

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

RECEIVED

NOV 10 2016

S.C. SUPREME COURT

Appellate Case No. 2014-001492

Meredith Huffman Respondent

vs.

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

**AIKEN ELECTRIC COOPERATIVE, INC'S PETITION
FOR WRIT OF CERTIORARI**

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
(803) 799-9791
(803) 253-6084
pope@popejohnsonlaw.com
Attorney for Petitioner Aiken Electric
Cooperative, Inc.

QUESTIONS PRESENTED

- I. Did the Court of Appeals overlook and fail to address and consider whether Mrs. Huffman's claims against Aiken Electric were barred by the plain language of Article 1, Section 24, Victims Bill of Rights under the South Carolina Constitution and S.C. Code Ann. Section 16-3-1505 et.seq?

- II. Was the decision of the Court of Appeals that there were genuine issues of material fact based upon inadmissible evidence and based upon evidence that Aiken Electric did only that which Article I, Section 24(7) gave it the right to do?

Petitioner Aiken Electric Cooperative, Inc. (“Aiken Electric”) hereby files this petition for a writ of certiorari pursuant to Rule 242, SCACR. Aiken Electric respectfully submits that issuance of the writ of certiorari is warranted. The petition raises novel questions of law. Further, this matter is of exceptional importance as it involves the South Carolina Constitution and the statute enacted pursuant thereto.

In Opinion No. 5417 filed June 22, 2016, the Court of Appeals reversed the Trial Judge’s order granting Aiken Electric’s motion for summary judgment. The Court of Appeals overlooked or misapprehended and failed to decide several matters of law and fact in rendering its opinion. First, the Court of Appeals ignored and did not mention Article 1, Section 24 of the South Carolina Constitution. Second, the Court of Appeals overlooked, ignored and did not mention S.C. Code Ann. Section 16-3-1505 et seq. Third, without mentioning the constitutional and statutory provisions, the Court of Appeals improperly concluded that there was a genuine issue of material fact which precluded summary judgment. The Court of Appeals relied upon case law issued prior to the adoption of the constitutional provisions and the statutes related thereto which have not yet been subject to judicial review. Aiken Electric’s final brief and petition for rehearing are incorporated as herein by reference. This Court should grant a writ of certiorari and upon a review, affirm the Trial Judge’s grant of summary judgment.

STATEMENT OF THE CASE

The Respondent (“Mrs. Huffman”) commenced this action against Orangeburg County Sheriff’s Department (“Sheriff’s Department”) and Sunshine Recycling, LLC (“Sunshine”) on May 9, 2012. In her complaint, Mrs. Huffman alleged causes of action for negligence, false imprisonment and malicious prosecution arising out of her arrest on June 2, 2010 on an arrest warrant obtained by

the Sheriff's Department.

On or about May 24, 2013, Mrs. Huffman amended her complaint and joined Aiken Electric as a party defendant. Rather than answer, Aiken Electric filed a motion to dismiss supported by an affidavit. Aiken Electric's motion was filed on or about June 27, 2013. On or about June 30, 2013, Petitioner Sunshine Recycling, LLC ("Sunshine") moved for summary judgment. Mrs. Huffman settled her claims against the Sheriff's Department and dismissed her action against the Sheriff's Department on or about December 18, 2013. Aiken Electric's and Sunshine's motions were heard by the Honorable Maite D. Murphy on March 10, 2014. Aiken Electric's motion to dismiss was treated as a motion for summary judgment. Judge Murphy granted both motions by an Order dated April 3, 2014. Mrs. Huffman filed her Notice of Appeal on July 11, 2014. Mrs. Huffman filed a timely motion for reconsideration, which was denied by an Order dated June 16, 2014.

Mrs. Huffman appealed and the Court of Appeals, by a decision dated June 22, 2016, reversed. Aiken Electric made a timely motion to reconsider which was denied by an Order dated September 15, 2016.

FACTUAL BACKGROUND¹

On May 16, 2010, a thief went onto Aiken Electric's property and stole some copper wire and aluminum wire having a value of \$463.19. (Appendix. p. 38, ¶2) Aiken Electric had a video surveillance camera which showed the thief to be a black male. (Appendix p. 38 ¶2, p. 43) An Aiken Electric employee reported seeing a white pickup truck leaving Aiken Electric's property on the night of the theft. (Appendix p. 44) According to Aiken Electric's Mr. Mark Goss ("Goss"), Mr.

1. Mrs. Huffman, in an apparent effort to create a genuine issue of material fact, has repeatedly misstated and/or misquoted the record. These are addressed in Aiken Electric's brief to the Court of Appeals. Aiken Electric provides a more detailed factual background than would ordinarily be provided.

Charles Rushton, another Aiken Electric employee, met with a Sheriff's deputy who responded to the report of the theft.

"A I got dressed, got in the car and started heading that way. I contacted the manager of that office, Charles Rushton. He was getting dressed, heading that way, because he can get there before I do. The dispatch actually got on the phone with the sheriff's office and by the time that I got there, the person had already left, had already gotten away, and the sheriff's office was there, but the person was already gone." (Appendix p. 651, lines 14-21)

Deputy Huggins completed the initial report dated May 16, 2010 which showed Charles Rushton as the complainant and the suspect unknown. The initial report stated:

"On 5-16-10 this deputy responded to the above incident type. Upon arrival I spoke to the complainant (Charles Rushton) and he stated that the security camera showed a unknown subject on the premise at the incident location. This unit conducted a security check of the incident location and did not locate the subject. Complainant stated that it is unknown if any items were taken." (Appendix p. 42)

On May 17, 2010, Goss, Aiken Electric's Loss Control and Safety Coordinator, began to check with metal recyclers to see whether the thief had tried to sell the copper and aluminum wire.

"I became involved in the matter on May 17, 2010. When Aiken Electric suffers a theft loss of this nature, I normally check with the metal recyclers in the area to see whether the thief has tried to sell the copper and aluminum. When I went to Sunshine Recycling, LLC on May 17, 2010, I saw the goods which had been stolen from Aiken Electric and sold to Sunshine Recycling, LLC. I had been told that the surveillance camera had filmed a black male in the Aiken Electric building but I had not actually seen the video and I did not have a copy." (Appendix p. 38, ¶4)

Goss also spoke with Sunshine's owner, Joseph Rich ("Joe"). According to Goss, Joe told him that he had talked with his Hispanic employees who had unloaded the copper wire and aluminum wire. A Hispanic employee, speaking in Spanish, told Joe that Mrs. Huffman was the person who brought in the copper wire and aluminum wire. (Appendix p. 38, ¶5) According to Goss, Joe reported this to

the Sheriff's deputy.

Goss testified that he did not know who was responsible for the theft when he went to Sunshine on May 17, 2010. He testified:

“Q Okay. And looking at Exhibit E, at this point, on May the 17th, 2010, it lists the subject as unknown, correct?

A Yes, sir.

Q And at this date you didn't know who was the – who was responsible for this theft, did you?

A No, sir.” (Appendix p. 662, lines 12- 18)

Goss testified as follows:

“Q What did you tell Joe when you saw him?

A I told Joe that we had a theft that night, that to the best of my knowledge we had a white Ford pickup leaving there with a black male in it and that's what we were looking for, to see if we had anyone come through there like that.

Q You told him the best of your knowledge a white Ford pickup truck –

A And we had --

Q --possibly a black male?

A We had a black male on video – because we reviewed the video that morning, so we were looking for a black male.

Q And at the time that you saw Office Huggins on 5-17-2010, did you tell him that you saw the video and the video showed a black male?

A Yes, sir. If my memory serves me correct, we were looking for a black male and I told him about the video, too, because the white Ford pickup in E, in the Incident Report for E

Q Yes, sir.

A -- that's what I told him about the white Ford pickup, that we actually had an employee that saw the suspect leaving and that we had the video, Because he didn't were a mask or anything. This guy came up under there with nothing on.

Q So you talked to Joe. You said we had a theft last night and he takes you to the back?

A Uh-huh.

Q Where is the back? Describe where that location is.

A They have different places where different items are dropped off and in the back they have got a warehouse-type building back there that people can drive their cars and trucks through and unload the items that they have for copper and aluminum, and different things like that back there, that type of metal. It's got, if I'm not mistaken, another place for cars and appliances and things like that. He's got video back there for all of that stuff right there.” (Appendix p. 665, line 4 to p. 666,

line 17)

Goss testified as follows:

“Q Okay. You saw Joe Rich. He took you to the back. Keep going.

A When we got to the back, the aluminum and the copper were there. Joe spoke to some of the employees back there in the back in Spanish. He speaks outstanding Spanish. And when we came back and was leaving out, he said that one of his employees there had stated that a lady had dropped off all the copper and all that.

Q So he’s telling you what he was told in Spanish by a Spanish-speaking employee?

A Yes, sir.” (Appendix p. 667, lines 2-12)

Goss testified as follows:

“Q The name Meredith Huffman is on this document, correct?

A Yes, sir.

Q And she’s marked as the suspect, isn’t she?

A Yes, sir.

Q How did she become the suspect?

A When we went back there where the copper was at, when Joe talked to the employee there in Spanish, he told me that the lady that had come in beforehand was the one that dropped it off. That’s how they got her name right there to go there. Because they went up to the video, up to the window there, and it was only like two people had come in so far that morning. I was there right away when they opened up. It wasn’t very many people that had come through. So the employee in the back that accepted the copper said that a lady had come up there and dropped it all off.

Q Okay. But the information that you gave Orangeburg County Sheriff’s Department linked up the samples that you apparently had with you to the metal that she had brought in, correct?

A That was brought in.

Q That was brought in.

A Yes, sir. I have no way of knowing who brings what in. All I did was verify that the metal there matched the metal that I was looking for. At that time, my video showed a black male in there, but in the metal industry, it’s not uncommon for girlfriends and wives to bring metal in and drop them off. It happens all the time.” (Appendix p. 674, line 18-p. 675, line 21)

Goss testified as follows:

“Q And in order to determine that Meredith Huffman was the suspect, listed as suspect one on the second page of Exhibit E, they obtained her name and the

fact that she was a suspect, from information you provided, correct?

A No, sir.

MR. JOHNSON: Object –

Q Okay. What information did they get to link Meredith Huffman up as a suspect to this crime?

A The only information that Meredith Huffman had given to anyone was to Sunshine Recycling. I had no way of getting any information about anyone. My subject at that time was unknown and a black male, that's what I had video to show and that's what I had a witness that saw that night. So when the employee in the back told Joe that the lady that had just drove through dropped all of that off, that's when Ms. Huffman became a suspect.

Q Okay. So you are saying that it's evidence or information – I say information. It was information from Sunshine Recycling that made Orangeburg County Sheriff's Department determine that Meredith Huffman was a suspect?

MS. WALKER: Object to the form.

A The only way that her name is obtainable is through Sunshine Recycling on the stuff that she gave them and they signed – they keep great records there, okay, so that's – I mean, I have no way of having a name or a number, but, you know –“ (Appendix p. 679, line 2 to p. 680, line 4)

Sunshine had a video camera system that recorded what happened in the area where the copper and aluminum wire were dropped off. On May 17, 2010, Joe instructed Alan Price of Palmetto Security Camera to make a copy of the video for the Sheriff's deputy. Joe testified as follows:

“Q Did you ever provide the Orangeburg County Sheriff's Department with a copy of – of video footage from May 17th, 2010?

A Yes, sir. We did

Q When did you provide that information?

A I don't know when Alan recorded it or when he burned it off of the DVR.

Q Now, who's Alan?

A Alan Price.

Q Who is Alan Price with?

A Palmetto Security Cameras. They're located here in Orangeburg. He actually does a pretty good bit of work for the sheriff's department. So he's one of their trusted sources for video or whatever else. I believe we notified him that day, which is, you know, policy with regards to, you know, sheriff's office needing video, that they were going to need the video. And when he could, to go ahead and burn them a copy of the video.

Q Did you provide Orangeburg County Sheriff's Department with a copy of the ticket that showed Meredith Huffman's name and receipt?

A "Yes, sir." (Appendix p. 858, line 25 to p. 859, line 22)

Deputy Huggins completed a supplemental report dated 5/17/10 which stated:

"On 5-17-10 this deputy spoke to the above complainant (Mark Goss) in reference to Case #2010005803. Complainant stated that an unknown subject stole the following items from the incident location. (1) 60ft cooper, (2) #6 cooper, (1) roll of aluminum. Estimated value of items taken are \$330.00. Complainant stated that a white ford F-150 was seen on the security camera at the incident location. This incident type has been changed to burglary." (Appendix p. 45)

Deputy Aldridge completed a supplemental report dated 5/17/10 which stated:

"This unit met with Joseph Rich, owner of Sunshine Recycling, in reference to the subject bringing in metal that had been identified as stolen from the victim. This unit met with Mark Goss of Aiken Electric verify that the metals at Sunshine matched samples that he had brought. This unit observed the subject on video at the payment window, and this unit was also provided with a copy of the receipt. Mr. Rich advised that he would provide OCSO with a copy of the video. The subject was driving a black dodge pickup truck SC Tag: AFB106. This unit will forward this to R/O Dep. Huggins." (Appendix p. 46)

Deputy Ethridge, who took over the investigation, did not interview the Hispanic employee or call for an interpreter to interview him. (Appendix p. 565, lines 6-22) He did not study Mrs. Huffman's sales receipt and compare it to the stolen goods. Deputy Ethridge did not wait to review the Sunshine video. Instead he contacted Mrs. Huffman to come in. (Appendix p. 566, lines 15-24; p. 569, lines 9-21) Mrs. Huffman met with Deputy Ethridge and denied that she had sold stolen copper wire and aluminum. (Appendix p. 569, line 24 to p. 570, line 19) Mrs. Huffman brought in examples of the metal sheathing she had sold to Sunshine. (Appendix p. 570, lines 16-19) Notwithstanding, Deputy Ethridge proceeded to arrest her. Mrs. Huffman spent the better part of the day at the Orangeburg County Jail being booked and bonded out. (Appendix p. 570, lines 20-21) When the Sunshine video was available to review, Deputy Ethridge admitted that it showed that Mrs. Huffman did not bring in the copper wire and aluminum that was stolen from Aiken Electric. Deputy

Ethridge dropped the charges against Mrs. Huffman. (Appendix p. 514, line 24 to p. 516, line 9)

Goss never identified Mrs. Huffman as a suspect. Goss testified:

“Q Let me slow it down and break it up for you. Orangeburg County Sheriff’s Department determined that Meredith Huffman was a suspect, correct?

A Yes, sir.

Q And they determined that on the 17 of May 20109, correct?

A Yes, sir.

Q And in order to determine that Meredith Huffman was the suspect, listed as suspect one on the second page of Exhibit E, they obtained her name and the fact that she was a suspect, from information you provided, correct?

A No, sir.

MR. JOHNSON: Object –

Q Okay. What information did they get to link Meredith Huffman up as a suspect to this crime?

A The only information that Meredith Huffman had given to anyone was to Sunshine Recycling. I had no way of getting any information about anyone. My subject at that time was unknown and a black male, that’s what I had video to show and that’s what I had a witness that saw that night. So when the employee in the back told Joe that the lady that had just drove through dropped all of that off, that’s when Ms. Huffman became the suspect.” (Appendix. p. 678, line 20 to p. 679, line 18)

ARGUMENT

I.

Did the Court of Appeals overlook and fail to address and consider whether Mrs. Huffman’s claims against Aiken Electric were barred by the plain language of Article 1, Section 24, Victims Bill of Rights under the South Carolina Constitution and S.C. Code Ann. Section 16-3-1505 et.seq?

The Trial Judge, in ruling on the negligence claim, ruled:

“In addition, imposition of such a duty of care would be inconsistent to the rights and duties of a crime victim and a witness to a crime under S.C. Code Ann. Section 16-3-1505 et seq. Section 16-3-1505 states that the crime victims and witnesses to a crime have a civic and moral duty to cooperate fully and voluntarily with law enforcement. Nothing in the Act suggests that a victim cannot press law enforcement to proceed with an arrest. 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.”

There was no appeal of the Circuit Court Judge's granting of summary judgment on the negligence claim. Thus, the ruling is the law of the case. *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 432, 699 S.E.2d 687, 691 (2010) (An unappealed ruling is the law of the case and requires affirmance).

Aiken Electric made the following argument in its brief:

“In the South Carolina victims of crime have certain rights guaranteed by the South Carolina Constitution and by statute. Act 1 §24 of the South Carolina Constitution provides for the ‘Victim’s Bill of Rights.’ Act 1 §24(1) provides protection of victims, who are to be ‘free from intimidation, harassment or abuse’. S.C. Code Ann. §16-3-1505 which outlines the legislative intent of the statutes regarding victim’s rights, and recognizes ‘***the civil and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecuting agencies ***[recognizes] the importance of the citizen cooperation to state and local law enforcement efforts ***’

This is a case of exceptional importance. The people of the State of South Carolina voted to amend the Constitution to provide for victim rights, Article I, Section 24 (1998).

Article 1, Section 24(a)(1) of the South Carolina Constitution provides as follows:

“(A) To preserve and protect victims’ rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim’s constitutional rights, provided by statute;”

Article 1, Section 24(a)(11) provides as follows

“(A) To preserve and protect victims’ rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

The General Assembly, pursuant to Article I, Section 24, enacted statutes guaranteeing crime victim’s certain rights. S.C. Code Ann. Section 16-3-1505 provides as follows:

“In recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well-being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants; and that the State has a responsibility to provide support to a network of services for victims of a crime, including victims of domestic violence and criminal sexual assault.”

The Court of Appeals overlooked and did not mention these constitutional and statutory provisions in reversing the circuit court judge. This is contrary to the Court’s duty and responsibility.

Rule 220(b) provides:

“In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court’s decision, be preserved in the record of the case.”

The Court of Appeals concluded that since Aiken Electric contacted law enforcement several times about “moving further with the case”, this presented a question of fact as to whether Aiken Electric was legally responsible for law enforcement’s decision to arrest Mrs. Huffman. However, Article I, Section 24(7) grants a crime victim the right to confer with law enforcement and to confer about a reasonable disposition of the criminal case.

Under Article 1(7), a victim has the following rights:

“confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;”

Article 1, Section 24(6) provides:

“be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;”

The Court of Appeals’ decision, which ignored the constitution and statutory provisions, waters down the rights guaranteed to victims of crime by the Constitution and statutes regarding victims of crime. A writ of certiorari should be issued and the decisions of the Court of Appeals should be reversed.

II.

Was the decision of the Court of Appeals that there were genuine issues of material fact based upon inadmissible evidence and based upon evidence that Aiken Electric did only that which Article I, Section 24(7) gave it the right to do.

The decision is based upon opinion testimony from Officer Aldridge that Goss, in communicating with law enforcement, “had a sense of urgency”. This is opinion testimony by a lay witness which is inadmissible. Rule 701, SCRE. The Court of Appeals also improperly relied on testimony of Officer Aldridge since there is no evidence that Officer Aldridge was communicating his opinions to Officer Etheridge who made the decision to arrest. In ruling on motion for summary judgment, only evidence that would be admissible can be considered. Rule 50(e), SCRCP.

The only other evidence relied upon by the Court of Appeals was from Officer Ethridge who testified:

“Moreover, Officer Ethridge testified,

I didn’t have the video at that point in time so [Goss] wanted to know what I was going to do. Was I going to try to arrest her, lock her up, you know, speak with a magistrate, what to do. On the 21st, that’s what I did is [sic] I went and spoke with a magistrate.

Q Did you feel that [Goss] was urging you to prosecute [Huffman]? ...

He was calling me. He was calling me just like any other victim would. You know, what are you doing? You know, what – I mean, he had people he had to answer to ...

Q Okay. And the reason he was calling you is because he wanted

A To know what I was going to do with the case. Was I ---

...

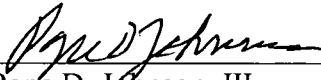
Going to arrest her, yeah.

Officer Ethridge also testified ‘I had spoke[n] with Sunshine [s]everal times[,] trying to obtain a copy of the video and [Goss] was calling me, wanting to know what I was doing with the case.’”

As is shown above, Goss had constitutional and statutory rights to have these communications. According to Officer Ethridge, Goss only did what “any other crime victim” would do. Aiken Electric cannot be sued for exercising its constitutional and statutory rights.

CONCLUSION

This Court should not allow rights guaranteed by the South Carolina Constitution and by statute to be disregarded. If the constitutional and statutory provisions are to have meaning, Goss’ communications with Officer Ethridge must be deemed protected. The writ of certiorari should be granted and the order of the Trial Judge should be affirmed.



Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
(803) 799-9791

(803) 253-6084

pope@popejohnsonlaw.com

**Attorney for Petitioner Aiken Electric
Cooperative, Inc.**

Columbia, South Carolina
November 10, 2016

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

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vs.

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

PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Robert F. Goings and J. Todd Rutherford, attorneys for the Respondent, and Breon C. M. Walker, attorney for Petitioner Sunshine Recycling, LLC, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses this 10th day of November, 2016.

COUNSEL SERVED:

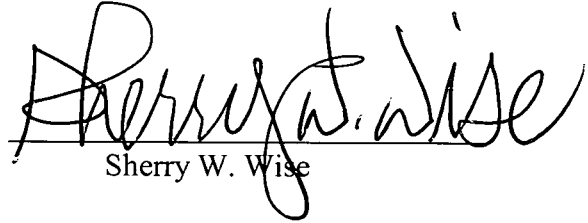
Robert F. Goings, Esquire
Goings Law Firm, LLC
P.O. Box 436
Columbia, SC 29202

J. Todd Rutherford, Esquire
The Rutherford Law Firm, LLC
P.O. Box 1452
Columbia, SC 29202-1452

Breon C. M. Walker, Esquire
Gallivan White & Boyd, P.A.
P.O. Box 7368
Columbia, SC 29202

PLEADINGS:

Aiken Electric Cooperative, Inc's Petition for Writ of Certiorari



Sherry W. Wise

Pope Johnson

From: Robert F. Goings <rgoings@goingslawfirm.com>
Sent: Wednesday, November 09, 2016 11:09 AM
To: Pope Johnson
Cc: trutherford@sc.rr.com; Breon Walker (bwalker@gwblawfirm.com); Jessica O'Neill Gooding; Leslie Clamp
Subject: Re: Meredith Huffman v. Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc.

Pope,
I don't have have problem with your request.

Robert F. Goings
Goings Law Firm, LLC
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
(803) 350-9230 (ph)
(877) 789-6340 (fax)
rgoings@goingslawfirm.com

Goings Law Firm

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On Nov 9, 2016, at 9:48 AM, Pope Johnson <pope@popejohnsonlaw.com> wrote:

Robert, as you know, I finally got the Appendix printed and filed and served yesterday. I need to correct some things in my Petition For Writ of Certiorari. I included references to the Record on Appeal in my Petition with page numbers provided. However, the page numbers were from the Record on Appeal and not based upon the page numbers in the Appendix. I want to re-file my Petition and correct the page numbers that reference the pages in the Appendix.

I also heard from Lindsey Matthews that I need to redact some personal identifiers from the Appendix, which I will do. I told her I would likely be filing a corrected Petition with the page numbers from the Appendix. Please let me hear from you.

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-376-8965 (direct)

803-730-1078 (cell)
803-253-6084 (fax)

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