THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2015-000058
Trial Court Case No. 2013-CP-18-00735

William McFarland and Jennifer McFarland,

Appellants/Respondents,

v.

Mansour Rashtchian and Amy Rashtchian,

Respondents/Appellants.

INITIAL APPELLANTS' BRIEF OF APPELLANTS/RESPONDENTS

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PROLOGUE

"I told him, 'Why are you so inconsiderate? These are the kind of crap you do. Nobody likes you around here.'"

–Mansour Rashtchian[1]

[1] (Tr. p. 649:11-23 (testifying about the start of the April 26, 2011, incident that gave rise to this lawsuit, specifically, recounting the words *he used* to confront Bill McFarland, i.e., the *first* words exchanged between the two men that day).)

INTRODUCTION

Bill and Jennifer McFarland[2] appeal to this Court following a defense verdict in the trial of the defamation case they brought against Mansour and Amy Rashtchian.[3] The McFarlands' appeal centers on the trial court's jury charge on self-defense,[4] one of the Rashtchians' affirmative defenses.

Underlying this lawsuit is an unusual and most unpleasant incident, a mid-street row between these two sets of across-the-street neighbors, wherein false accusations, of a sort actionable *per se*, were imprudently cast at the McFarlands, with Jennifer accused of adultery and Bill of stealing his father-in-law's (Jennifer's father's) business, the latter charge, i.e., the one aimed at Bill, which Mansour admitted making, the trial court actually—and correctly—determined to constitute defamation as a matter of law.

Besides being *unusual* and *unpleasant*, the incident was—without question—*unnecessary*. It happened when—and never would have happened had not—Mansour angrily charged out of his house to initiate a

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[2] Appellants/Respondents William McFarland and Jennifer McFarland are referred to as "Bill" and "Jennifer," respectively, and as the "McFarlands" or "Plaintiffs," collectively.

[3] Respondents/Appellants Mansour Rashtchian and Amy Rashtchian are referred to as "Mansour" and "Amy," respectively, and as the "Rashtchians" or "Defendants," collectively.

[4] The trial court also used the terms "provocation" and "justification," which it viewed, incorrectly, as being interchangeable with "self-defense." (Tr. pp. 628:5-629:8, 792:17-793:4, 801:20-802:1.)

confrontation with Bill over what was at most—at most—a minor transgression, a grand total of two vehicles crossing some portion of the "'right-of-way' grass"[5] on his side of the street while the roadway was temporarily obstructed by a landscaping crew delivering mulch to the McFarlands, the record containing no evidence of any damage actually done thereby.

Mansour himself admitted the incident was triggered by his "foolish" behavior and "should never [have] happened."[6] Indeed, Mansour's immediate and overt hostility, grossly disproportionate to the trivial slight he claimed to have prompted it, betrayed a long-simmering animosity toward the McFarlands and a malicious intent, not to respond in good-faith defense of an unprovoked defamatory attack, but to launch his own ill-willed offensive.

Respectfully, the trial court committed reversible error by charging the jury that self-defense, which it incorrectly equated with provocation and justification, was an absolute defense to the defamatory statements at issue and, for that matter, by even charging the jury on self-defense to begin with.

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[5] (*See, e.g.,* Testimony of Mansour Rashtchian: Tr. pp. 682:12-687:10; Plaintiffs' Counsel's Opening Statement: Tr. pp. 192:19-193:5.)

[6] (Testimony of Mansour Rashtchian: Tr. pp. 662:24-663:1; *see also* Mansour Rashtchian: Tr. pp. 653:6-15, 688:4-690:9; Plaintiffs' Counsel's Opening Statement: Tr. p. 194:13-18; Plaintiffs' Counsel's Closing Argument: Tr. pp. 766:24-767:2.)

STATEMENT OF THE ISSUE ON APPEAL

I. **Did the trial court commit reversible error by charging the jury that self-defense, which the court incorrectly equated with provocation and justification, was an absolute defense to the defamatory statements at issue and, for that matter, by even charging the jury on self-defense to begin with, when, by Defendant Mansour Rashtchian's own admission, the incident wherein the subject defamation occurred was triggered by his "foolish" actions and "should never [have] happened"?**[7]

STATEMENT OF THE CASE

By summons and complaint filed in the Court of Common Pleas for Dorchester County on April 24, 2013, the McFarlands sued the Rashtchians for defamation. (*See* Summons; Complaint.) Ultimately, their claims were premised on two false accusations, both actionable *per se*, having been made against them: (1) that Jennifer was unchaste/engaged in extra-marital relations and (2) that Bill committed criminal acts by stealing his father-in-law's business. (*See* Amended Complaint; Tr. pp. 90:23-92:18, 126:25-129:20, 310:20-315:12, 472:13-473:16, 810:6-9.)

The Rashtchians denied the McFarlands' material allegations and

[7] As reflected in this issue statement, it would seem that the trial court's error is most efficiently viewed in terms of the jury charge. Nonetheless, to be clear, to the extent that the trial court's mistaken notion of self-defense in the context of this case may also be viewed in terms of its relationship to the court's ruling on Bill's motion for a directed verdict (or other judgment as a matter of law) or Bill's verdict form (in that it even gave the option of a defense verdict) or the denial of the McFarlands' motion for a new trial, it is intended that such sub or collateral points are included as issues on appeal.

asserted a number of affirmative defenses, including what the trial court denominated/equated with self-defense. (*See* Answer; Tr. pp. 129:18-130:1, 263:9-12, 628:5-629:8, 792:17-793:4, 801:20-802:1.)

The case was tried from December 8-12, 2014, before the circuit court and a jury, the Honorable Diane Schafer Goodstein presiding. (Tr. pp. 1-4.)

At the close of all evidence, Plaintiffs' counsel moved for a directed verdict as to Mansour's liability for defamation, actionable *per se*, for having wrongly accused Bill of stealing his father-in-law's business, i.e., so as to leave only damages to be determined by the jury on this claim. (Tr. pp. 723:23-727:16, 737:21-744:9.) The trial court determined as a matter of law that Mansour made this accusation of Bill, that it was false, and that it was defamatory and actionable *per se*, but over Plaintiffs' counsel's objection, it nonetheless charged the jury that self-defense was an absolute defense available to Mansour on Bill's claim and included the option of a defense verdict on Bill's verdict form; the court likewise charged the jury that self-defense was available to Defendants on Jennifer's defamation claim. (Tr. pp. 737:21-744:9, 792:17-793:4, 801:15-802:13, 805:4-806:24, 809:6-810:9, 812:24-815:12, 818:10-823:12; *see also* Verdict Form (Bill); Verdict Form (Jennifer).)

More specifically, the trial court charged the jury as follows regarding self-defense:

> Ladies and gentlemen, I have made a determination as a matter of law, and that has to do with one of the statements. It is the statement regarding Mr. McFarland, and I have made a determination that that statement is a statement which is -- would meet the definition of slander per se.
>
> Now, you do not have to concern yourself with whether or not Mr. McFarland has made out that claim for slander per se. There is an affirmative defense, which is a complete defense, and it is the – it's referred to in the law as self-defense, provocation or justification, and they're used interchangeably, depending on the case that you look at, sometimes depending on the state that you're looking at. It's maybe called more often justification, provocation. South Carolina, we call it justification or self-defense or provocation. We've called it that as well.
>
> So you will consider that defense, because it is an absolute defense to slander per se. The defendants have the burden of proving self-defense. I'm going to talk about those elements in just a moment.
>
> Now, as to the claim involving Mr. McFarland, again, don't worry about the defamation, his defamation action. You do, though -- would determine whether or not the defendants have met their burden regarding their affirmative defense of self-defense.[8]

[8] (Tr. pp. 801:15-802:13.)

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. . . . If you find that the statement was slanderous per se and that the defendants have failed to prove self-defense, then you -- or self-defense or truth, then you should return a verdict for the plaintiff and must award the plaintiff at least nominal damages.

Nominal damages may be only a small or trivial sum, and nominal damages are required because the law presumes that some actual damage to the plaintiff's reputation and character directly and proximately resulted from the defendant's defamatory statement.

Now, ladies and gentlemen, I want to talk about self-defense. I want to talk about self-defense, which is an affirmative defense. Then I'm going to talk to you regarding truth. When you speak in terms of defenses to slander or slander per se, you talk about truth as an absolute defense is the term that's used.

Going to first talk about self-defense, then we're going to talk about truth as an absolute defense, and these are defenses that the defendants have pled to the defamation alleged by and shown by Mr. McFarland. Now, the defendants must maintain the burden of proof regarding these defenses. That burden of proof is by the greater weight or the preponderance of the evidence.

Self-defense, the defendants claim the defense of self-defense. Even if the statement was defamatory or statements were defamatory, the statement or statements will not support an action for defamation if the statement or statements were invited or brought about by the plaintiff that you are considering. And of course you do this for

both plaintiffs.

If the plaintiff verbally attacked the defendant, the defendant is allowed to reply to that attack as long as the reply is made in good faith and without malice. However, the defendant is responsible or the defendants are responsible if the statement in response to the plaintiff's attack goes beyond the plaintiff's attack or uses language that is unnecessarily defamatory.

Self-defense, which is also referred to as provocation or justification, must have been so recent as to induce a fair presumption that the injury complained of, the slander, the slander per se, was inflicted during the continuance of feeling and passions, excited by the provocation. The cause and manner of speaking the slander and all the circumstances then and there existing ought to be considered by you, the jury, in determining whether or not the defense of self-defense exists.[9]

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Ladies and gentlemen, if you find that the defendant has failed to meet the burden of proof regarding self-defense as it relates to Mr. McFarland, then you would award some amount of damage. And I'm going to talk to you about aggravating and mitigating circumstances in a moment, but if you find that the defendants have failed to meet their burden of proof regarding self-defense, provocation, justification, then you must award some amount of damages.

Now, ladies and gentlemen, if you find that Ms. McFarland has sustained her burden with regards to her claim for slander per se, and if you

[9] (Tr. pp. 805:4-806:24.)

> find that the defendants failed to meet their burden with regards to either truth or either self-defense, then, again, damages would be presumed and you would award some amount of damage. You would consider mitigation that I'm going to talk about in just a moment, but you would award some amount of damage.[10]

The jury returned defense verdicts on Bill and Jennifer's claims. (Tr. pp. 826:15-827:22; Verdict Form (Bill); Verdict Form (Jennifer); *see also* Judgment in Favor of Defendants (Form 4).) The McFarlands promptly moved for a new trial, and their motion was denied. (Tr. pp. 830:13-833:1.)

By notice served January 9, 2015, this appeal followed. (The McFarlands' Notice of Appeal.)

STATEMENT OF FACTS

Although they do not live in the same subdivision and their mailing addresses do not share the same street name, Plaintiffs and Defendants are across-the-street neighbors; the Rashtchians' house fronts the street, called Flud Street, directly across from where the McFarlands' yard backs up to it.[11] Together with the strips of land on each side of its paved surface, Flud Street constitutes a 50-foot-wide zone of public right-of-way separating their respective properties. (*See* Testimony of Bill McFarland: Tr. pp. 204:8-17,

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[10] (Tr. p. 809:6-21.)

[11] The McFarlands' place, Lot 3 of seven total lots in the Live Oak Village subdivision, fronts Oak Village Lane and, like the subdivision at large, is bounded to the west by Flud Street.

213:8-23, 214:5-218:8, 218:14-220:20, 256:15-257:11; Jennifer McFarland: Tr. pp. 417:22-418:3, 420:24-421:3, 422:23-423:24; Marissa McFarland: Tr. p. 604:11-18; Mansour Rashtchian: Tr. pp. 634:1-5, 645:13-20, 665:4-14, 682:12-683:13; Amy Rashtchian: Tr. p. 695:5-12; Plaintiffs' Exhibit 1 (Subdivision Plat); Plaintiffs' Exhibit 3 (Photo).)

It happened on April 26, 2011, when a rather mundane—and undeniably tranquil—afternoon of yard work[12] was disrupted by Mansour storming from his house to confront Bill in the middle of Flud Street. By the time it was over, Mansour had, *by all accounts*, falsely—and loudly—accused Bill of having stolen his father-in-law's business[13] and, *according to the McFarlands*, both of the Rashtchians had flung baseless charges of marital infidelity at Jennifer[14]—all within earshot of, among others, the

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[12] (*See, e.g.,* Testimony of Amy Rashtchian: Tr. pp. 699:20-700:2; Mansour Rashtchian: Tr. pp. 644:19-645:5.)

[13] Mansour admitted accusing Bill of stealing his father-in-law's business, that he showed "poor judgment" in doing so, and that "[he] should have never said [it]." (*See* Testimony of Mansour Rashtchian: Tr. pp. 653:6-15, 688:4-690:9; *see also* Plaintiffs' Counsel's Opening Statement: Tr. pp. 194:13-18; Plaintiffs' Counsel's Closing Argument: Tr. 766:24-767:2; Statement of the Case, *supra*, regarding the trial court's determination about Bill's claim as a matter of law.)

[14] The McFarlands testified that both of the Rashtchians falsely accused Jennifer of adultery. (Testimony of Bill McFarland: Tr. pp. 237:23-238:4, 241:12-13, 242:4-6, 369:20-370:1; Jennifer McFarland: Tr. pp. 432:22-433:3, 435:13-436:2; *see also* Stephon Johnson: Tr. pp. 400:21-401:5; Lance Johnson: Tr. pp. 535:6-25, 556:1-7.) Mansour denied this outright. (Testimony of Mansour Rashtchian: Tr. pp. 660:10-18, 662:9-17.)

McFarlands' two children, drawn out onto their back porch by the commotion. (*See* Testimony of Bill McFarland: Tr. pp. 229:15-231:19, 233:5-244:17, 251:4-12, 258:17-259:15; Stephon Johnson: Tr. pp. 393:2-396:8, 398:17-22; Jennifer McFarland: Tr. pp. 430:10-436:2, 475:23-476:4; Lance Johnson: Tr. pp. 526:11-540:23, 564:20-25; Mansour Rashtchian: Tr. p. 593:15-20, 597:11-599:14, 600:17-603:24; 644:19-652:7, 653:6-660:18, 662:24-663:1; Marissa McFarland: Tr. pp. 604:11-605:7, 608:7-615:22, 618:2-13, 619:5-24; Amy Rashtchian: Tr. p. 699:20-709:9; Plaintiffs' Exhibit 6 (Handwritten Statement of Lance Johnson to Summerville Police Department).)

Immediately prior to the incident, Bill was outside with Lance Johnson ("Lance") and two other men[15] from Lance's landscaping company who were delivering mulch via the McFarlands' back gate. (Testimony of Bill McFarland: Tr. pp. 229:15-231:19.)[16] It began when, according to

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Amy acknowledged communicating a need for concern about visitors coming to the McFarlands' house but denied such concerns were in reference to adultery on the part of Jennifer. (Testimony of Amy Rashtchian: Tr. pp. 707:10-709:2; *see also* Plaintiffs' Counsel's Opening Statement: Tr. pp. 196:10-18, 199:2-8.)

[15] Specifically, the two men with Lance were Stephon Johnson and Terrion Johnson. (Testimony of Stephon Johnson: Tr. pp. 390:19-392:2; Testimony of Lance Johnson: Tr. pp. 527:3-528:22.)

[16] A brick and wrought iron fence bounds the rear of the McFarlands' property. Slightly offset from one of the entrances to the Rashtchians' circular driveway, on the McFarlands' side, there is a break in the fence in

Mansour's own testimony, he approached and, dispensing with any pleasantries, "greeted" Bill as follows: "*Why are you so inconsiderate? These are [sic] the kind of crap you do. Nobody likes you around here.*" (Testimony of Mansour Rashtchian: Tr. p. 649:18-23 (emphasis added).) Thus, the peace was breached, and from this point of departure—or rather derailment—the affair continued, with both men's wives becoming involved before it was all said and done. (*See, e.g.,* Testimony of Lance Johnson: Tr. pp. 553:1-554:15, 583:23-584:25; Mansour Rashtchian: Tr. pp. 651:17-22, 659:9-17, 691:8-13; Amy Rashtchian: Tr. pp. 703:10-705:25.)

As for the offense that drew his ire, according to Mansour, the landscapers' truck and trailer were blocking Flud Street—which, it should be noted, is not a thoroughfare, but comes to a dead end, with but a modest

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the form of a double-swinging gate and a short, paved vehicular access (sort of a truncated driveway with its terminus a concrete pad emptying into their back lawn) connecting the McFarlands' property to Flud Street. (*See, e.g.,* Testimony of Bill McFarland: Tr. pp. 219:14-220:6, 252:23-254:1, 256:15-258:12; Mansour Rashtchian: Tr. pp. 595:22-24, 640:13-15, 645:13-646:25; Amy Rashtchian: Tr. pp. 716:12-717:6; Plaintiffs' Exhibit 2 (Photo); Plaintiffs' Exhibit 3 (Photo).) Lance/his company had delivered Bill mulch a number of times prior, between two and four times per year since 2009, following the same procedure—i.e., using Flud Street and backing their mulch trailer into position on the concrete pad at the rear gate—without complaint from Mansour. (Testimony of Bill McFarland: Tr. pp. 229:15-231:19, 233:5-235:19.)

number of houses along it[17]—and Bill had directed a total of exactly *two* vehicles around the obstacle so as to cross over a portion of the grass on the Rashtchians' side, albeit "'right-of-way' grass" near the pavement that was not actually his property and, at that, there is no evidence in the record of any property damage in any event. (Testimony of Mansour Rashtchian: Tr. pp. 597:11-598:3, 644:19-649:25, 682:12-687-20; *see also* Plaintiffs' Counsel's Opening Statement: Tr. pp. 192:19-193:5; Stephon Johnson: Tr. p. 409:3-12; Lance Johnson: Tr. pp. 550:18-552:7, 552:19-22, 564:6-13, 590:12-22; Amy Rashtchian: Tr. pp. 716:12-17, 722:11-17.)

Besides this alleged impropriety, even though the only evidence in the record is that the couples had little interaction in the nearly ten years prior, both of the Rashtchians also testified about previous events reflecting a growing resentment against the McFarlands that they brought with them to the events of April 26, 2011. (*See* Testimony of Mansour Rashtchian: Tr. pp. 634:1-644:18; Amy Rashtchian: Tr. pp. 695:5-699:19.) To be clear, the McFarlands denied any past antagonism of the Rashtchians. (Testimony of Bill McFarland: Tr. pp. 242:7-243:11, 328:9-17, 330:16-331:2, 338:12-14; Jennifer McFarland: Tr. pp. 423:10-430:9.) The Rashtchians' allegations in

[17] (Testimony of Bill McFarland: Tr. pp. 231:20-233:4; Testimony of Jennifer McFarland: Tr. pp. 422:23-423:5; *see also* Testimony of Stephon Johnson: Tr. p. 397:17-19; Plaintiffs' Exhibit 3 (Photo).)

this regard are noted here only to make the point that—unwarranted as it was—as evidenced by their own testimony, the Rashtchians' bitterness toward the McFarlands pre-dated the incident giving rise to the defamation at issue.

STANDARD OF REVIEW

Trial-court decisions regarding jury charges are subject to an abuse-of-discretion standard of appellate review. Cole v. Raut, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." Id.[18]

Where a trial court's erroneous jury instruction causes prejudice to the appellant, it has committed reversible error. Id. at 405, 663 S.E.2d at 33; *see also* Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000)

[18] Likewise, a trial court's decisions regarding verdict forms and new-trial motions are subject to an abuse-of discretion standard. *See* S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 300-01, 641 S.E.2d 903, 906 (2007) ("The determination of whether a special verdict should be submitted to the jury is within the sound discretion of the trial judge, and an appellate court will only reverse upon a finding of an abuse of that discretion. An abuse of discretion occurs when a ruling is based on an error of law or a factual conclusion without evidentiary support. . . . The trial judge has the discretion to determine how a case is submitted to the jury.") (citations omitted); Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009) ("The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.").

("When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues."). "A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion affects the outcome of the trial." Cole, 378 S.C. at 404, 663 S.E.2d at 33.

Additionally, with regard to review of the denial of a motion for directed verdict, the appellate court employs the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *See, e.g.,* Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999). In essence, the court must determine whether a verdict for the opposing party "would be reasonably possible under the fact as liberally construed in his favor." Harvey v. Strickland, 350 S.C. 303, 309, 566 S.E.2d 529, 532 (2002). This rule does not, however, authorize submission of speculative, theoretical, or hypothetical views to the jury. Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997). The appellate court should reverse the trial court when there is no evidence to support the ruling below. Steinke, *supra*; Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997).

ARGUMENT

I. The trial court committed reversible error by charging the jury that self-defense, which the court incorrectly equated with provocation and justification, was an absolute defense to the defamatory statements at issue and, for that matter, by even charging the jury on self-defense to begin with, when, by Mansour's own admission, the incident wherein the subject defamation occurred was triggered by his "foolish" actions and "should never [have] happened."

Stated differently, the McFarlands' argument is that the trial court should not have charged the jury that self-defense was the same as provocation and justification, nor should it have charged the jury that self-defense was an absolute defense to Bill or Jennifer's claims, nor even should it have charged the jury on self-defense at all; after it determined—properly—as a matter of law that Mansour had defamed Bill, in a manner actionable *per se*, it should have sent Bill's case to the jury only for a determination of damages—and, in this same vein, for the sake of completeness, the trial court erred by not granting the McFarlands a new trial on account of its error.

Most respectfully, the trial court's jury charge on self-defense reflects its misapprehension of both the relevant law and the evidence in this case.

To begin, in defamation law, there is, of course, a material difference between statements made with an *absolute* privilege and those made with only a *qualified* privilege. Hainer v. American Med. Intern., Inc., 328 S.C.

128, 135, 492 S.E.2d 103, 106 (1997) ("Privileged communications are either absolute or qualified. When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice. When qualified however, the plaintiff may recover if he shows the communication was actuated by malice.") (citations omitted).

South Carolina has recognized a *qualified*, not absolute, privilege for statements made in self-defense to a defamatory attack. Cartwright v. Herald Pub. Co., 220 S.C. 492, 498, 68 S.E.2d 415, 417 (1951) ("The case therefore falls within the well established rule of self-defense from libel or slander. 'Statements made in an honest endeavor to vindicate one's character or to protect one's interests are usually regarded as *qualifiedly* privileged, even though they are false, if they are made in good faith and without malice.[']") (emphasis added) (citation omitted). The trial court's mere linking of the word "absolute" to self-defense was therefore incorrect and confusing to the jury.

Likewise, the trial court incorrectly equated justification and provocation with self-defense and conflated these concepts in its charge. *Compare* Cartwright, 220 S.C. at 498, 68 S.E.2d at 417 *with* Johnston v. Life

& Cas. Inc. Co., 192 S.C. 518, 7 S.E.2d 463, 465 (1940) ("It is true that when the plea of *justification* is entered in an action of slander *there is no complete defense except by proof of the charge*, but in fixing the *amount of the verdict* we do not see why there may not be circumstances of aggravation or of mitigation in such case as well as in any other. Why may not the defendant say: 'I spoke the words, but under great *provocation*, or in sudden heat and passion,' . . . ? It is true that the defendant cannot avail himself of the defense which the truth of the charge affords without pleading *justification*; but it does not follow that in all such cases the verdict must be the same without regard to the facts and circumstances of aggravation or mitigation.")

Moreover, statements made in self-defense must still be "made in good faith and without malice;"[19] thus, even where this qualified privilege applies, a plaintiff may nonetheless recover by showing actual malice,[20] which, under the common law, "means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference toward the plaintiff's rights." Murray v. Holnam, Inc., 344 S.C.

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[19] Id.

[20] Hainer, 328 S.C. at 135, 492 S.E.2d at 106.

129, 142, 542 S.E.2d 743, 750 (Ct. App. 2001).[21] And, at that, qualified privilege "does not protect any unnecessary defamation" and, one operating thereunder, still "must be careful to go no further than his interests or his duties require." Murray, 344 S.C. at 141, 542 S.E.2d at 749.

Here, based on Mansour's own admissions, it was clearly his "poor judgment," his "foolish[ness]," that sparked the whole defamatory episode, in which, of course, Amy thereafter joined. At that, Mansour's defamatory statements were not made in an honest endeavor to vindicate his character or to protect his interests, nor can it reasonably be said that calling Bill a thief and Jennifer an adulteress could have possibly done so—indeed, as for Jennifer, there is no evidence of her making any defamatory remarks at all. (*See* Testimony of Stephon Johnson: Tr. pp. 393:15-394:9, 403:815; Lance Johnson: Tr. pp. 531:23-532:4, 537:9-16.) Rather, the Rashtchians' fuse, short and already dripping with an incendiary ill will, was lit by Mansour himself; if anything, Bill was provoked, not the other way around.

Still, regardless, notwithstanding any unpleasant or disparaging words the Rashtchians may claim the McFarlands directed toward them on April

[21] In this case, between private citizens, common law actual malice applies; a different, more restrictive, definition of "actual malice" would be applicable were this a dispute involving a public official or public figure. Id. at 143, 542 S.E.2d at 750.

26, 2011,[22] exactly *none* of them were said before, nor would any of them have been said at all had not, Mansour—acting in a manner grossly disproportionate to the transgression he claims to have prompted him—hastily—and hostilely—burst from his home to initiate that day's discord.

Again, respectfully, the trial court misapprehended the relevant law and failed to appreciate that self-defense was misfit for this case, and by charging—and confusing—the jury with irrelevant and inapplicable principles upon which to decide Bill and Jennifer's claims, the trial court abused its discretion, resulting in prejudice to the McFarlands, and, thereby, committed reversible error. *See* Cole, 378 S.C. at 404, 663 S.E.2d at 33.

The McFarlands are—as they were when moving the trial court previously—entitled to a new trial.

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[22] The McFarlands, of course, deny the lion's share of the Rashtchians' allegations in this regard. (*See* Testimony of Bill McFarland: Tr. pp. 242:7-243:11, 328:9-17, 330:16-331:2, 338:12-14, 338:24-339:4); Jennifer McFarland: Tr. pp. 469:16-470:16; *see also* Stephon Johnson: Tr. pp. 400:16-20, 403:8-15.)

CONCLUSION

For the foregoing reasons, the McFarlands ask this Honorable Court to reverse the defense verdict and judgment in favor of the Rashtchians and to remand this matter for a new trial.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

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Attorneys for Appellants/Respondents

Charleston, South Carolina

Dated: 7/9/15

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2015-000058
Trial Court Case No. 2013-CP-18-00735

William McFarland and Jennifer McFarland,

Appellants/Respondents,

v.

Mansour Rashtchian and Amy Rashtchian,

Respondents/Appellants.

PROOF OF SERVICE

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I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Appellants/Respondents above named, do hereby certify that I have served the **Initial Appellants' Brief of Appellants/Respondents** and Appellants/Respondents' **Designation of Matter** on the above-named Respondents/Appellants by depositing a copy of the same in the United States Mail, postage prepaid, on July 7, 2015, addressed as follows to their counsel of record:

David C. Cleveland, Esquire
Michael L. Leech, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-7595

YOUNG CLEMENT RIVERS, LLP

By: _____
Russell G. Hines

Charleston, South Carolina

Dated: 7/7/15

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July 7, 2015

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: William McFarland and Jennifer McFarland v. Mansour Rashtchian and Amy Rashtchian
Appellate Case No.: 2015-000058
Circuit Court Case No.: 2013-CP-18-0735
YCR File: 15508-20150131

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find the original and two copies of Appellants/Respondents' Initial Brief, Designation of Matter to be Included in the Record on Appeal, and Proof of Service regarding the same.

Kindly return one clocked copy in the pre-stamped envelope provided. With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Aimee Justman

Aimee M. Justman
Legal Assistant

/amj
Enclosures
cc: Michael L. Leech, Esquire, Clawson & Staubes, LLC
David C. Cleveland, Esquire, Clawson & Staubes, LLC

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