THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Circuit Court Case No. 2014-CP-38-672
Appellate Case No.: 2014-001492

Supreme Court No. 2016-002080

Meredith Huffman. .....Respondent,

v.

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

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Petitioners Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc. are seeking a writ of certiorari to review a unanimous decision of the Court of Appeals that reversed the circuit court's grant of summary judgment and remanded the case for jury trial on the merits. This decision was based on the Court of Appeals' conclusion that there was at least a scintilla of evidence to support Respondent Meredith Huffman's claims. A writ of certiorari should not be granted to review this decision.

Rule 242(c), SCRAP, provides that "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." The character of reasons which will be considered are: "(1) Where there are novel questions of law; (2) Where there is a dissent in the decision of the Court of Appeals; (3) Where the decision of the Court of Appeals is in conflict with a prior decision on the Supreme Court; and (4) Where substantial constitutional issues are directly involved; and (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court." *Id.* None of these circumstances are true in the present case. This case involves nothing more than the Circuit Court mis-applying the summary judgment standard and the Court of Appeals correcting this error. Contrary to Petitioners' arguments, the Court of Appeals opinion does not create new law or answer a novel question, and there are no constitutional issues directly involved. Thus, for the reasons herein explained, this Court should deny Certiorari.

STATEMENT OF THE CASE AND FACTS

Respondent Meredith Huffman ("Huffman") was wrongfully arrested and imprisoned based on false accusations made by Petitioners Sunshine Recycling, LLC ("Sunshine Recycling") and Aiken Electric Cooperative, Inc. ("Aiken Electric"). Huffman brought this civil action against

Sunshine Recycling and Aiken Electric, asserting claims for Negligence, False Imprisonment, and Malicious Prosecution, and requesting a jury trial.

On May 16, 2010, there was a break-in at Aiken Electric's Orangeburg facility, resulting in the theft of *new* copper and *new* aluminum wiring. (App. at 652-654). The next morning, Mr. Mark Goss ("Goss"), Aiken Electric's Loss Control and Safety Coordinator, reviewed the surveillance video, which showed a black male stealing the goods and a white Ford F-150 pickup truck leaving the parking lot a few minutes later. Goss reported the theft to the Orangeburg County Sheriff's Department ("Sheriff's Department"), valuing the stolen goods at approximately $330.00 and describing them as "(1) 60ft copper [wire], (2) #6 copper [wire], (1) roll of aluminum [wire]." (App. at 652-654; 735).

On May 17, 2010, Huffman lawfully brought in scrap metal for recycling to Sunshine Recycling. (App. At 756-758). The metal was from an abandoned mobile home located on property that Huffman owned, and it consisted of *old* aluminum sheeting and *old* electrical wiring that was from the mobile home. (*Id.*). Sunshine Recycling paid Huffman $53.00. (*Id.*). The metal Huffman sold was a different *type, shape, color, and amount* than what was stolen.

Also on May 17, 2010, Goss contacted Joseph Rich ("Rich"), owner of Sunshine Recycling, and told him that a black male in a white pickup truck had stolen metal from Aiken Electric the night before. (App. at 64-65). Goss went to Sunshine Recycling to review the metal they had purchased that morning, and he identified the metal stolen from Aiken Electric. (App. At 662-63). According to Goss and Rich, they spoke with an unnamed Spanish-speaking employee working in the metal drop off area, and the employee allegedly told Rich that a white woman was the first to drop off metal that morning. (App. at 667). Rich did not mention to the

employee that Goss was looking for a black male, nor did he ask who else dropped off metal that day. (App. at 858[1]).

After Goss went to Sunshine Recycling and identified the stolen metal, Officer Ashley Aldridge of the Sherriff's Department joined Goss and Rich at Sunshine Recycling to investigate. (App. at 344-45; 657). Goss and Rich played Officer Aldridge the video of Huffman waiting to receive payment at Sunshine Recycling and showed him a copy of her receipt. (App. at 46; 347; 494-495; 504-05; 859[1]). On the video, Goss and Rich identified Huffman as the person that sold the stolen metal from Aiken Electric to Sunshine Recycling. (*Id.*). Goss also identified the stolen metal to Officer Aldridge and told the police 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.]" (App. at 408; 499; 506-07).

Regrettably, when Goss viewed the metal sold to Sunshine Recycling on May 17 and identified the items stolen from Aiken Electric, he was viewing items that had been comingled with the products Huffman dropped off. (App. at 663). Goss did not mention to Rich or to the police that he noticed some items that were not stolen from Aiken Electric in the same area as the stolen items. Additionally, the Spanish-speaking employee apparently did not mention that a black male in a white Ford pickup truck dropped off metal very shortly after Huffman dropped off metal, and neither Goss nor Rich asked him.

[1] At the time of filing this Return, Respondent had not yet been served with a complete copy of the Joint Appendix, as pages 825-882 were missing. Thus, this citation is counsel's best approximation. Respondent's attempts to obtain these pages of the Joint Appendix prior to filing this Return were unsuccessful.

On May 18, 2010, Officer Ethridge went to Sunshine Recycling to photograph the metal identified as stolen. (App. at 513). While he was there, Rich informed Officer Ethridge that he would contact Palmetto Security Cameras to request a copy of the video that would show customers dropping off metal the previous day. (App. at 513). When Officer Ethridge obtained a warrant for Huffman's arrest on May 21, 2010, he still did not have a copy of the video, but he testified that Rich represented to him that the video would show Huffman dropping off the stolen metal. (App.at 504-05; 527-28).

After Sunshine Recycling and Aiken Electric had accused Huffman, Aiken Electric continued to strongly urge the Sheriff's Department to arrest Huffman. (App. at 376; 538). Officer Aldridge testified that Sunshine Recycling and Aiken Electric expressed a great "sense of urgency" when inquiring as to Huffman's arrest. (App. at 368). Sunshine Recycling and Aiken Electric pressed for the Sheriff's Department to arrest Huffman and continued to accuse Huffman of the crime, even though no evidence supported these 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. 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. (App. at 409). Further, Huffman's receipt showed that she did not sell the stolen metal, which was new copper wire and new aluminum wire, but rather sold old copper wire and old aluminum sheeting. Huffman was only paid $53 for the metal she dropped off, whereas the stolen metal was valued at $330. Any reasonable review of all 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. (App. at 520-21). On June 2, 2010, Huffman was arrested and booked as an inmate at the Orangeburg-Calhoun Regional Detention Center. (App. at 761-763; 798-801). She was at the detention center from 9:00am until around 5:00pm, when she was released on bond, and she was not allowed to call home to check on her children, who were home alone. (*Id.*).

Finally, after Huffman had been arrested and released, the Sheriff's Department obtained a copy of the surveillance video from Sunshine Recycling. The video shows that the items Huffman brought in do not match the description of the stolen items. It also shows that a black male in a white Ford pickup truck dropped off metal that matched Goss's description of what was stolen. Further, the receipt 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, unlike Huffman's invoice of $53.00. (App. at 512).

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. (App. at 409; 518-19; 526). Even after the Sheriff's Department pointed out to Sunshine Recycling that the video showed Huffman with a different type of metal than what was stolen, Rich still pressed for her conviction and asserted that he would "come and testify [against Huffman] in court." (App. 409; 526). Nonetheless, Officer Ethridge dismissed the charges against Huffman because of the lack of evidence to support the case. 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.*" (App. at 410; 529). (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's accusation of her, and if they were told all the facts, then Huffman would not have been arrested. (App. at 409; 520-21). Huffman appeared in court on the date the charges against her were to be heard, and the charges against her were dismissed on grounds consistent with her innocence. (App. at 532-33). Afterwards, on June 21, 2010, the black male shown on the video was arrested and pled guilty.

Huffman filed the underlying civil action 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. (App. at 293-326). On April 9, 2014, the Circuit Court entered an Order granting summary judgment on all causes of action against Huffman and in favor of both Defendants. 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. Huffman filed the Notice of Appeal on July 11, 2014, and all parties filed briefs. The Court of Appeals heard oral arguments on May 4, 2016, and on June 22, 2016, it issued an order reversing and remanding this case for trial.

Both Sunshine Recycling and Aiken Electric filed Petitions for Rehearing, which were denied on September 15, 2016. On December 7, 2016, both Petitioners filed Petitions for Writ of Certiorari.

ARGUMENT

I. The Court of Appeals Correctly Applied Well-Established South Carolina Precedent to the Facts of This Case.

The Summary Judgment standard in South Carolina is clear. 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.

In this case, the Court of Appeals reviewed the elements of false arrest and malicious prosecution, and, considering the facts in the light most favorable to Huffman, found that there was at least a scintilla of evidence that those elements were met as against Petitioners. Respondent does not, at this stage, have to prove these elements by a preponderance of the evidence; there must only be evidence that would allow for a reasonable inference in Plaintiff's favor. The Court of Appeals correctly applied the proper standard in the context of the well-established elements that make up the relevant causes of action, and this Court should deny Petitioners' Writ of Certiorari.

False Arrest

"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.* The fundamental issue in determining the lawfulness of arrest is whether there is probable cause, or in other words, whether there is evidence that "would induce an ordinarily prudent and cautious man" to believe the arrested person is guilty of a crime. *McBride v Sch. Dist. Of Greenville Cty.*, 389 SC. 546, 567, 698 S.E.2d 845, 856 (Ct. App. 2010).

The Court of Appeals correctly held that an ordinarily prudent and cautious person, in reviewing the evidence, would not have concluded that Huffman committed theft. (App. at 985). The court held, among other things, that a jury could reasonably conclude that the discrepancy between the $330 estimated value of the stolen goods and the $53 Huffman received for her metal would preclude an ordinarily prudent and cautious man from believing Huffman was selling the metal stolen from Aiken Electric. *Id.* Thus, probable cause cannot be found as a matter of law in this case, and the question must go to the jury.

A private individual 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). A person who may "cause instigate or procure an unlawful arrest" is liable for false imprisonment. *Id.* Communicating an accusation to the police is lawful only if the information communicated is "supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged." *Id.* Thus, this claim must go to a jury if there is any scintilla of evidence that (1) Aiken Electric and Sunshine Recycling, instigated, procured or induced Huffman's arrest, and (2) that Aiken Electric and Sunshine Recycling made representations to the police that were not "supported by circumstances

sufficiently strong to warrant a cautions man in the belief that Huffman was guilty of the offense charged." *See id.*

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, urged the Sheriff's Department to arrest Huffman, and intended to testify against her in the criminal proceeding. 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. Goss, among other things, identified the metal at Sunshine Recycling as matching the products stolen from Aiken Electric but failed to mention that it was intermingled with items that had not been stolen from Aiken Electric. In addition, Goss continued to call Officer Ethridge and urge him to arrest Huffman in the days that followed the theft. Rich represented to the police that his employee and surveillance videos identified Huffman as the person who dropped off the stolen metal at Sunshine Recycling in addition to providing other information. Given the information that was available to both these men at the time the representations were made and leading up until the day Huffman was arrested, a jury could reasonably conclude that the men were intentionally misleading the officers or, at the very least, recklessly disregarded the obvious falsity of their representations. In other words, a jury could reasonably find that the circumstances would not lead a cautious man to believe that Huffman was guilty of this crime.

Because a genuine issue of fact remains for a jury to determine if Sunshine Recycling and Aiken Electric wrongfully caused, instigated, or procured Huffman's arrest, the Court of Appeals correctly reversed the grant of summary judgment.

Malicious Prosecution

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) (emphasis added). "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." *See Gibson v. Brown*, 245 S.C. 547, 549, 141 S.E.2d 653, 654 (1965); *see also* 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.").

This Court has previously expounded on the element of malice in a malicious prosecution case:

> 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.***

Law v. S.C. Dept. of Corrections, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006) (emphasis added). As with false imprisonment claims, "[t]he issue of probable cause is a question of fact and ordinarily one for the jury." *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (S.C. 1990). 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).

Without dispute, Aiken Electric and Sunshine Recycling contacted the Sheriff's Department and affirmatively accused and identified Huffman as the person who brought in the stolen metal. (App. at 46; 344-347; 494-495; 501-05; 536-540; 657; 798). Sunshine Recycling and Aiken Electric made these allegations without any truthful or credible evidence. 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. There is more than a mere scintilla of evidence Huffman was arrested at these companies' insistence without probable cause. These companies either knowingly made false accusations or accused Huffman of a crime with a reckless disregard for the truth – a far cry from what an ordinarily prudent and cautious person would do. Based on this evidence, a jury could rightfully conclude that reasonable person, under the circumstances, would have never accused and arrested Huffman.[2]

[2] As Respondent argued before the Court of Appeals, the Circuit Court's holding that probable cause existed in this case as a matter of law based solely on what an unidentified "Hispanic employee" was claimed to have said in Spanish to another person was a substantial legal error and sets a dangerous precedent. The precedent established would be that probable cause can be

For all of these reasons, the Court of Appeals was correct in determining that there are issues of material fact in this case that must be decided by a jury under South Carolina law.

A. The Court Did Not Impose Any New Duties on Witnesses to Crimes

Sunshine Recycling argues the Court of Appeals opinion creates new law and places an affirmative burden on witnesses to crimes to conduct an investigation prior to providing any information to law enforcement. The opinion does not create new law nor impose such a duty. The Court of Appeals simply holds that, viewing the evidence in the light most favorably to Huffman, and considering the information available to Aiken Electric and Sunshine Recycling, a jury could reasonably conclude that the companies accused Huffman of a crime based on information not sufficiently strong to warrant a cautious man's belief that she was guilty of the crime. A cautious man would not intentionally or recklessly mislead the police.[3] Under South Carolina common law, a person who undertakes to act has a duty to use due care. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Likewise, a person providing information to the police msut take care not to give misinformation or partial truths that might hinder the investigation. This duty to act reasonably has long been encompassed by the standard

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established in criminal cases based solely on an unsubstantiated identification made by an unidentified person. This 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.").

[3] The Court of Appeals pointed to evidence that would support a finding that Goss and/or Rich intentionally or recklessly misled the investigating officers. For example, the court's holding was based in part on evidence that Rich represented to police that the surveillance video showed Huffman dropping off the stolen metal. Also, it was based in part on evidence that Goss identified some stolen metal intermingled with some additional metal but chose not to share this information.

for probable cause; it is not new law. *See e.g., McBride v Sch. Dist. Of Greenville Cty.*, 389 SC. 546, 567, 698 S.E.2d 845, 856 (Ct. App. 2010).

In this case, Officer Ethridge stated in his report that he was no longer comfortable pursuing the case because the "witnesses gave [him] false information." This evidence alone is enough to create a material fact as to whether the companies wrongfully caused Huffman's arrest. In applying the well-established probable cause standard to the facts of this case, the Court of Appeals correctly held that a jury must decide whether these companies acted as a cautious man would under these circumstances.

B. Being a Victim of the Crime is Not an Element of False Imprisonment or Malicious Prosecution.

Petitioner Sunshine Recycling next argues that the Court of Appeals created new law and errantly applied *Wingate* against Sunshine Recycling, who was not a victim of the subject crime. This argument also fails.

First, the holding in *Wingate* is not limited to crime victims or based on the fact that the defendant in that case was an agent of the crime victim. *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 ("The charge of false imprisonment . . . extends to *any* person who may cause, instigate or procure an unlawful arrest.") (emphasis added). Second, there is no South Carolina precedent for Sunshine Recycling's contention that a plaintiff must prove motive or provide an explanation as to why the defendant acted as they did in order to recover for false arrest or malicious prosecution. *See id.* In fact, malice is presumed when probable cause is lacking. *Id.* Thus, Petitioner's attempt to distinguish *Wingate* from this case and call this a novel issue of law is without merit.

C. The Court of Appeals Did Not Change South Carolina's Standard for Malicious Prosecution.

Finally, Petitioner Sunshine Recycling argues that it cannot be held liable for Huffman's arrest because it only provided information to the police, and this action does not "ipso facto institute[] or procure[] the prosecution" of an accused party.[4] However, the Court of Appeals did not hold that Sunshine Recycling "ipso facto" procured the arrest by providing information. The evidence in this case is that Rich guaranteed the officers that Huffman brought metal into the recycling center that was stolen from Aiken Electric, which was unequivocally false, and also that Rich continued to push for Huffman's prosecution even after reviewing the exculpatory video. (App. 408-09; 526). Further, he undertook to question his employees about who had dropped off metal that morning, but he did not bother to ask whether multiple people dropped off metal or to mention that Aiken Electric was looking for a black male in a white Ford F-150, and he blatantly ignored the discrepancy between the $330 estimated value of the goods stolen from Aiken Electric and the $53 shown paid to Huffman on the receipt he showed to the investigating officer. (App. at 859[1]; 349; 454). At the very least, this evidence prevents the court from absolving Sunshine Recycling of liability as a matter of law.

II. This Case Does Not Implicate a Constitutional Question.

Petitioner Aiken Electric attempts in its Petition to create a Constitutional issue where none exists. Aiken Electric argues that because the South Carolina Constitution (and § 16-3-1505) grants crime victims the right to confer with law enforcement without threat of intimidation, harassment, or abuse, it cannot be held liable for false arrest or malicious prosecution. This argument flies in the face of *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d

[4] As an initial matter, Respondent would not that Petitioner Sunshine Recycling relies on a Fourth Circuit case interpreting Virginia law in support of this argument.

307, 311 (1944) (holding that private citizens may be liable for false arrest) and *Gibson v. Brown*, 245 S.C. 547, 549, 141 S.E.2d 653, 654 (1965) (holding that all participants in malicious prosecution are equally liable). A private citizen does not have a constitutional right to lie or mislead or offer false information to police. Clearly, this goes beyond exercising one's constitutional right and rises to the level of infringing on the rights of another individual. The Court of Appeals' decision simply finds that there is at least a scintilla of evidence that Aiken Electric and Sunshine Recycling took actions not protected by, and in fact in violation of, South Carolina law. (App. at 990; 992-93). The decision to allow a jury to determine exactly what happened in this case in no way infringes on the Defendant/ Petitioners' constitutional rights.

III. The Court Properly Considered Evidence that Would be Admissible at Trial.

Aiken Electric argues that the Court of Appeals' Opinion was improperly based on inadmissible evidence. More specifically, it argues that Officer Aldridge's testimony that Goss "had a sense of urgency" in his communications with law enforcement is inadmissible opinion testimony from a lay witness. This argument is without merit.

Aiken Electric did not raise any objection to this evidence before the trial court, nor was it addressed in Aiken Electric's brief in response to Huffman's Appeal. Thus, no issue related to the lower courts' consideration of testimony in the record can be properly considered by this Court. *See e.g., M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 474, 666 S.E.2d 262, 265 (Ct. App. 2008) (holding that an argument was "not preserved for . . . review" where it was not properly raised at the summary judgment hearing); *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

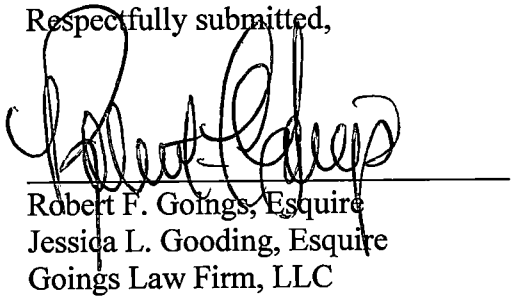
Furthermore, the Court of Appeals did not rely solely on this testimony in concluding that there were issues of material fact precluding summary judgment in this case. Second, this testimony clearly qualifies as admissible testimony. South Carolina Evidence Rule 701 allows for lay witnesses to give opinion testimony whenever it is (a) "rationally based on perception of the witness;" (b) "helpful to a clear understanding of the witness' testimony or the determination of a fact in issue," and (c) "do[es] not require special knowledge skill, experience, or training." *Id.* "Conclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of no value to the jury." *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 468, 494 S.E.2d 835, 845 (1997). Officer Aldridge's testimony is reasonably based on his perceptions and would be helpful to the jury, and no special skill or training is required to determine whether a person is conveying a "sense of urgency." Thus, the Court of Appeals was right to consider it.

Ironically, on the next page of its brief, Aiken Electric relies on Officer Ethridge's testimony that Goss was behaving like "any other crime victim" to support its argument that Aiken Electric and/or Goss were exercising constitutional rights at all times relevant to this case. This statement is no different in effect than the statement it argues is inadmissible. Not only are the arguments of Aiken Electric fundamentally flawed, they are internally inconsistent. As discussed above, Aiken Electric's assertion of constitutional rights is misplaced. Further, a simple statement that Officer Ethridge considered certain behavior to be typical of crime victims cannot single-handedly absolve Aiken Electric of liability. To find otherwise would be ludicrous.

CONCLUSION

For these reasons, the Petitioners fail to articulate any sufficient basis on which to grant a writ of certiorari. This case centers on the summary judgment standard in South Carolina, and the simple fact is that there are genuine issues of material fact in this case that should be determined by a jury. This issue is far from novel. The Court of Appeals' unanimous decision to remand for trial was based on well-established case law. In sum, there is no "special and important reason" to accept this Petition. Accordingly, Huffman requests the Court deny this petition and remand to the circuit court.

Respectfully submitted,



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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Circuit Court Case No. 2014-CP-38-672
Appellate Case No.: 2014-001492

Supreme Court No. 2016-002080

Meredith Huffman. .....Respondent,

v.

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

PROOF OF SERVICE

I certify that I have served Respondent's Return to Petition for Writ of Certioari on this day of the 28th of December, 2016 by placing a copy of same in U.S. Mail, postage prepaid and addressed to the following:

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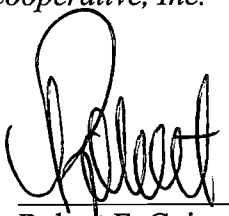

Robert F. Goings
Counsel for Respondent

Columbia, South Carolina
December 28, 2016