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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY JUL 07 2016
Court of Common Pleas

SC Court of Appeals

Maite D. Murphy, Circuit Court Judge

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman,Appellant

v.

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

RESPONDENT SUNSHINE RECYCLING, LLC'S PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENT
SUNSHINE RECYCLING, LLC

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent Sunshine Recycling, LLC (“Sunshine”) hereby petitions for the Court for rehearing. The opinion of the Court (Opinion No. 5417) was filed June 22, 2016. The opinion reversed the grant of summary judgment in favor of Sunshine on the causes of action of false imprisonment and malicious prosecution. Sunshine petitions this Court for rehearing.¹

I. INTRODUCTION

The Court’s decision, in an unprecedented manner, reverses the proper grant of summary judgment in favor of Sunshine, a mere cooperating witness to a criminal investigation, on the causes of action of false imprisonment and malicious prosecution. The decision not only penalizes a witness who cooperates with law enforcement, it also imposes a heretofore non-existent duty on a witness, to review evidence and fact-check information, duties traditionally placed on law enforcement, before speaking with and cooperating with police. Moreover, the court permits the causes of action of false imprisonment and malicious prosecution to lie against mere witnesses. Furthermore, the Court misconstrued the facts in the record and misapplied the law to Sunshine, and failed to recognize the distinction between Sunshine and Aiken, in this malicious prosecution and false imprisonment litigation.

Rehearing is warranted on multiple grounds. As detailed below, the Court’s opinion misapprehends facts, law, and arguments critical to its determination. Sunshine therefore respectfully requests that the Court grant its petition for rehearing.

II. STANDARD OF REVIEW

¹ In addition to the arguments and facts contained herein, Sunshine incorporates the arguments and facts contained in its Final Brief.

The purpose of a petition for rehearing “is to aid the court in deciding correctly a case heard by it.” Arnold v. Carolina Power & Light Co., 168 S.C. 163, 172, 167 S.E. 234, 238 (1933). Where, as here, the existing record does not support the decision, a petition for rehearing is appropriate. See, e.g., Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., 409 S.C. 487, 492 n.4, 763 S.E.2d 19, 21 n.4 (2014) (“If, based on the current record, we have misapprehended the scope of PCS’s indemnification claim against Ross, we invite a rehearing petition. . . .”); Arnold, 168 S.C. at 172, 167 S.E. at 238 (court is “bound by the transcript of record as to the facts of the cause.”). See Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument.”); Rule 221(a), SCACR (petition shall state the points “supposed to have been overlooked or misapprehended”). These standards are met here.

III. ARGUMENT

A. **The Court’s Opinion Imposes an Unprecedented Duty on Witnesses of Criminal Investigations.**

First, the Court’s opinion imposes a duty on witnesses in criminal investigations which as heretofore never been recognized by this State. The Court’s analysis essentially imposes a duty on a witness to independently investigate potential evidence prior to providing the same to law enforcement, the entity charged with the duty of investigating criminal activity. In holding that a juror could reasonably conclude that Sunshine, via Joe Rich, “cause[d], instigate[d] or procure[d]” or “induce[d]” the arresting officer by “request, direction or command,” Huffman’s arrest, the Court stated:

Further, Rich admitted he did not bother to ask his Spanish-speaking employee to identify the second or third person who had dropped off metal on the morning in questions. He stated, ‘That’s what the cameras are for.’

Yet, Rich never bothered to view the video himself despite the fact that he could have obtained a copy of the video before Huffman's arrest.

Moreover, in explaining why he did not view the video of Huffman dropping off her metal before arresting Huffman, Officer Ethridge indicated that he called Alan Price, with Palmetto Security Cameras, several times. The following exchange then occurred:

So either – you didn't personally see the video or watch the video at Sunshine. You were told by Sunshine that it showed [Huffman] –

Correct.

--With the –

She – yes, yes.

A juror could reasonably infer from this testimony that Rich, who never bothered to view the video himself, represented to Officer Ethridge that the video would show Huffman dropping off the \$330 worth of metal stolen from Aiken. Based on the foregoing circumstances, a reasonable juror could conclude that Rich's representation to Officer Ethridge was not 'supported by circumstances sufficiently strong to warrant a cautious man in the belief that [Huffman was] guilty of the offense charged.'

(Op. pp. 13-14).

First, the Court relies on Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) in reversing summary judgment. However, Wingate involved an agent of the *victim* who demanded an arrest from an incident the night before. The facts of the case are distinguishable from those involving Sunshine, a mere witness and/or scene of a crime. As such, the law cited in Wingate is inapplicable to the case *sub judice*, as Sunshine, as a matter of law, did not and could not cause, instigate or procure Huffman's arrest.

Moreover, beyond the distinction of Wingate, the opinion imposes a duty on witnesses to investigate and analyze evidence in the same manner law enforcement is obligated to, and essentially relieves law enforcement of any obligation to conduct a criminal investigation. This opinion essentially absolves law enforcement of its most

important duty.² With its opinion, the Court essentially mandates that witnesses act as amateur detectives, and that should they fail to do so, mistaken information relayed to the police can lead to civil liability. This is not the law of South Carolina and other states have categorically refuted such a standard on public policy grounds. See also, e.g., Davis v. Equibank, 603 A.2d 637, 641 (Pa. 1992) (“We further recognize that the potential of civil liability for the provision of mistaken information to law enforcement agents would have a chilling effect on citizen cooperation and the provision of valuable information by citizens to police.”); Reaves v. Westinghouse Electric Corp., 683 F. Supp. 521, 523 (D.Md.1988) (“The tort of false arrest is predicated upon *knowing* misconduct Negligence or other mistake in providing incorrect information to lawful authorities does not give rise to liability.”). See Ramsden v. Western Union, 138 Cal.Rptr. 426, 431 (Ct. App. 1977) (no cause of action for negligently reporting a crime to the police); Campbell v. City of San Antonio, 43 F.3d 973, 981 (5th Cir.1995), overruled in part on other grounds by Swierkiewicz v. Sorema, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (1989) (“To hold ... that [defendant's] negligent misidentification of [plaintiff] is actionable would in substance convert the Texas tort of *malicious* prosecution into one of *negligent* prosecution. This we decline to do.”) (emphasis in original)).³

² Certainly, information provided by victims and witnesses is part of a criminal investigation. But law enforcement cannot rely solely on such information, fail to do any independent investigation, and then point the finger at the cooperating witnesses who provide information. Here, should this opinion stand, Sunshine, as a mere witness, is now being subject to civil liability the officers failed to perform their job properly—this is wholly at odds with the public policy behind witness cooperation and the factual circumstances in the case at bar.

³ Moreover, in its order granting summary judgment, the circuit court stated: “Law enforcement, not the crime victim and witnesses to a crime, has the duty to investigate a crime and to decide whether and when to seek a warrant.”

The Court's misapprehension and misapplication of the law warrants rehearing on both the false imprisonment and malicious prosecution claim as a matter of law.

B. The Court's Opinion Misapprehends the Record Evidence in Finding that Huffman Offered a Scintilla of Evidence to Withstand Summary Judgment in Favor of Sunshine.

Secondly, this cited evidence does not lead to a *reasonable* inference that Sunshine, as a mere witness with absolutely no stake in the criminal investigation, caused, instigated, or procured Huffman's arrest. In its opinion, the Court misconstrued the record evidence. "It is not sufficient [to defeat a motion for summary judgment] that one create an inference which is not reasonable or an issue of fact that is not genuine." Shuler v Tuomey Reg'l Med. Ctr., 313 S C 225, 437 S E 2d 128, 129 (Ct. App. 1993).

The evidence cited above does not create a reasonable inference or a genuine issue of material fact. In addition to the citation above, the Court cites the following to support a reasonable inference: Officer Ethridge testified that when he visited Sunshine, "[t]hey were guaranteeing that the metal that [Huffman] brought in was the metal – [Goss] was saying this is 100 percent our metal from [Aiken] and the [receipt] showing the weights, everything, was – was co- -- everything was looking the same." (Op. p. 13). The Court then morphs what is clearly a clarification by Ethridge that Goss was speaking the entire time to a genuine issue of material fact that a jury could reasonably infer that Rich made this representation. (Op. p. 13). This leap, which grasps at straws, is unsupported by the quoted testimony and does not, in any event, create a *reasonable* inference to support Huffman's causes of action.

As the circuit court properly found, there is absolutely no evidence to support a reasonable inference of either false imprisonment or malicious prosecution. In its opinion reversing summary judgment, the Court concludes that there is a scintilla of evidence that

Rich, on behalf of Sunshine, induced Officer Ethridge “by request, direction, or command to unlawfully arrest” Huffman or “cause[d], instigate[d] or procure[d] the arrest.” The Court’s opinion fails to appreciate that Sunshine was acting as a witness, providing unfiltered information to the officers. There is absolutely nothing in the record to support a reasonable inference that Sunshine induced prosecution or demanded prosecution of Huffman, thereby failing to create a genuine issue of material fact as to probable cause as a matter of law.⁴ Rather, as the circuit court properly found, the objective evidence leads to only one reasonable conclusion—that Sunshine cooperated with a law enforcement investigation and relayed information that it, in good faith, believed to be true.

Thus, the Court misapprehended the facts and the standard for summary judgment, and erred in concluding that Huffman offered a scintilla of evidence to withstand summary judgment in favor of Sunshine. For this reason, the petition for rehearing should be granted and summary judgment in favor of Sunshine reinstated.

C. The Court’s Opinion Misapprehends the Law and Facts Regarding Malicious Prosecution.

The Court erred as a matter of law in reversing the grant of summary judgment in favor of Sunshine as to the malicious prosecution claim. In its opinion, the Court relies on its probable cause discussion in the false imprisonment section to also reverse the

⁴ In addition to these cited excerpts from the opinion, the Court also seemingly faults Sunshine for: Sunshine’s “employee apparently not tell[ing] Rich that a black male in a white Ford pickup truck dropped off metal immediately after Huffman dropped off her metal[;]” “Rich never view[ing] the video[;]” for failing to thoroughly interview his employee, who was presumably available for interview to law enforcement; and for the difficulty Palmetto Security Cameras had in copying the video. (Op. pp. 3-4; 13). Respectfully, the Court’s opinion misconstrues this evidence, and overlooks the abundant, objective record evident that exists and that supports only one reasonable inference – that Sunshine cooperated with a police investigation and did not institute or demand the arrest or prosecution of Huffman.

grant of summary judgment as to the malicious prosecution claim. As noted above, the opinion misapprehends the record facts and the applicable law in finding that there was a scintilla of evidence to support a finding of lack of probable cause on the part of Sunshine, a mere cooperating witness.

Moreover, the Court misapplies the law of malicious prosecution as it relates to other pertinent elements. The Fourth Circuit Court of Appeals opinion in Brice v. Nkaru, 220 F.3d 233 (4th Cir. 2000), is instructive. In *Brice*, the plaintiff filed suit against a security guard for malicious prosecution based upon the security guard's misidentification of him as a suspect to a crime. The Fourth Circuit, interpreting Virginia law, stated "[w]e find no authority supporting [the] contention that a witness who provides the police with incorrect information during a criminal investigation ipso facto 'institutes' or 'procures' the prosecution if he provides that information unequivocally." Id. at 238. The court further stated:

[W]e are aware of no authority supporting the novel proposition that a witness, by honestly providing information to a law enforcement official, may be held responsible for the official's execution of his independent duty to investigate. *See, e.g., Gramenos v. Jewel Cos.*; 797 F.2d 432, 434 (7th Cir.1986) ("Police often arrest suspects on the basis of oral reports from witnesses, and the state may prosecute against the wishes of all witnesses."); *King v. Massarweh*, 782 F.2d 825, 828–29 (9th Cir.1986) (injuries from arrest are not proximately caused by private party, absent some showing that private party "had some control" over state officials' decision). In this case, [the security guard] simply provided the police with information within his knowledge, and the police reasonably believed him. *See id.* at 439 (explaining that police have reasonable grounds to believe a guard at a supermarket, because there are inherent safeguards against the making of false charges in the institutional employment setting), *see also* 66 A.L.R.3d 10 Summary § 3 (1975) (normally a malicious prosecution plaintiff must show that defendant did more than merely give information that included an identification, *e.g.*, that he requested the initiation of proceedings, signed a complaint, or swore out an arrest warrant against plaintiff); 52 Am.Jur.2d *Malicious Prosecution* § 23 (1970) (plaintiff must show defendant was affirmatively active in

instigating or participating in the prosecution); *id.* § 24 (no liability for mistaken, but reasonable and in good faith, misidentification of perpetrator of crime).

Id. at 238-39.

The Fourth Circuit Court of Appeals ultimately rejected the plaintiff's contention that there was sufficient evidence to support an inference that the security guard acted in bad faith in providing law enforcement with information, and concluded, as a matter of law, that the plaintiff could not maintain his claim for malicious prosecution. *Id.* at 241. Merely providing information to the police and leaving the decision to bring charges to the sole discretion of the police cannot constitute the initiation of criminal proceedings for purposes of a malicious prosecution claim. See 54 C.J.S. Malicious Prosecution § 17 (stating a "civilian complainant, by merely seeking police assistance or furnishing information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for malicious prosecution"),

First, Brice makes clear that as a matter of law, malicious prosecution cannot lie in this instance against Sunshine as a witness. Secondly, as the law states, "[t]he burden is on the plaintiff to show that *the prosecuting person or entity* lacked probable cause to pursue a criminal or civil action against him." Parrott, 246 S.C. at 322, 143 S.E.2d at 609. Law v. S.C. Dep't of Corr., 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006). Huffman has failed to meet this burden or produce a scintilla of evidence regarding institution of proceedings. Rather, the record evidence leads to only one reasonable inference -- Sunshine did not institute or have instituted the proceedings against Huffman at its instance, but rather was merely a cooperating witness.

Moreover, there is absolutely no evidence presented that indicates Sunshine or its employees acted with malice in reporting information and providing documentation to the police, and as discussed above, the Court misapprehended the facts to conclude that there was an issue of material fact with respect to the lack of probable cause.⁵ Sunshine permitted Goss, at his request, to examine the metal and view the surveillance tape; Sunshine relayed information from an employee regarding Huffman's transaction at the yard; Sunshine permitted the officers to view the surveillance tape; and Sunshine indicated it would testify should the need arise. In essence, the Court's opinion erroneously and inversely infers malice and a lack of probable cause on the part of Sunshine because Sunshine failed to investigate and filter information in its possession. This is not the law of malicious prosecution.

For these reasons, the petition for rehearing should be granted and summary judgment reinstated in favor of Sunshine.

IV. CONCLUSION

The Court's opinion seemingly blends the actions of Goss and Respondent Aiken Electric, the victims, with those of Sunshine and Rich, mere witnesses. However, the record evidence is clear that the actions of the two are distinguishable, it is a distinction with a difference. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes to which they are witnesses. However, they are not required to conduct an independent investigation of the information in their possession before relaying the same to the police. The Court erred in imposing such a duty. Furthermore, public policy

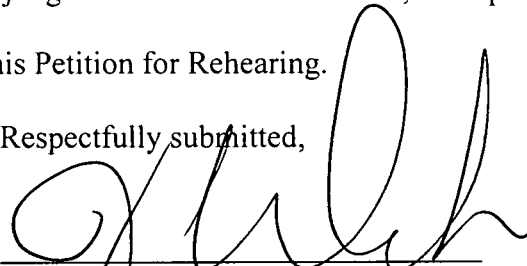
⁵ In fact, because Sunshine was not the victim in this matter, Sunshine had absolutely no incentive to maliciously attempt to prosecute or have the Sherriff's Department prosecute Huffman for the copper wire, nor does the evidence support even an inference of such.

dictates that a witness, even one who provides bad information, cannot be held civilly liable for malicious prosecution—the chilling effect of such legal threat would greatly inhibit the ability of law enforcement to properly investigate and prosecute criminals.

Even assuming these causes of action could lie as a matter of law against Sunshine, the only *reasonable* inference that can be drawn from the evidence presented is that Sunshine assisted and cooperated with an investigation. It did not institute the investigation or prosecution, nor was the same done at the “instance” of Sunshine, a *mere witness*. The Court has misapprehended the facts, failed to distinguish the actors at play, and misapplied the facts to the applicable law.

For the foregoing reasons, Sunshine submits that this Court misapprehended or overlooked matters of both law and fact that compel a different outcome in this case. Accordingly, rehearing is warranted and the Court should withdraw its current opinion and issue a new opinion affirming summary judgment in favor of Sunshine, as requested by Sunshine in its appellate briefing and in this Petition for Rehearing.

Respectfully submitted,



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SUNSHINE RECYCLING, LLC.

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SC Court of Appeals

Maite D. Murphy, Circuit Court Judge

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman,Appellant

v.

Sunshine Recycling, LLC and
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CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

Respondent Sunshine Recycling, LLC's Petition for Rehearing

[Continued on Next Page]

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SC Court of Appeals

VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Meredith Huffman, Appellant v. Sunshine Recycling, LLC and
Aiken Electric Cooperative, Inc., Respondents*
Court of Appeals Case No. 2014-1492
GWB File No. 4-1849

Dear Ms. Kitchings:

Enclosed for filing with your office is the original Petition of Rehearing on behalf of Respondent Sunshine Recycling, LLC, along with ten (10) copies. I would appreciate you filing the original, retaining six (6) copies for the Court, and returning four (4) clocked copies to me via our courier.

By copy of this letter, I am serving the above-referenced on counsel of record. Thank you for your assistance with this matter.

With highest regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.


Jessica A. Waller

JAW:keh
Enclosures

cc: Robert F. Goings, Esquire
James T. Rutherford, Esquire
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