

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,

FINAL REPLY BRIEF OF THE APPELLANT

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SC Court of Appeals

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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.**

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) (R. p. 601). 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) (R. p. 543). 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) (R. p. 543, p. 558). After being shown the photographic lineup, Ms. Boney identified the alleged suspect and initialed next to the picture. (Deposition of Eugene Magwood pg. 36) (R. p. 545). 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) (R. p. 543, p. 545). 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) (R. p. 902). 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) (R. ppp. 445-446). Prior to the conclusion of the criminal investigation by Agent Ghent of SLED, Respondents Anderson and Antonio of the Charleston County Sheriff's Department began an internal affairs investigation on April 1, 2009. (Internal Affairs Memorandum, Deposition of Michael Anderson pg. 44) (R. pp. 833-842, p. 757). 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 Warrant) (R. pp. 911-912) 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) (R. p. 778, pp. 805-811, p. 694, pp. 468-470). 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) (R. p. 563). 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 a jury of his peers found him NOT GUILTY of all charges. (Deposition of Eugene Magwood pg. 98) (R. p. 607). 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) (R. p. 581, p. 583, p. 584, p. 623, p. 626, p. 627).

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

While Respondents attempt to argue that Appellant has failed to produce any evidence whatsoever to support his causes of action, as was the case at the trial court level, this flawed reasoning is based on facts taken in a light most favorable to Respondents instead of most favorable to Appellant. South Carolina courts have been clear in that, “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). Throughout Respondents’ brief, the support used for their arguments completely ignores the evidence put forth by Appellant and claims it does not exist by twisting the facts in a light most favorable to Respondents. This type of rationale by Respondents only further strengthens Appellant’s argument that there is a genuine issue of material fact in this case which should have been allowed to proceed to trial in order that a jury could make a factual decision.

Respondents base the majority of their brief alleging the existence of probable cause throughout the investigation, arrest, and prosecution of Appellant but never fully address Appellant’s argument that any determination of the existence of probable cause in this matter was flawed due to the Respondents’ willful ignorance and avoidance of the known fact that Catherine Boney never stated she did not sign the photo lineup, only that she could not

remember for sure. (Criminal Trial Transcript pg. 5, Ins. 21-25, Deposition of Michael Anderson pg. 66, Ins. 9-23, Deposition of Charles Ghent pg. 11, Ins. 12-14, Notes of Michael Anderson) (R. p. 312, lines 21-25, p. 778, lines 9-23, p. 440, lines 12-14, pp. 805-811). Although it is undisputed that Ms. Boney informed all Respondents of her uncertainty as to whether she signed the lineup, the Respondents, both during the criminal prosecution of Appellant and throughout this civil action, purposely ignore this crucial fact, as it does not support their purpose of prosecuting Appellant. This willful ignorance proves to be the fatal flaw in determining the existence of probable cause against Appellant as any determination made by a magistrate or circuit court judge was made based on the falsely reported fact that Ms. Boney denied signing the photo lineup. As detailed in State v. Missouri, wherein the defendant also faced the issue of false information present in a critical warrant, while police officers are not required to list every bit of exculpatory evidence, where, "an omission is combined with an affirmative falsehood, it reveals that the affiant not only believed the omitted information was critical, but that a statement in the affidavit to the contrary was necessary for establishing probable cause." State v. Missouri, 337 S.C. 548, 557, 524 S.E.2d 394, 398 (1999). The result of these actions in State v. Missouri, led to the invalidation of the search warrant in question as the Supreme Court found that the Constitution required them to invalidate the warrant due to the close call on the facts. *Id.* In applying this rationale to the case at hand, the omitted exculpatory information and the Respondents' insertion of false information in the affidavit to Appellant's arrest warrant calls into serious question the validity of any determination of probable cause made by a judge as that determination would have been made on false grounds. As such, there is a genuine issue of material fact as to the existence of probable cause for the arrest and prosecution of Appellant. Because this existence of a lack of probable cause as to the arrest and prosecution of Appellant

forms the basis for Appellant's causes of action against Respondents, it was error for the trial court to grant summary judgment in favor of Respondents and this Court should reverse and remand this matter for a trial on the merits.

The Respondents' willful ignorance of the undisputed fact that Ms. Boney never denied signing the photo lineup has more repercussions than to defeat the existence of probable cause in this matter as it also demonstrates the existence of fraud and malice throughout the proceedings against Appellant. Respondents give no explanation whatsoever as to why they chose to change the multiple statements given to them by Ms. Boney to portray Appellant as forging a witness' signature. While Appellant would concede that he does not have a "smoking gun" in the form of a documented conversation between the Respondents discussing their motive behind this lie, this Court does not require this type of hard evidence. Instead it is enough for the Appellant to bring forth this information as demonstrating the complete lack of probable cause in this matter and the logical next step that the only explanation for this behavior would be the existence of malice and a civil conspiracy between the parties to injure the Appellant. As stated in Appellant's Initial Brief on multiple occasions, when taking the evidence in a light most favorable to Appellant there exists glaring instances of genuine issues of material fact that require this case to be submitted to a jury.

Malicious Prosecution and Abuse of Process

Although Respondents appear to argue that Respondent SLED and Respondent Ghent with the assistance of Respondents Cannon, Anderson and Antonio did not participate in the institution and continuation of the proceedings against Appellant; this argument finds no basis in the record. It is axiomatic that the Appellant would not have been charged with a crime without the investigation and report of all Respondents. Furthermore, Respondent Ghent submitted the

affidavit that formed the basis of the arrest warrant for Appellant, the same affidavit that contained the false allegation against Appellant that was supported by all Respondents. It is Appellant's position that had the Respondents submitted a fully accurate report as to their investigation, Appellant would not have been charged with any criminal act nor would he have been found to have violated the Sheriff's office policies of truthfulness. At the least, Appellant believes the continuing prosecution of Appellant would have been halted upon the revelation of the exculpatory information that fully supported Appellant's consistent position. While Respondent Anderson and Respondent Antonio, on behalf of Respondent Cannon, may not have sat at the prosecution table across from Appellant, their continued participation in the investigation against Appellant and their failure to notify Respondent Ghent and Respondent SLED of Ms. Boney's continued assurance that she had signed the photo lineup, caused the Appellant's arrest and prosecution to continue.

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.

Respondents' attempt to attack Appellant's evidence supporting his abuse of process cause of action for a lack of a willful act and lack of improper purpose also finds no basis in the record. A review of the reports, trial transcript and statements in this matter reveals that the Respondents all assisted in withholding truthful information from the court and the presentation of false information to the court. These repeated acts each time the Respondents ignored the statements of Ms. Boney and put forth evidence falsely alluding to Ms. Boney denying initialing the photo lineup, constitute the required "willful act" as recited in the abuse of process elements.

While Respondents do not address this issue in their brief, Appellant feels confident that Respondents would not and cannot claim that misstating an essential factual element of a charge is ever appropriate in the regular criminal process. Additionally, South Carolina case law clearly shows that an ulterior purpose can be inferred from the willful act, thus supporting Appellant's position that he has properly pled and supported his abuse of process cause of action. First Union Mortgage Corp. v. Thomas, 317 S.C. 63, 451 S.E.2d 907 (Ct. App. 1994).

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

While Respondents characterize Appellant's negligence cause of action as one for false arrest, Appellant would contend that this cause of action includes so much more than just a false arrest. As stated numerous times throughout Appellant's Initial Brief and above, Respondents' actions in this matter to not fully disclose the information gathered in their investigation constitutes not just a lack of probable cause, but a willful ignorance of their duties resulting in gross negligence. Under this theory of gross negligence on behalf of Respondents, the South Carolina Tort Claims Act allows for Appellant's cause of action to move forward as he has put forth evidence supporting the Respondents' breach of their duty of care and resulting damages incurred and endured by 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 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

Respondents' basing their arguments against a reversal of the trial court's grant of summary judgment on Appellant's cause of action for defamation/defamation per se ignores the evidence in the record of information known to the Respondents as being false as well as being detrimental to Appellant's standing in the community as well as to his fitness as a police officer being published on multiple news sites. While statements Respondents made between themselves in the process of their investigation would not rise to the level of defamation, when Respondents chose to publish a statement that Appellant forged a witness' signature in a photo lineup and lied to prosecutors about the pending rape case to which the lineup was related, their actions took them outside of the protected speech area. While Respondents now allege that they spoke to no one outside of the investigation, they fail to give an explanation as to the reporting of false information (that Appellant forged Ms. Boney's signature) to the media. Furthermore, even if this Court finds credibility in Respondents' position, this conflict between the parties as to dissemination of this information to the public only works to further reveal the existence of a genuine issue of material fact as to Appellant's cause of action for defamation/defamation per se. Therefore, the trial court's grant of summary judgment to Respondents should be reversed and the case remanded for trial.

Civil Conspiracy to Commit Fraud

Respondents again fall into the repeated path of taking the facts in this matter in a light most favorable to the Respondents instead in a light most favorable to Appellant in examining this cause of action. While Respondents claim that there exists no evidence supporting a conspiracy between the parties, Appellant has put forth testimony and evidence supporting the contention that the Respondents had multiple interactions during the pendency of the Appellant's criminal

prosecution 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) (R. p. 625, lines 4-9). Appellant would also note that South Carolina courts allow for the conspiracy to 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). As such, in looking at the apparent mutual goal of the Respondents to injure the Appellant by putting forth inaccurate information to the court and prosecuting agencies as to the results of their investigation and the complete lack of probable cause, the existence of a civil conspiracy appears clear. Even with the Respondents’ position that the parties barely spoke, Appellant has properly met his burden such that this cause of action should have been submitted to a jury of Appellant’s peers. Therefore the trial court’s grant of summary judgment must 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.

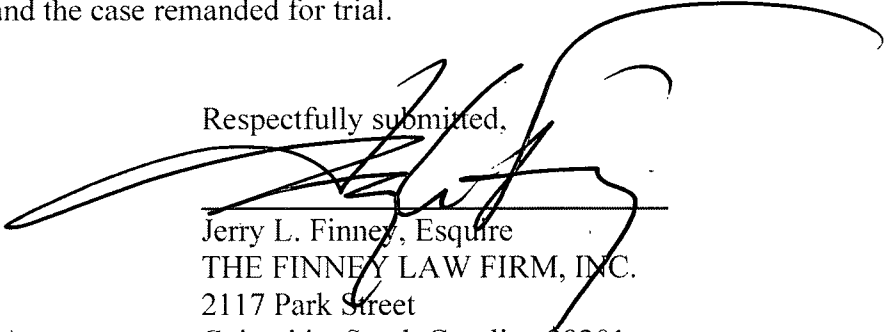
Respondents’ final argument regarding whether immunity applies to Respondents also ignores the flagrant and unexplainable actions of the Respondents regarding the information supplied to them on multiple occasions that Ms. Boney never denied signing the photo lineup which formed the basis of Appellant’s criminal prosecution and firing from his job. Appellant agrees that the South Carolina Tort Claims Act provides governmental agencies significant immunity from suit in many aspects, however, the Act is clear in that there exists liability on behalf of governmental agencies, “when the responsibility or duty is exercised in a grossly

negligent manner.” (S.C. Code Ann. §15-78-60(25)). As detailed above as well as throughout the Appellant’s Initial Brief, the actions of the Respondents exhibit conscious disregard for Appellant’s rights in misconstruing Ms. Boney’s statements to them. This type of behavior of Respondents undoubtedly would constitute gross negligence of their duties as officers of the law and subject them to liability even in light of the South Carolina Tort Claims Act. However, as the facts were not considered in a light most favorable to Appellant at the trial court level, summary judgment was erroneously granted to Respondents under the guise of immunity. A proper examination of the facts and evidence reveal that there exists a genuine issue of material fact in all aspects of this matter, including as to whether Respondents are entitled to immunity based on the Appellant’s facts and evidence, and the grant of summary judgment should be vacated and this matter remanded for trial.

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,



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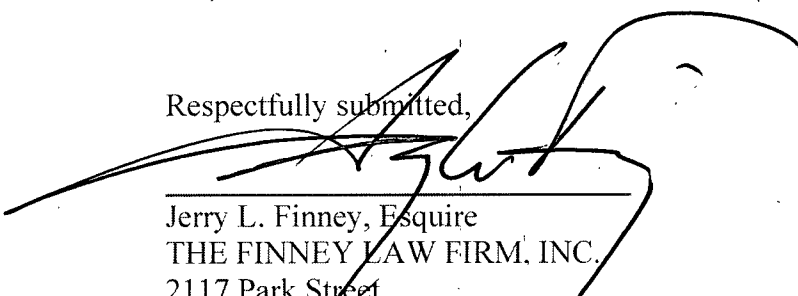
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CERTIFICATE OF COUNSEL

I certify that the Appellant's Final Reply Brief herein complies with Rule 211(b).

Respectfully submitted,



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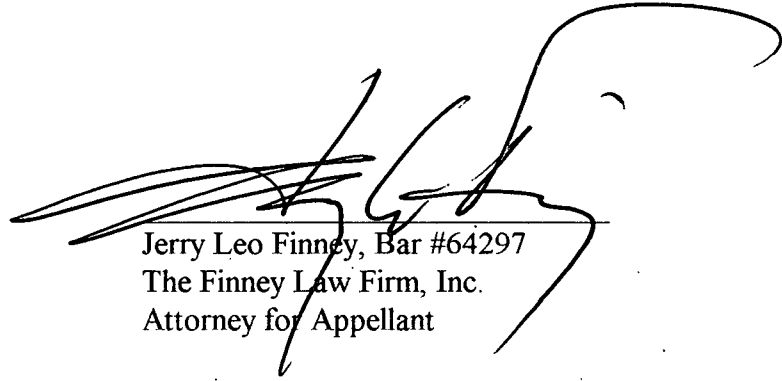
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PROOF OF SERVICE

I certify that I have served the **Appellant's Final Brief and Final Reply Brief** in
the above matter on opposing counsel of record, by depositing a copy of the same in the
United States Mail, postage prepaid, on April 7, 2015, addressed as follows:

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