THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Case No. 2012-CP-38-00672

Court of Appeals Tracking No. 2014-1492

Meredith Huffman ..... Appellant

v.

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

PETITION FOR A WRIT OF CERTIORARI OF SUNSHINE RECYCLING, LLC

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SUNSHINE RECYCLING, LLC

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was finally decided and ruled upon by the Court of Appeals on September 15, 2016.

QUESTIONS PRESENTED

I. **IN A NOVEL QUESTION OF LAW, DID THE COURT OF APPEALS ERR IN IMPOSING AN UNPRECEDENTED DUTY ON WITNESSES IN CRIMINAL INVESTIGATIONS?**

II. **DID THE COURT OF APPEALS' DECISION MISAPPREHEND THE SUMMARY JUDGMENT STANDARD AND THE RECORD EVIDENCE IN FINDING THAT HUFFMAN OFFERED A SCINTILLA OF EVIDENCE TO WITHSTAND SUMMARY JUDGMENT?**

III. **DID THE COURT OF APPEALS MISAPPREHEND THE LAW AND FACTS IN CREATING UNPRECEDENTED LAW REGARDING MALICIOUS PROSECUTION?**

STATEMENT OF THE CASE

This case arises out of stolen property and an unfortunate arrest of an innocent person. On May 16, 2010, copper was stolen from the premises of Aiken Electric. The next day, Aiken Electric's Loss Control and Safety Coordinator, Mark Goss, went to the facility of Petitioner Sunshine Recycling, LLC ("Petitioner" or "Sunshine") with a list of the items stolen to inquire if anyone brought the items in to sell. Goss observed copper and aluminum matching what was stolen from Aiken Electric in a pile on the floor. A Hispanic employee informed the owner of Sunshine, Joseph Rich, that he observed Huffman dropping off the metal Goss observed. The Orangeburg County Sherriff's Department was then called to Sunshine and upon an officer's arrival, Goss showed the officer samples of the metal from Aiken Electric that matched the metal at Sunshine. The officer then reviewed Sunshine's surveillance video and observed Appellant at the payment window. He was also provided a supporting receipt from Sunshine for Huffman's transaction. Another officer returned to Sunshine the next day after receiving a telephone call from Goss, photographed the metal, and returned the items to Goss.

Several days later, a warrant was obtained by the Sherriff's Department for Huffman's arrest in connection with the stolen metal. Huffman turned herself in approximately two weeks later, and informed the arresting officer that although she did sell metal to Sunshine, the metal she sold was not stolen. Huffman was then released on bond. Subsequent to her release, an officer viewed the surveillance video of the day in question and observed Huffman selling a different type of wire to Sunshine than that which was stolen from Aiken Electric. The charges were dismissed against Huffman.

Huffman filed this lawsuit against Sunshine, Aiken Electric, and the Sherriff's Department,[1] alleging negligence, false imprisonment / false arrest, and malicious prosecution. Both Aiken Electric and Sunshine separately filed for summary judgment on Huffman's claims. In an Order dated April 3, 2014, the circuit court granted Sunshine and Aiken Electric's motions for summary judgment, holding that (1) a crime witness or victim cannot be sued in negligence for reporting ultimately mistaken information to law enforcement; (2) Huffman failed to present any genuine issues of material fact regarding the elements of false imprisonment; and (3) Huffman failed to present any evidence that the proceedings against her were maliciously initiated by Sunshine or Aiken Electric without probable cause. Huffman's motion for reconsideration was denied on June 14, 2014. Thereafter, Huffman filed a Notice of Appeal.

On June 22, 2016, the Court of Appeals reversed the circuit court's grant of summary judgment with respect to false imprisonment and malicious prosecution.

[1] The Sherriff's Department is no longer a party to this action.

ARGUMENT

Pursuant to Rule 242, SCACR, Petitioner respectfully moves for a Writ of Certiorari and for this Court to review and reverse the Court of Appeals Opinion 5417 of June 22, 2016. The Court of Appeals' decision, in an unprecedented manner, reverses the proper grant of summary judgment in favor of Petitioner, a mere cooperating witness to a criminal investigation, on the causes of action of false imprisonment and malicious prosecution. In a novel question of law, 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 before speaking with police, duties traditionally placed on law enforcement, Moreover, with its Opinion, the Court of Appeals misapprehends the law and elements of false imprisonment and malicious prosecution and permits the causes of action of false imprisonment and malicious prosecution to lie against mere witnesses.

Furthermore, the Court of Appeals 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. Respectfully, the Court of Appeals' analysis is fatally and fundamentally flawed, and this Court should review the issues and reverse.

1. THE COURT OF APPEALS ERRED IN IMPOSING AN UNPRECEDENTED DUTY ON WITNESSES IN CRIMINAL INVESTIGATIONS.

In a novel question of law, the Court of Appeals' opinion reversing summary judgment essentially holds that a witness to a criminal investigation can be found civilly liable for providing inaccurate information to law enforcement. In so doing, the Court of Appeals has now imposed an affirmative duty on witnesses in criminal investigations

which as heretofore never been recognized by this State. The Court of Appeals' 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 of Appeals 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).

However, whether a *witness* to a crime can be liable reporting inaccurate information to law enforcement is a novel issue in South Carolina. While the Court of Appeals relied on Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) in reversing summary judgment, it is important to note that 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.

Beyond the distinction of Wingate, the Court of Appeals' decision inexplicably 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 of Appeals 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.[3] See, 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

[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] The Court of Appeals failed to address these other cases or the public policy arguments.

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 also 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)).[4]

Given this public policy and interest in favor of cooperation and assistance with law enforcement, it is clear that a negligent misidentification of a suspect should not and cannot lead to liability on the part of the witness. The Court of Appeals misapprehended and misapplied the law and the Court of Appeals opinion on this issue should be reversed.

[4] 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."

2. THE COURT OF APPEALS' DECISION 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 of Appeals misconstrued the record evidence and misapplied the summary judgment standard: "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) (emphasis added).

The evidence cited above does not create a reasonable inference or a genuine issue of material fact, especially in light of the novel issue of a witness's civil liability for providing law enforcement information. In addition to the citation above in section I, *supra*, the Court of Appeals relied on 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 of Appeals 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. Respectfully, the Court of Appeals recreated the record evidence to create an issue of fact that simply does not exist to survive the longstanding summary

judgment standard. In any event, even such misconstrued evidence does not create a *reasonable* inference to support Huffman's causes of action, and in ruling otherwise, the Court of Appeals misapplied the summary judgment standard.

In its opinion reversing summary judgment, the Court of Appeals 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." There is absolutely nothing in the record or law of the State 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.[5] 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. Furthermore, the Court of Appeals' opinion fails to appreciate that Sunshine was acting as a witness, providing unfiltered information to the officers. As discussed in section I, *supra*, it is a novel issue in South Carolina whether a mere witness can be held liable for inducing or demanding criminal prosecution, one that should be decided in the negative.

[5] In addition to these cited excerpts from the opinion, the Court of Appeals also seemingly faulted Sunshine for: Sunshine's "employee apparently not tell[ing] Rich that a black make 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 of Appeals 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.

Thus, the Court misapprehended the facts and the standard for summary judgment, and created an unprecedented duty on witnesses to crimes. For this reason, the Petition for a Writ of Certiorari should be granted and this Court should reverse the Court of Appeals, thereby reinstating summary judgment in favor of Sunshine.

3. THE COURT OF APPEALS' OPINION MISAPPREHENDS THE LAW AND FACTS IN CREATING UNPRECEDENTED LAW REGARDING MALICIOUS PROSECUTION.

The Court of Appeals 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 of Appeals relies on its probable cause discussion in the false imprisonment section to also reverse the grant of summary judgment as to the malicious prosecution claim. As noted above, the opinion misapprehended 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.

Furthermore, the Court of Appeals misapplied 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, and demonstrates that the issue presents a novel question of law, which the Court of Appeals erroneously determined.[6] 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

[6] Brice is also instructive in supporting Petitioner's arguments in sections I and II of this Petition.

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"),

Thus, Brice makes clear that as a matter of law, malicious prosecution cannot lie in this instance against Sunshine as a witness. The Court of Appeals erred in this regard.

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 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. [7] 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 of Appeals'

[7] Sunshine was not the victim in this matter, and therefore 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.

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. Again, such a duty has never before been recognized by this State and it cannot be the law of malicious prosecution. Thus, this Court must examine and reverse the Court of Appeals in this regard.

CONCLUSION

In its Opinion, the Court of Appeals created novel issues and heretofore non-existent duties and liabilities, in addition to misapprehending the summary judgment standard and the record evidence. Based upon the foregoing arguments, Petitioner requests that the Supreme Court issue a writ of certiorari to review the final decision of the Court of Appeals.

Respectfully Submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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November 7, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

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Meredith Huffman, ...Appellant

v.

Sunshine Recycling, LLC and
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PROOF 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

Petition for a Writ of Certiorari of Sunshine Recycling, LLC

[Continued on Next Page]

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November 7, 2016

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
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Supreme Court Building
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Re: *Meredith Huffman, Appellant v. Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc., Respondents*
Orangeburg County Case No. 2012-CP-38-672
Court of Appeals Case No. 2014-1492
GWB File No. 4-1849

Dear Mr. Shearouse:

Enclosed for filing is the original and seven (7) copies of Sunshine Recycling, LLC's Petition for Writ of Certiorari (with attached Proof of Service) in the above matter. I have included the filing fee of $100.00.

I would appreciate you returning a clocked copy to me via our courier. By copy of this letter, I am serving all parties of record below with a copy of our Petition.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Breon C. M. Walker

BCMW:keh
Enclosures
cc: Robert F. Goings, Esquire
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