy Ethridge responded, "Correct.....I was going off what I was told at Sunshine by Sunshine Recycling and what Mark Goss was giving me[,] the information." (Ethridge p. 40-41). The question of whether Huffman's arrest was caused, instigated, requested or procured by the Respondents is a jury question, and further goes to the issue of causation. *See generally, Madison v. Babcock Ctr., Inc.,* 371 S.C. 147, 638 S.E.2d 650, 662 (2006) ("The question of proximate cause ordinarily is one of fact for the jury."); *Burnett v. Family Kingdom*, 387 S.C. 183, 191, 691 S.E.2d 170, 175 (Ct. App. 2010) ("Only on the rarest occasion should the trial court determine the issue of proximate cause as a matter of law").

Further, it remains for a fact finder to determine whether Sunshine was acting "honestly" or in "good faith" as the Respondents argue. The intentions and honesty of the witnesses is for a jury to weigh, not this Court on summary judgment. The intention of the Respondents is a question for a jury. A jury could easily find that Respondents acted overly hasty and without a sufficient good faith basis to accuse her. *See Law v.*

S.C. Dept. of Corrections, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006) (defining "malice" under a false arrest case to mean a "mind which is not sufficiently cautious" acting with "a disregard of the consequences"). A fact finder may conclude that Respondents' actions were "not sufficiently cautious" or that they acted in a manner without regard to the consequences. Even more, a jury could easily find that Respondents made actual false statements to police and lied about the evidence for purposes of securing an arrest. The evidence supports the fact that Sunshine Recycling told the Sheriff's Department that Huffman was shown on the video with the stolen metal. (Ethridge Depo. p. 34). However, Huffman discovered in this litigation that Sunshine Recycling never once reviewed the video. (Rich Depo. pp. 27-28). Additionally, Mr. Goss had a copy of the video, but never viewed it. The Respondents falsely led the Sheriff's Department into believing that the video depicted her of being in possession of the stolen metal. Furthermore, Mr. Goss lied to the Sheriff's Department when he said that he personally spoke with Huffman while at Sunshine Recycling and she was physically carrying the stolen metal. Mr. Goss told the police that he actually spoke with Huffman while she was selling Aiken Electric's metal at Sunshine Recycling. (Offense Report p. 4, Ethridge Depo. pp. 26-28; Ethridge II Depo. pp. 56-57). These statements obviously caused the Sheriff's Department to believe it had the correct suspect. When asked in his deposition, Mr. Goss testified that he did not speak with Huffman and never states that he saw her on the date in question. (Goss Depo. p. 49). This significant discrepancy could lead a jury to conclude that Mr. Goss was providing false statements to the police in order to procure an arrest. At the very least, a "mere

scintilla" of evidence existed for a jury to determine if arrest was caused, instigated, requested or procured by the Respondents.

As with the cause of action for malicious prosecution, the linchpin of this claim is the lack of probable cause. "An action for false imprisonment may not be maintained where the plaintiff was arrested by *lawful authority*." *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 615 (Ct. App. 1999) (emphasis added). The fundamental issue in determining 'lawful authority' turns on probable cause. *Wortman v. Spartanburg*, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (S.C. 1992); *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (S.C. 1990). *"The issue of probable cause is a question of fact and ordinarily one for the jury." Id.* (emphasis added). In determining whether probable cause exists, the "assessment of the credibility of witnesses is a question for the jury, not the court, and it is the jury that decides the weight to be afforded the testimony." *Melton v. Williams*, 281 S.C. 182, 186, 314 S.E.2d 612, 614-15 (Ct. App. 1984).

Not only does the totality of the evidence suggest that probable cause did not exist to arrest Huffman, but the Respondents admit that probable cause was lacking. Goss was posed the direct question "Do you believe Meredith Huffman was falsely arrested?", and he answered "Yes, sir." (Goss p. 78). Summary judgment should have been denied based on this admission alone. Then, Mr. Goss was asked "there was no probable cause to arrest Meredith Huffman for stealing Aiken Electric's metal, was there?" (Goss Depo. p. 103). He answered "no, sir, not that I know of..." (Id.) He also concedes that probable cause should have been based on the unsubstantiated statements attributed to the Hispanic male that worked at Sunshine Recycling. (Id.) Similarly, Mr. Rich testified "I don't

know" to the question of whether probable cause existed to arrest Huffman, and that he never received any information that would link Huffman to the crime. (Rich p. 33-35).

IV. THE STATUTE OF LIMITATIONS DOES NOT BAR THE CLAIM FOR FALSE ARREST AS TO AIKEN ELECTRIC.

Aiken Electric argues for the first time on appeal the statute of limitations bars the claim for false arrest as to it. The statute of limitations defense would not apply to Sunshine Recycling. This defense was not raised to the lower court and was not the substance of any dispositive motion. If the statute of limitations were to be properly raised to the trial court, Huffman would argue this defense has been waived or should be equitably tolled.

V. REPLY TO RESPONDENTS' MALICIOUS PROSECUTION ARGUMENTS.

The Respondents' arguments regarding the claim for malicious prosecution lack meaningful substance on appeal. Aiken Electric provides little analysis, other than to say "it is more than ludicrous to argue" that malice existed and that "Probable cause was established by the Hispanic employee who told Joe." (Aiken Electric p. 17). "In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution." *See Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006). Malice is satisfied when evidence establishes that a person was "not sufficiently cautious" or acting with "a disregard of the consequences." Aiken Electric was not acting sufficiently cautious when it accused Huffman of a crime when the physical evidence, including a video, did not support her involvement. Aiken Electric was not acting sufficiently cautious or was acting with a disregard of the consequences when Mr. Goss told the Sheriff's Department that he actually saw Huffman

carrying the stolen metal, and spoke with her. This false statement was designed to give the police the assurance that Huffman was the correct perpetrator of the crime. Further, Goss claimed that the type and weight of the metal stolen "coincided with Huffman's ticket", but, in fact, there was no correlation between the two. (Rich p. 26). Finally, the Respondents represented to the Sheriff's Department that the video showed Huffman as the criminal.

At any rate, it is error for Aiken Electric to argue that probable cause is established as a matter of law "by the Hispanic employee who told Joe." (Aiken Electric p. 17). This statement was not used in the arrest warrant to establish probable cause. The statement that is attributed to this unknown Sunshine Recycling Hispanic employee hardly satisfies probable cause. The lack of meaningful support for relying on the Hispanic employee is reinforced by the fact that no one knows his name and he never gave a written statement. Again, to allow probable cause to be based on triple hearsay from an "unknown Hispanic employee" renders the probable cause standard meaningless. Mr. Rich even admits that probable cause should not be based on hearsay from his Hispanic employee. (Goss Depo. pp. 78, 103). To borrow the words of Aiken Electric, "it is more than ludicrous to argue" that probable cause exists as a matter of law to justify for *anyone's* arrest simply because *someone accuses you* of committing a crime.

Sunshine Recycling, on the other hand, ignores South Carolina law in analyzing probable cause and malice, instead devoting its argument to the law of foreign jurisdiction. Sunshine Recycling cites to cases that interpret laws of Virginia, Minnesota, Texas, and Pennsylvania. Respectfully, this court does not need to look any further than South Carolina's established law to determine if a genuine issue of fact exists for

malicious prosecution. Since malice can be inferred from a lack of probable cause, the threshold question is whether probable cause existed. Mr. Goss and Mr. Rich admit that probable cause was lacking for Huffman's arrest. (Goss Depo. p. 78, 103; Rich Depo. pp. 33-35). Also, the fact that no physical evidence existed to link Huffman further shows that probable cause was missing. The lack of probable cause also creates a jury question as to malice. "In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution." *See Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006). Additionally, malice is satisfied when evidence establishes that a person was "not sufficiently cautious" or acting with "a disregard of the consequences." The fact that Respondents accused Huffman of committing this crime when the video and physical evidence completely shows otherwise creates a disputed fact as to malice. A jury could find that Respondents were not "cautious" or were operating with "a disregard of the consequences."

CONCLUSION

In viewing the facts and inferences in the light most favorable to Huffman, this Court should find that a "mere scintilla" of evidence exists as to the causes of action for False Arrest and Malicious Prosecution. Accordingly, the Order of the Circuit Court should be reversed for a trial on the merits.

Respectfully submitted,

By: _____

Robert F. Goings, Esquire (S.C. Bar # 74855)
Goings Law Firm, LLC
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Phone: (803) 350-9230
Fax: (877) 789-6340
rgoings@goingslawfirm.com

J. Todd Rutherford, Esquire
The Rutherford Law Firm, LLC
2113 Park Street
P.O. Box 1452
Columbia, South Carolina 29202
(803) 256-3003

Attorneys For Appellant

Columbia, South Carolina
December 19, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,

v.

Sunshine Recycling, LLC and
Aiken Electric Cooperative, Inc. .....Respondents,

PROOF OF SERVICE

I certify that I have served Appellant's Initial Reply Brief and Amended Designation of Matter by mailing a copy of the same, via United States Mail, on December 19, 2014 to the following:

Breon C. M. Walker, Esquire
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
Attorney for Respondent, Sunshine Recycling, LLC

Pope D. Johnson, III, Esquire
Pope. D. Johnson, III, Attorney at Law
1230 Richland Street
Columbia, SC 29201
Attorney for Respondent, Aiken Electric Cooperative, Inc.

Robert F. Goings
Counsel for Appellant

December 19, 2014
Columbia, South Carolina

Goings Law Firm

914 RICHLAND STREET
SUITE A-101
POST OFFICE BOX 436 (29202)
COLUMBIA, SC 29201

P 803.350.9230
F 877.789.6340

E rgoings@goingslawfirm.com

December 19, 2014

VIA UNITED STATES MAIL
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Clerk of Court
1015 Sumter Street
Columbia, SC 29201

Re: Meredith Huffman v. Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc.
Appellate Case No.: 2014-001492

Dear Ms. Kitchings:

Enclosed please find for filing the original and one (1) copy of the following documents in the above-referenced matter:

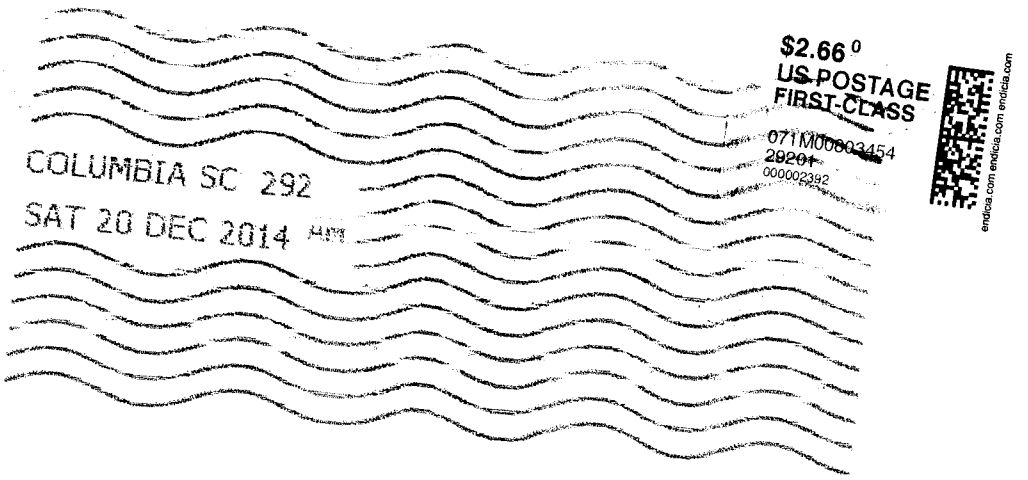
1. Appellant's Initial Reply Brief;
2. Appellant's Amended Designation of Matter to be Included in the Record on Appeal; and
3. Proof of Service.

By copy of this letter, I am hereby serving counsel for the Respondents with the same. Thank you for your assistance and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Robert F. Goings

Enclosures
cc: Breon C. M. Walker, Esquire
Pope D. Johnson, III, Esquire
J. Todd Rutherford, Esquire



Firm

RECEIVED
DEC 22 2014
SC Court of Appeals

Jenny Abbott Kitchings
Court of Appeals

reet
29201