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SC Court of Appeals

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 FINAL BRIEF

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STATEMENT OF THE CASE

On May 17, 2010, Plaintiff Meredith Huffman ("Huffman") lawfully sold scrap metal to Sunshine Recycling, LLC ("Sunshine Recycling") in Orangeburg, South Carolina for recycling. Almost fifteen (15) days later, Ms. Huffman was arrested based on false accusations made by both Sunshine Recycling and Aiken Electric Cooperative, Inc. ("Aiken Electric") that she had received stolen metal from Aiken Electric. After she was arrested and imprisoned, the criminal court dismissed the charge since Sunshine Recycling and Aiken Electric had accused the wrong person.

Huffman brought this civil action against Sunshine Recycling and Aiken Electric based on her wrongful arrest. Huffman alleged claims for Negligence, False Imprisonment, and Malicious Prosecution against the defendants. Huffman requested a jury trial.

The original complaint was filed on May 9, 2012. Sunshine Recycling filed an Answer denying the allegations. After preliminary discovery was exchanged, on May 24, 2013, Huffman filed an Amended Complaint adding Aiken Electric as a defendant. On June 27, 2013, Aiken Electric moved to dismiss the Amended Complaint. On January 30, 2014, Sunshine Recycling moved for summary judgment. On March 10, 2014, the Circuit Court heard the motions to dismiss and for summary judgment. (R. p. 290-323). On April 9, 2014, the Circuit Court entered an Order granting summary judgment on all causes of action against Huffman. Huffman timely filed a Motion to Reconsider, Alter,

or Amend the Order Granting Summary Judgment pursuant to Rule 59(e), SCRCP. On June 19, 2014, the Circuit Court summarily denied Plaintiff's motion pursuant to Rule 59(e), SCRCP. Huffman filed the Notice of Appeal on July 11, 2014. This appeal follows.

FACTS

On May 17, 2010, Huffman lawfully brought in scrap metal for recycling to Sunshine Recycling. (R. pp. 750-751). The metal was from an abandoned mobile home located on property that Huffman owned. (R. p. 750). The metal consisted of *old* aluminum sheeting and *old* electrical wiring that was from the mobile home. (R. p. 751). Sunshine Recycling paid Huffman $53.00. (R. p. 752). Several weeks later, she was wrongfully accused of being in possession of stolen metal from Aiken Electric.

Unbeknownst to Huffman, Aiken Electric had experienced a theft of *new* cooper and *new* aluminum wiring. (r. p. 644). Mr. Mark Goss of Aiken Electric reported the theft to the Orangeburg County Sheriff's Department ("Sheriff's Department"). (R. pp. 644-645). The amount of the new metal stolen from Aiken Electric was estimated around $330.00, and described as "(1) 60ft cooper [wire], (2) #6 cooper [wire], (1) roll of aluminum [wire]." (R. pp. 648-649). This metal is not anywhere close as the same *type, shape, color, or amount* that Huffman sold.

On the morning of May 17, 2010, Mr. Goss of Aiken Electric and Joseph Rich, owner of Sunshine Recycling, met with the Sheriff's Department regarding the stolen metal. (R. pp. 341; 651). Mr. Goss identified the metal that Huffman brought in as stolen from Aiken Electric. (R. pp. 344; 495-497; 657; 663). Mr. Goss and Mr. Rich showed Officer Aldridge the video of Huffman at Sunshine Recycling and a copy of her

receipt. (R. pp. 43; 344; 494-495; 498-499; 853). On the video, Mr. Goss and Mr. Rich identified Huffman as the person that sold the stolen metal from Aiken Electric to Sunshine Recycling. (R. pp. 43; 341; 344-345; 498-499; 792). Additionally, Mr. Goss told the officers that he "actually spoke and carried on a conversation with Huffman while she as 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.]" (R. pp. 405; 493). The next day, Mr. Rich told Officer Ethridge that "his employees that work in the copper area advised that Huffman was the individual who brought the merchandised in [to Sunshine Recycling]." (R. pp. 405; 499; 668-669; 850-851). An employee of Aiken Electric, Charles Rushton, also told the Sheriff's Department that "Mark Goss ha[d] the identity of the woman who sold the wire," referring again to Huffman.

After Sunshine Recycling and Aiken Electric had accused Huffman, Aiken Electric continued to strongly urge the Sheriff's Department to arrest Huffman. (r. pp. 347; 373; 500-501). Officer Aldridge testified that Sunshine Recycling and Aiken Electric expressed a great "sense of urgency" to arrest Huffman. Sunshine Recycling and Aiken Electric pressed for the Sheriff's Department to arrest Huffman and continued to accuse Huffman as the criminal, even though no evidence supported these baseless accusations. All Sunshine Recycling and Aiken Electric had to do was review the video surveillance, which clearly proves that Huffman was not the person that brought in the alleged stolen goods to Sunshine Recycling. (R. pp. 348-350; 506-507). Even a cursory review of the surveillance video clearly shows that a black male, not a white female, had brought in the metal that fit the description of what was stolen. (R. pp. 348-350; 506-507). Huffman is not a male and not black. If the video was not enough, the receipts

proved that Huffman did not bring in the stolen metal, nor was she paid for the stolen metal. As indicated on the video and Huffman's receipt, the type of metal that she brought in (i.e. *old* aluminum sheeting, *old* electrical wiring) was not the type of *new and unused* metal that was stolen from Aiken Electric. (R. pp. 506-508). Also, Huffman did not sell the same quantity of metal. The metal that Huffman was paid for totaled $53.00, whereas the metal that was stolen was valued at $330.00. Any reasonable review of the totality of the evidence would have plainly revealed to Sunshine Recycling and Aiken Electric that Huffman was not a suspect or responsible in any manner for the alleged crime.

Based on the accusations of Sunshine Recycling and Aiken Electric, on May 21, 2010, the Sheriff's Department issued an arrest warrant of Huffman for receiving stolen goods in violation of S.C. Code Ann 16-13-180. (R. pp. 501-502). On June 2, 2010, Huffman was arrested and booked as an inmate at the Orangeburg-Calhoun Regional Detention Center. (R. pp. 754-758; 793-794; 504-506). Huffman told the arresting officer that he had arrested the wrong person because the metal that she took to Sunshine Recycling was old aluminum sheeting and old electrical wiring from her mobile home. (R. pp. 504; 678; 792). After being incarcerated, she was released on bond. (R. pp. 758; 794; 506). The Sheriff's Department then obtained a copy of the surveillance video from Sunshine Recycling that plainly showed the stolen goods were brought in by a black male. (R. pp. 348-350; 506-507). The video does not show Huffman with the type of metal that was stolen (new wiring vs. old aluminum sheeting), and the invoice associated with the black male totaled $350.00, which very closely resembled Aiken Electric's

description of the stolen metal and estimated price of $330.00, not Huffman's invoice of $53.00. (R. pp. 506-508).

Despite the clear evidence that Huffman was wrongfully arrested, Sunshine Recycling and Aiken Electric continued to accuse her as the person who committed the crime. (R. pp. 406; 507). After the Sheriff's Department reviewed the video a second time with Sunshine Recycling for the purpose of pointing out that Ms. Huffman was not responsible, the owner of Sunshine Recycling, Mr. Rich, still pressed for her conviction and demanded to "come and testify [against Ms. Huffman] in court." (R. pp. 406; 507). The fact that Sunshine Recycling and Aiken Electric pressed the Sheriff's Department to continue to prosecute Huffman even after being confronted by the Sheriff's Department is appalling. (R. pp. 406; 507). Officer 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*." (R. pp. 407; 512-513). (emphasis added).

Without any dispute, Huffman was arrested because Sunshine Recycling and Aiken Electric identified and accused her as the person who brought in the stolen metal. The Sheriff's officers testified that Huffman was arrested because of Sunshine Recycling and Aiken Electric' accusation of her, and if they were told all the facts, then Huffman would not have been arrested. (R. pp. 406; 512-513). Sunshine Recycling and Aiken Electric continued to press the Sheriff's Department for her arrest in the face of no proof that Huffman was involved with stolen metal and overwhelmingly clear exculpatory evidence.

Ms. Huffman appeared in court for her scheduled court date. (R. p. 511). The charges against Ms. Huffman were dismissed on grounds consistent with her innocence.

(R. pp. 510-511). Afterwards, on June 21, 2010, the black male shown on the video was arrested and pled guilty. (R. pp. 348-350; 509).

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Id.* at 329-30, 673 S.E.2d at 802.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR FALSE ARREST BECAUSE GENUINE ISSUES OF MATERIAL FACT REMAINS FOR A JURY.

False arrest is "deprivation of a person's liberty without justification." *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 30, 410 S.E.2d 21, 23 (Ct. App. 1991). "In order to recover under a theory of false imprisonment, the complainant must establish (1) the defendant restrained him; (2) the restraint was intentional; and (3) the restraint was

unlawful." *Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (S.C. Ct. App. 1995). "The tort of false imprisonment does not require an actual injurious touching. False imprisonment may be committed by words alone, or by acts alone or by both, and by merely operating on the will of the individual, or by personal violence, or by both." *Id.* A defendant can be liable for the tort of false arrest even if the police effectuated the arrest. "The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may cause, instigate or procure an unlawful arrest." *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944). "[W]here a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment." *Id.*

"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). 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). Thus, the linchpin of a false arrest claim is causing a person to be arrested without probable cause.[1]

Here, a genuine issue of material fact exists to support a claim against Sunshine Recycling and Aiken Electric for false arrest. The Circuit Court erred in finding that Sunshine Recycling and Aiken Electric did not deprive Huffman of her liberties. The Circuit Court incorrectly found that "plaintiff has failed to produce any evidence that

[1] The Circuit Court did not analyze or consider probable cause in granting summary judgment for False Arrest. However, probable cause is discussed in the following argument regarding malicious prosecution.

defendants deprived her of her liberty in any way. There has been no evidence produced that defendants physically restricted plaintiff or by their words or conduct, constructively restrained plaintiff." (R. p. 7). This finding is both legally and factually erroneous.

First, the Circuit Court ignored the well-established legal principle that a private person can be liable for the tort of false arrest even if the police effectuated the arrest. "The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may cause, instigate or procure an unlawful arrest." *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944). Huffman argued before the Circuit Court that summary judgment should be denied as to false arrest because Sunshine Recycling and Aiken Electric caused and instigated the Sheriff's Department to arrest her. (R. pp. 106-108). The Circuit Court should be reserved based on this error of law.

Second, the Circuit Court misconstrued the evidence, failed to construe the evidence and all reasonable inferences in favor of Huffman, and omitted and ignored material evidence in finding that these defendants did not deprive Huffman of her liberty. The evidence is overwhelming that Huffman was arrested because of the words and conduct of Sunshine Recycling and Aiken Electric. These two companies identified and accused Huffman of committing a crime. These two companies urged the Sheriff's Department to arrest Huffman and intended to testify against her in the criminal proceeding. The allegations made by Sunshine Recycling and Aiken Electric caused Huffman to be wrongfully arrested, booked, and incarcerated. The Sheriff's officers testified that Huffman was arrested based on these accusations, and if they were told all the facts, then Huffman would not have been arrested. Just because Sunshine Recycling

and Aiken Electric were not the parties that actually handcuffed and detained her, Sunshine Recycling and Aiken Electric caused the Sheriff's Department to arrest her. A genuine issue of fact remains for a jury to determine if Sunshine Recycling and Aiken Electric caused, instigated, or procured Huffman's arrest. Thus, the Circuit Court erred in granting summary judgment as to False Arrest.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR MALICIOUS PROSECUTION BECAUSE GENUINE ISSUES OF MATERIAL FACT REMAINS FOR A JURY.

In order to recover in an action for malicious prosecution, the plaintiff must show (1) the institution or continuation of the original judicial proceedings, either civil or criminal; (2) by, *or at the instance of*, the defendant; (3) termination of such proceeding in the plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Ruff v. Eckerds Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975). A genuine issue of material fact exists to support all the elements of proof for Malicious Prosecution.

In dismissing the Malicious Prosecution claim, the Circuit Court found the following:

> Plaintiff's cause of action against defendants for malicious prosecution fails because there is no evidence that the proceedings against her were initiated by the defendants maliciously and without probable cause. Here, the defendants assisted and cooperated with the investigation. They did not institute the investigation or prosecution, nor did they assist with malice. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes. Once the Hispanic employee reported that the plaintiff was the person who brought the stolen goods in for sale, that information would cause a reasonable person to believe that the plaintiff was guilty of the crime charged. In an action for malicious prosecution, a defendant must be absolved from liability unless the plaintiff shows that the prosecution

> was instituted maliciously. Here, the defendants cooperated with law enforcement and discharged their civic and moral duty to cooperate fully and voluntarily with law enforcement. The Orangeburg County Sheriff's Department, not the defendants, made the decision to take out a warrant and have the plaintiff arrested. There is no evidence that the defendants acted maliciously in connection with the plaintiff's arrest or acted without probable cause. Furthermore, the plaintiff has failed to identify genuine issues of material facts related to the elements of malicious prosecution. I find that there are no genuine issues of material fact and that judgment should be entered in favor of the defendants. (R. pp. 8-9).

This holding is in error on many levels. First, the record is replete with evidence that Huffman was charged at the instance of Sunshine Recycling and Aiken Electric. While the Sheriff's Department formally charged Huffman, it was Sunshine Recycling and Aiken Electric who initiated the criminal charge. No one other than these two companies identified Huffman as the "suspect" and the person in possession of the stolen metal. (R. pp. 43; 341; 344-345; 498-499). The evidence is overwhelming that the Sunshine Recycling and Aiken Electric were affirmatively active in instigating or participating in the institution of charging Huffman with a crime. *See Gibson v. Brown*, 245 S.C. 547, 549, 141 S.E.2d 653, 654 (1965) ("All persons who participate in a malicious prosecution are jointly liable for the resulting injury, and joint liability for a malicious prosecution may exist without reference to the existence of any conspiracy" and the defendant "caused one to be maintained or had voluntarily aided or assisted."); 52 Am. Jur. 2d *Malicious Prosecution* § 88 ("One who advises and procures another to institute proceedings, or aids and assists another in carrying on the prosecution, may [be liable for malicious prosecution]....Liability thus depends on whether the defendant was actively instrumental in causing the prosecution, and the presumption of prosecutorial

independence can be overcome by showing that the defendant improperly exerted pressure on the prosecutor, knowingly provided misinformation to him or her, concealed exculpatory evidence, or otherwise engaged in wrongful or bad-faith conduct instrumental in the initiation of the prosecution.").

Sunshine Recycling and Aiken Electric did not merely "assist or cooperate with the investigation" as the Circuit Court concluded. At the outset, the fact that one is found to "assist or cooperate with the investigation" does not absolve a party from liability for malicious prosecution. This finding actually supports the first and second elements of malicious prosecution. The fact that one actively assists or cooperates with an investigation supports a claim for malicious prosecution, especially in this case by providing false information.

More importantly, the Circuit Court erroneously invaded the province of a jury by reaching this factual determination. At the summary judgment stage, the Circuit Court should not weigh the evidence. *L & W Wholesale, Inc. v. Gore*, 305 S.C. 250, 253, 407 S.E.2d 658, 659 (Ct. App. 1991) (stating at the summary judgment stage of litigation, the trial court does not weigh conflicting evidence regarding a disputed material fact and does not make credibility determinations). The Circuit Court weighed the evidence to conclude that the Respondents "assisted" and "cooperated" with the investigation instead of reviewing the record for a mere scintilla of evidence in dispute.

The record before this Court fully supports that Sunshine Recycling and Aiken Electric advised and procured the Sheriff's Department in charging Huffman, and at the very least, aided and assisted in her arrest. Without dispute, these two companies contacted the Sheriff's Department and affirmatively accused and identified Huffman as

the person who brought in the stolen metal. (R. pp. 43; 341; 344-345; 495-499; 651; 657; 663). Sunshine Recycling and Aiken Electric made these allegations without any truthful or credible evidence. These companies lied to the police about Huffman being in possession of the stolen metal. These accusations were made with reckless disregard for the truth, at the very least. But for Sunshine Recycling and Aiken Electric accusing Huffman and pressing for her arrest, Huffman would have never been arrested. The record is undisputed that they expressed a great "sense of urgency" to arrest Huffman. A reasonable person could easily conclude that Huffman's arrest was by or at the instance of the Respondents.

Second, the Circuit Court erred in concluding that probable cause existed to arrest of Huffman as a matter of law. The Circuit Court reaches this conclusion *even though* Huffman had nothing to do with the alleged crime and there is no evidence, much less credible evidence, to support that she possessed stolen goods. The Respondents, as reflected in the Circuit Court's Order, must concede that Huffman "was not involved in selling stolen goods." (R. p. 2). At the very least, the reasonable inferences to be drawn from the facts support the conclusion that summary judgment should have been denied.

"Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise." *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). "In determining the presence of probable cause for arrest, the probability cannot be technical, but must be factual and practical considerations of everyday life on which reasonable, prudent and cautious men, not legal technicians, act."

Id. (citations omitted). "**The issue of probable cause is a question of fact and ordinarily one for the jury**." *Id.* (emphasis added). Furthermore, in a malicious prosecution claim, 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).

In the case at bar, a review of the facts in a light most favorable to Huffman creates a clear jury issue of whether probable cause existed for her arrest. Even a cursory review of the surveillance video clearly shows that a black male, not a white female, brought in the stolen metal. (R. pp. 348-350; 506-507). Respondents had this video at the time the accusations were made and showed the video to Sheriff's Department before Plaintiff was arrested. Mr. Goss of Aiken Electric also falsely stated that he actually spoke with Huffman and saw her actually carrying the stolen metal from Aiken Electric. (R. p. 43). This was nothing more than a contrived lie. Respondents were also in possession of the scrap metal that Huffman sold.

As indicated on the video and Huffman's receipt, the type of metal that she brought in (i.e. old aluminum sheeting, old electrical wiring) was *not the type, shape, color, or amount* of metal the alleged stolen metal. (R. pp. 506-508). Any reasonable review of the evidence by Sunshine Recycling and Aiken Electric would have plainly revealed that Huffman was not a suspect or responsible in any manner for the stolen metal. Based on the probable cause standard, there was no good faith belief that Huffman was guilty of a crime that would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. The only good faith belief is the only conclusion that the evidence yields – that Huffman was completely innocent!

Sunshine Recycling and Aiken Electric now concede that no evidence existed to believe that Huffman committed any crime. (R. pp. 680; 691-692; 857). A reasonable factfinder could undoubtedly determination that Huffman committed the crime was based upon a completely unsupported rash opinion of guilt and a reckless disregard for the truth.

In the Order, the Circuit Court found probable cause based on alleged statement from the unidentified "Hispanic employee" as a matter of law. This Circuit Court concluded that "[o]nce the Hispanic employee reported that the plaintiff was the person who brought the stolen goods in for sale, that information would cause a reasonable person to believe that the plaintiff was guilty of the crime charged" and that "there is no evidence that the defendants acted...without probable cause." (R. p. 9). In finding of probable cause, the Circuit Court relied on wholly unsubstantiated statements made in Spanish from an unidentified "Hispanic employee" to establish probable cause. This court improperly weighed the evidence in favor of the Respondents instead of viewing the record in the light most favorable to Huffman in determining whether a genuine issue of fact existed.

A reasonable person viewing the evidence could easily disagree that mere reliance on what an unnamed "Hispanic employee" reportedly said is not enough to arrest a person for a crime. A jury could rightfully conclude that evidence sufficient to arrest a citizen requires more than what an unnamed person claimed. A jury could rightfully conclude that the totality of the evidence was exculpatory. A jury could rightfully conclude that an ordinarily prudent and cautious person, under the circumstances, would have never accused and arrested Huffman. Common sense fully negates probable cause. How can probable cause be established when a black male looks nothing like a white

female? How can probable cause be established when Aiken Electric's stolen metal did not, even closely, resemble the same *type, shape, color, or amount* of metal that Huffman sold? How can probable cause be established when the video surveillance and sales document clearly show that Huffman was not involved? These are questions for a jury to decide. In finding probable cause, the Circuit Court disregarded the fact that the video did not show Huffman with the metal and that Mr. Goss had to be lying when he said he personally spoke with Huffman when she was physically carrying the stolen metal. Further, the Circuit Court disregarded the fact that the Sheriff's Department even believed that Sunshine Recycling and Aiken Electric had given "false statements." As such, the Circuit Court wrongfully determined that an unnamed "Hispanic employee" can establish probable cause, especially here where the video and all evidence plainly showed that Huffman did not possess the stolen metal.[2] *See Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, (1983) (holding that a "totality-of-the-circumstances analysis" must be used in determining probable cause"). At the very least, the record contains a mere scintilla of evidence of the lack of probable cause.

Further, the Circuit Court erred by concluding *as a matter of law* that probable cause exists based solely on what an unidentified "Hispanic employee" claimed to have said in Spanish to another person. To find that this supposed statement arises to the level of probable cause is a substantial legal error. The result would create bad law. The precedent established would be that probable cause can be established in criminal cases based solely on an unsubstantiated identification made by an unidentified person. This

[2] To demonstrate what little credibility was given to the double or triple hearsay attributed to the unidentified Hispanic employee, the Sheriff's Department did not rely on an unidentified "Hispanic employee" in swearing out an arrest warrant. This alleged person never gave a written statement.

results in an overwhelmingly low threshold to establish probable cause and renders its purpose functionally meaningless. In fact, this holding relegates the probable cause standard to something much lower than even "reasonable suspicion." *See State v. Rogers*, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch. However, it is less than the level required for probable cause."). The "Hispanic employee" never gave a written statement and nobody knows who this alleged person is. Probable cause cannot be established because some unknown person accuses Huffman of committing a crime, especially when this statement is not corroborated or substantiated by any evidence whatsoever. Based on the Circuit Court's holding, probable cause would exist for any wrongful arrest if simply someone "reported" another of a crime based on an unsubstantiated hunch. Probable cause requires more than "reasonable suspicion" or an "inchoated and unparticularized suspicion or hunch." The alleged statement from the "Hispanic employee" does not even rise to the level of reasonable suspicion, much less probable cause.

As to the Circuit Court's finding of a lack of malice is equally erroneous. In a malicious prosecution claim, malice may be inferred at law based on the lack of probable cause. In *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006), the Supreme Court explained:

> Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. **Malice also may proceed from an ill-regulated mind which is not sufficiently cautious before causing injury to another person. Moreover, malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury**

> **that may be inflicted on another person. Malice also may be implied in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person.** ***In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.***

Here, malice is inferred as a matter of law due to material issues of fact that Sunshine Recycling and Aiken Electric lacked probable cause. Because of the factual issue regarding probable cause, a factual issue exists as to malice.

Furthermore, the evidence taken in the light most favorable to Huffman infers that the Respondents acted with legal malice. A jury would easily find that Sunshine Recycling and Aiken Electric acted with an "ill-regulated mind" because they displayed the desire to simply hold someone criminally responsible, while completely disregarding the evidence. Sunshine Recycling and Aiken Electric acted with disregard to the consequence of their actions for the injury that they inflicted on Huffman. The evidence reveals that the employees of Sunshine Recycling and Aiken Electric who were charged with investigating the stolen metal were more concerned with their own purpose of a securing an arrest against somebody instead of acting in a sufficiently cautious manner. Under the malice standard, the failure to act sufficiently cautious implies proof of malice. Instead of acting in a sufficiently cautious manner, they expressed a great "sense of urgency" in demanding to have Huffman arrested.

Malice can be further shown by the fact that *after* Huffman was wrongfully arrested, Sunshine Recycling demanded that the Sheriff's Department not dismiss the charge. In fact, the owner of Sunshine Recycling still pressed for her conviction and he demanded to "come and testify [against Huffman] in court." (R. pp. 115; 507). These

malicious demands to continue prosecuting Huffman is strong evidence of their utter sense of disregard of accusing innocent people of crimes. The actions of Sunshine Recycling and Aiken Electric led to Officer Ethridge's conclusion that he was "not comfortable with this case due to the witnesses gave [sic] me false information the first time." (R. pp. 116; 512-513).

Accordingly, the Circuit Court erred in granting summary judgment against Huffman on her claim for Malicious Prosecution.

CONCLUSION

Accordingly, Huffman respectfully requests that the Court of Appeals reverse the Order of the Circuit Court and allow a jury trial on the merits.

Respectfully submitted,

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Meredith Huffman.....Appellant,

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CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Brief complies with Rule 211(b), SCACR and the August 13, 2007 Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."

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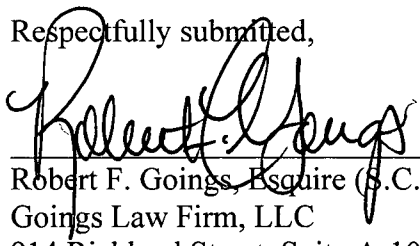
Respectfully submitted,

By: 

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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 Final Brief by having a copy of the same hand-delivered, on February 10, 2015, to the following:

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