

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

RECEIVED

FEB 09 2017

SC Court of Appeals

Jeffrey Kennedy.....Respondent

v.

Richland County School District Two, Eric Barnes and Chuck Earles.....Appellants,

RESPONDENT’S PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, the Respondent Jeffrey Kennedy respectfully moves the Court for rehearing and/or to alter its opinion no. 2017-UP-040 of January 25, 2017, which reversed the trial court’s denial of directed verdict and JNOV sought by Appellants. This appeal arises from a verdict in a week-long jury trial in favor of Mr. Kennedy for damages arising out of workplace defamation – a verdict that was accompanied by a special interrogatory finding that both Chuck Earles and Eric Barnes acted with actual malice. R. pp. 3-4. Because the Court’s opinion overlooks evidence in the record that would support the lower court’s denial of these motions and the jury’s verdict, Respondent respectfully requests that the Court rehear this matter or alter its opinion to affirm the rulings of the trial court and uphold the jury’s verdict. See, e.g. Brown v. Dick Smith Nissan, Inc., 414 S.C. 101, 777 S.E.2d 208 (2015) (reinstating the trial judge’s decision where there was evidence in the record to support the findings of fact and

the Court of Appeals ignored such findings and substituted its own, thereby exceeding its standard of review.)

The “any evidence” standard applicable here is equivalent to a “scintilla of evidence.” Despite the well-defined standard of review, the Court instead appears to have overlooked some evidence of defamation, or improperly weighed the evidence and decided which evidence was more important. In doing so, the Court’s opinion conflicts with the relevant case law and deviates from the standard of review.

“It is established that a defamatory insinuation may be made by actions or conduct as well as by word . . . Defamation need not be accomplished in a direct manner. To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain.” Tyler v. Macks Stores of S. Carolina, Inc., 275 S.C. 456, 272 S.E.2d 633 (1980)

The opinion further misapprehends the evidence in the record to support the jury’s verdict and the lower court’s rulings; rather than reviewing the record on appeal to determine whether the low bar of “any evidence” to support the ruling was found, the Court appears to have only considered the testimony of the Appellants that they did not publish the e-mail, and therefore the qualified privilege could not have been exceeded.

In short, the Court has overlooked evidence in the record that supports both the trial court’s denial of the motions for directed verdict and JNOV and the jury’s verdict.

Legal Standard

An appellate court can only reverse the trial court’s ruling on a denial of a directed verdict and JNOV when *no evidence* supports the ruling or when the ruling is controlled

by an error of law. Steinke v. S.C. Dep't of LLR, 336 S.C. 373, 520 S.E.2d 142 (1999). A factual finding by the jury will not be overturned unless there is no evidence that reasonably supports the jury's findings. Pope v. Heritage Communities, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011). The "any evidence" standard is the equivalent of a "scintilla of evidence." Hancock v. Mid-South Mgmt., 381 S.C. 326, 673 S.E.2d 801 (2008).

"On appeal, the jury's verdict must be upheld unless no evidence reasonably supports the jury's finding. Moreover, neither an appellate court nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." Bass v. SC DSS, 414 S.C. 558, 780 S.E.2d 252 (2015) (reversing the Court of Appeals' decision reversing a jury verdict in favor of plaintiffs, finding that the Court of Appeals "acted outside its limited scope of review" when, "rather than examining the record to discern whether there was any evidence put forward to support the jury verdict, the Court of Appeals seems to have searched the record for evidence to corroborate [the Defendant's] theory of the case . . ."); See also Cook v. Regions Bank, 2016-UP-387 (*per curiam*) (Ct. App. July 27, 2016) (upholding trial court's denial of motions for directed verdict and JNOV in defamation case because a reasonable jury could have believed the plaintiff's version of events, **even if contradicted by the defense**).¹ Credibility of witnesses is always for the jury, and a jury may properly consider motive, bias, and the demeanor of a witness when determining what to believe and disbelieve. R. pp. 974-976.

¹ Counsel is aware that citation to unpublished opinions is disfavored under the Appellate Court Rules; however, counsel respectfully believes that this opinion could aid in the Court's consideration of this matter, given that the opinion concerns workplace defamation and was rendered by the same panel of judges.

Grounds for Rehearing

The Court found that there was no evidence to support a claim for defamation because there was “no evidence that either Earles or Barnes was responsible for disseminating the defamatory e-mail beyond its intended recipients” and therefore “the jury could not have properly found that they exceeded the scope of their qualified privilege”. See Opinion.

This was error, as the Court overlooked the substantial evidence – or at least a *scintilla* of evidence –that the entirety of the Appellants’ conduct could be found, by a reasonable jury, to have defamed Mr. Kennedy. The Court appears to have overlooked some evidence of defamation under South Carolina law, or improperly weighed the evidence and decided which evidence was more important (i.e. the Appellants’ denial that they printed and left out an e-mail). See Brown v. Dick Smith, supra. South Carolina law clearly provides that publication can be established by either direct or circumstantial evidence, and a trial court will properly deny directed verdict if there is even circumstantial evidence of defamation. Duckworth v. First Nat. Bank, 176 S.E.2d 297, 254 S.C. 563 (1970). “Publication . . . may be established by the positive testimony of a person to the effect that the slanderous remarks were heard by him or by evidence tending to show that third persons were present and near enough at the time to hear the words spoken.” Id.

The Court’s opinion misapprehends the legal basis for the defamation claim in this lawsuit, which was predicated on both words and conduct. Long-standing South Carolina law has found sufficient evidence of defamation through words or conduct or a combination of both. See, e.g., Mains v. K-Mart Corp., 297 S.C. 142, 375 S.E.2d 311 (Ct. App. 1988) (no error in denial of motion for directed verdict and JNOV when a jury could

have found that “words or conduct or the combination of words and conduct can communicate defamation.”) Furthermore, defamation need not be accomplished in a direct manner – mere insinuation is actionable. See Eubanks v. Smith, 292 S.C. 57, 354 S.E.2d 898 (1987) (where city manager implied that employees were guilty of wrongdoing, even though he knew that SLED found no criminal wrongdoing, evidence was sufficient to submit the case to the jury); See also Constant v. Spartanburg Steel (affirming denial of directed verdict where evidence that employer continued to convey its belief that an employee was a thief, despite having no evidence to support that belief, was sufficient to find that employer exceeded qualified privilege).

In defamation cases, the defendant may assert conditional or qualified privilege as an affirmative defense, and the court will determine as a matter of law whether such privilege attaches. See Swinton Creek v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999). However, the question of whether the privilege has been abused is for the jury. Id. For instance, publication to a co-worker may be the basis of a defamation action if a qualified privilege is abused. Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E.2d 641 (1946) (cited with approval in Swinton Creek).

In Bell, the Supreme Court overturned the trial court’s granting of the Bank’s *demurrer* on a defamation cause of action on the grounds that the communication was qualifiedly privileged, **noting that the trial court had overlooked the principle that “if actual malice is shown, the protection of the privilege is destroyed.”** Id. at 495 (emphasis added).

In this case, the trial court properly denied Appellants’ motion for directed verdict and submitted the issue of whether the privilege was abused based on the evidence that

Earles and Barnes were not acting in good faith by attempting to let the greater Richland Two community know that they considered Kennedy a thief, even though the Sheriff's Department declined to charge anyone and the Human Resources Department refused to terminate him. Where there is some evidence tending to show abuse of the privilege – and evidence of improper motive - the trial court's denial of directed verdict and JNOV should be affirmed. See Cook v. Regions Bank, supra. The trial court's ruling is further supported by the jury's specific finding that Appellants acted with actual malice towards Mr. Kennedy.

The Court here overlooked evidence of defamation under existing South Carolina law or improperly *weighed* the evidence and decided which evidence (i.e. the denial by the Appellants that they printed and left out the e-mail) was more important than other evidence (i.e. that the Appellants got the word out to staff that Kennedy was not to be trusted; that Appellants never bothered to investigate or follow up with the other recipients of the e-mail to determine who printed it out, if they themselves actually didn't). As a result, the Court has disregarded the “any evidence” standard.

The trial court correctly found that, viewed in the light most favorable to the plaintiff, there was at least a *scintilla* of evidence (i.e. “any evidence”) to support a cause of action for defamation, and the considerable evidence presented was susceptible to more than one reasonable inference. As outlined in more detail below, there was at least some evidence that Appellants communicated to rank and file employees, either through words or conduct or a combination of both, that they believed Jeffrey Kennedy was a thief, could not be trusted, and was unfit for his job and that they were motivated by ill will and malice in doing so, perhaps the result of frustration with the decision by Richland Two to keep

Mr. Kennedy employed, or by the decision of the Sheriff's Department not to charge him (or anyone) with the alleged theft. A "trial court should deny the motion [for directed verdict and JNOV] where either the evidence yields more than one inference or its inference is in doubt." Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (2003).

Undisputed Facts

In the Spring of 2011, Jeffrey Kennedy was employed as a security guard, working third shift, with Richland Two. As part of his shift, he was responsible for patrolling various schools, including Spring Valley High School. Appellant Chuck Earles was the director of security and Appellant Eric Barnes was his deputy. Appellants believed that the security division had a rumor and gossip problem. R. p. 418, l. 15 – p. 419, l. 18; R. p. 423, l. 25 – p. 424, l. 9; R. p. 305, l. 17- p. 306, l. 2.

On February 28, 2011, Mr. Earles recommended Mr. Kennedy for a promotion and it was known among the rank and file that Mr. Kennedy was getting the promotion. It was known among the rank and file that Mr. Kennedy was getting the promotion. R. pp. 153 - 154; R. p. 225, l. 25 – p. 226, l. 8; R. p. 268, l. 13-20.

On March 4, 2011, Spring Valley's athletic director, Tim Hunter, alleged that he left \$1,000 in some cash boxes in his office the night before, and discovered the money was missing the next day. R. p. 319, l. 21 – p. 320, l. 2; R. p. 608, l. 14 – p. 611, l. 18; R. p. 1025. Mr. Hunter had a safe in his office where he usually locked up money; however, he alleged that he felt sick the evening of March 3rd and wanted to leave the cash boxes out, in case a staff member needed to access the cash for an event.² This was not his standard practice. R. p. 611, l. 19- p. 612, l. 6.

² Obviously, Mr. Hunter did end up coming to work the following day.

There are approximately 100+ thefts which occur every year at Spring Valley. R. p. 746, l. 4. – p. 747, l. 4. Numerous witnesses testified that “everyone had keys” at Spring Valley and, in fact, the Richland Two security division (including Appellants) did not even know who had keys to what – that decision was made by Spring Valley’s principal. R. p. 154, l. 23 – p. 156, l. 25; R. p. 248; R. p. 419, l. 19 – p. 421, l. 1.

Mr. Hunter’s actions on the night in question were deemed “odd” and “suspicious” by certain people, including Appellants. R. p. 226, l. 14 – p. 227, l. 7; R. p. 362, l. 10- 18; R. pp. 434-435. There was no video footage from the security camera of anyone entering or exiting Mr. Hunter’s office on the night in question. R. p. 349, l. 1-5; R. p. 442, l. 23 – p. 443, l. 5.

Mr. Kennedy was on duty the evening of March 3rd and, as part of his rounds, turned on the alarm in the Athletic Department around 11:00 p.m., and came back and disarmed it by himself sometime around 5:55 a.m. on March 4th. R. p. 159, l. 1-14. Sometime after the alarm was set, the baseball team returned to campus and set off the alarm. When the alarm went off, Mr. Kennedy was instructed by his shift lieutenant, Lt. Young, to drive over and check on things. R. p. 159, l. 17 – p. 161, l. 12. By the time Kennedy arrived, the baseball coach was already turning the alarm off himself and Kennedy did not re-enter the building. However, while sitting in his vehicle outside, Mr. Kennedy observed numerous players and coaches in the hallway by Mr. Hunter’s office; additionally, there were numerous players and coaches observed on the videotape from the security camera in the Athletic Department building. R. pp. 159 -161; R. p. 243, l. 19 – p. 244, l.10.

While some witnesses testified that they saw the baseball team on the video footage from the evening in question, Chuck Earles did not recall seeing the team when he reviewed

the footage, R. p. 559, l. 24 – p. 560, l. 18; however, Earles did observe Mr. Kennedy on the phone as he exited the building around 5:55 a.m. At the time when he disarmed the alarm, and other nights in question, Mr. Kennedy spent time in the weight room, “killing time”. R. p. 515, l. 15 – p. 517, l. 10. While in the weight room on the morning in question, Kennedy received a call from Lt. Young, directing him to go to another school. R. pp. 162, l. 13 – p. 163, l. 16.

Earles never followed up to see who Kennedy was speaking with that morning. R. p. 543, l. 9 – p. 546, l. 2. Earles refused to testify as to whether “it would be highly unlikely that [Kennedy] would be in the process of robbing something while he is talking to somebody else.” R. p. 545, l. 24 - p. 546, l. 2. Earles did not save any video from the night in question which showed Tim Hunter leaving or arriving, nor did he save the video from the period of time after Kennedy disabled the alarm. R. p. 560, l. 19 – p. 561, l. 25.

Despite no one ever having observed Kennedy – during the three years he had been a night watchman - entering or exiting any office where he was not supposed to be (including Mr. Hunter’s), and despite the District finding that others had “access and opportunity” to Mr. Hunter’s office, Mr. Kennedy was the sole focus of the Appellants’ investigation. R. p. 272, l. 11-17; R. p. 351, l. 15 – p. 352, l. 2.; R. p. 565, l. 10 – 14, R. pp. 1011-1012. Appellants never interviewed the baseball team, baseball coach, or the custodial staff. R. pp. 323 -325, R. p. 184, l. 18 – p. 186, l.23 , R. p. 331, l. 13 – p. 332, l. 22.

Appellants testified that they did not really perform an investigation, but merely acted as liaisons to the Richland County Sheriff’s Department. R. pp. 319-322, 329. However, both men reviewed videotape of the nights in question; met with human

resources staff and with Mr. Kennedy; and reviewed instances of other petty thefts at Spring Valley High School and sought to “catch” the alleged thief by placing “bait money” in a certain location, without success. R. pp. 323-325; R. pp. 482 – 483.

Appellants never questioned Mr. Kennedy about what his training had been, or what his habits were, or reviewed videotape from months past. R. pp. 314-315; R. p. 406, l. 18 – p. 407, l. 6; R. p. 533, l. 10 – p. 535. They also did not speak with his supervising lieutenants, who could presumably attest to the training Kennedy received and his habits. R. p. 564, l. 18-20; R. pp. 533-535.

Despite the Sheriff’s Department decision not to charge anyone, Appellants both believed that Kennedy was the thief, and Earles withdrew the recommendation for the promotion. R. pp. 351-352, R. pp. 444 - 445. Mr. Barnes was “very frustrated” and simply could not believe that Mr. Kennedy was not fired, and characterized Richland Two, his voice dripping with sarcasm at trial, as a “beautiful place to work”. R. p. 328, l. 21-23; R. p. 366, l. 9 – p. 367, l. 21; R. p. 847, l. 19-24.

Mr. Kennedy returned to work at the security division in June 2011; however, Chuck Earles decided that Mr. Kennedy was not to have keys and was to be assigned to desk duty only. R. p. 422, l. 25 – p. 423, l. 12. In order to implement his decision, Appellants communicated to non-supervisory staff (i.e. “the rank and file”) that Kennedy was not have keys. R. p. 249, l. 14 – p. 250, l. 16. Kennedy testified that he heard that Appellants said he was the thief. R. p. 168, l. 5-23.

Mr. Earles also sent out an e-mail, marked confidential, to the supervisors within the security division, along with his deputy, Mr. Barnes. The e-mail states explicitly that Mr. Kennedy is returning to work on desk duty and is “NOT to be given any assignment

that involves having keys to any District facility.” R. p. 1010. The e-mail was printed out and left out for the rank and file employees to see in the security division office and their vehicles. R. p. 168, l. 11 – p. 169, l.22; R. p. 229, l. 21 – p. 230, l. 11; R. p. 246, l. 7 – p. 247, l. 24. Appellants denied printing it out or leaving it out. R. p. 364, l. 21 – p. 365, l. 1; R. p. 519, l. 1-5. Appellants admitted that the e-mail would have harmed Kennedy if it had gone beyond the recipients. R. pp. 359 - 360; R. p. 423, l. 25 - p. 426, l. 8.

Current and former Richland Two security employees testified that they saw the e-mail and knew what it meant – that Earles and Barnes considered Kennedy to be the thief and that he could not be trusted. R. p. 227, l. 23 – p. 230, l. 20; R. p. 274, l. 7 – p. 276, l. 10. These same witnesses testified that you can “put two and two together”, and that it was “obvious” that Appellants thought Kennedy had stolen the \$1,000. R. p. 227, l. 23- p. 230, l. 25.

Upon learning that the supposedly “confidential” email had been printed out and left out for all to see, neither Barnes nor Earles ever followed up with their supervisory staff to find out who (if not them) had left it out, or why their confidentiality directive was ignored. R. p. 400, l. 24 – p. 406, l. 8; R. pp. 398-399; R. pp. 310-311; R. p. 359.

Richland Two’s human resources department, in confronting a situation where highly sensitive employee information was conveyed to non-supervisory staff, noted that the District strives for a “culture of excellence” when dealing with sensitive employment issues. R. p. 849, l. 2 – p. 851, l. 24. The communication of negative information related to Mr. Kennedy’s trustworthiness to the general staff did not reflect the “culture of excellence”, nor was it indicative of the District’s “best practices”. R. p. 851, l. 25 – p. 852, l. 19; R. p. 857, l. 8 – 24 .

Argument in Support of Rehearing or Alteration

I. There is At Least Some Evidence in the Record to Support the Verdict and the Trial Court's Denial of the Motions

The record before the Court is substantial and consists of direct and circumstantial evidence from which the jury could, and did, find that the Appellants communicated a defamatory message about Mr. Kennedy – that he was a thief and unfit for his profession– and that such message exceeded the scope of qualified privilege and was delivered with actual malice.

It would have been incredible for the Appellants to admit that they communicated to the staff, through words or conduct, that Mr. Kennedy was a thief or could not be trusted (or for them to admit that they printed out the e-mail and left it out for all to see). A cause of action for defamation necessarily must involve circumstantial evidence - unless a newspaper is involved - since most defendants are unlikely to admit words or conduct which defame someone.

1. There is direct, undisputed evidence in the record that Appellants communicated to staff (i.e. the rank and file), through words and/or conduct, that Kennedy could not be trusted. John Reid, a member of the security division staff working second shift, recounted:

Q. When did you first find out that Jeffrey was being investigated for the theft?

A. Well, I mean, after [Eric Barnes] asked me about it, [Kennedy] didn't come to the shift to take the supervisor's position. They moved him into the office, and all he could do was answer the telephone, wasn't to have any keys, wasn't to drive any vehicles.

Q. How did you find out that he wasn't supposed to have keys or drive vehicles.

A. It was told to us. Because he came in on third shift and he would relieve us, and sometimes he would beat the shift supervisor to work himself . . .

Q. Who told you he was not supposed to have keys?

A. It was put out by Mr. Barnes.

Q. What did you think of that?

A. Well you know, it's pretty obvious. I mean, a guy supposed to get promoted; and all of a sudden, they move. He didn't get promoted, and then he is brought into the office. All he can do is answer telephones. Evidently he was under suspicion for something.

Q. Was it clear to you that he was under suspicion for the thousand dollar theft?

A. That's when it started. So, I mean, put one and two together.

Q. So you ended up getting the job that Jeffrey had been promoted to and that was revoked?

A. Yes, sir.

Q. . . . Did Jeffrey's job overlap with what you thought your job was supposed to be as the second shift supervisor?

A. I didn't get the job until later on.

R. at p. 249, l. 14 – p. 251, l. 3.

There was no evidence in the record that Mr. Reid had become a supervisor at the time this conversation occurred. In their rebuttal at oral argument, counsel for Appellants incorrectly asserted that this conversation was privileged because Mr. Reid was a supervisor. This is incorrect, as Mr. Reid clearly testified that he didn't get that promotion until later on.

Barry Mitchell, another shift security guard, also testified that Mr. Barnes and Mr. Earles let the staff security guards know that they considered Kennedy to be the thief, *even if* he was back at work and never charged with any crime:

Q. Based on your personal knowledge, going back to those days and months around March 2011, personally was it obvious to you that Mr. Earles and Mr. Barnes thought that Jeffrey was not to be trusted?

A. Yes, ma'am. Once they promoted him to lieutenant and then demoted him to a desk job, it was rather obvious that he was under investigation for it.

...

Q. Where did you see this [Earles e-mail] before?

A. There is an office in the support service center where we have a file cabinet where we keep our time sheets . . . and it was laying on the desk.

Q. So that office is not a secure area?

A. No.

Q. Staff goes in and out of there?

A. Yes, ma'am.

...

Q. And so the letter says [Kennedy] is not to have keys?

A. Yes, ma'am.

Q. And you interpreting that how?

A. He was not to be trusted.

Q. A security guard without keys really isn't a security guard?

...

A. Is worthless, for what we do. If you can't use keys, you can't work.

R. p. 229, l. 13 – p. 231, l. 1.

2. The direct evidence that Appellants communicated to the staff that Kennedy could not be trusted also serves as circumstantial evidence that Appellants would have been likely to have printed and left the e-mail out, in an effort to get the word out and harm Kennedy.

Earles and Barnes, upon learning that the e-mail had been printed out and left out, never asked their subordinates if they had done so, nor did they investigate the matter further. This failure to investigate the alleged breach of confidentiality creates a reasonable inference for the jury to conclude that the Appellants did nothing because they, in fact, were the ones who printed the e-mail out and left it out for the rank and file to see.

Additionally, despite believing that the security division was a “rumor mill” in need of reform, neither Earles nor Barnes took any action to ensure that this “confidential” memo – which they knew would harm Kennedy if it was seen by others – would actually be kept confidential. R. p. 426, l. 4-21; R. p. 427, l. 17- p. 428, l. 2. This evidence, taken as a whole, also creates a reasonable inference for the jury to believe that Appellants did not take steps to ensure confidentiality, because they either wanted to communicate the message that Kennedy was a thief to the staff, or because one or both of them did, in fact, leave it out for all to see.

The position of the Court appears to be that a cause of action for defamation cannot stand because the jury was not allowed to “disbelieve” the Appellants’ testimony regarding the e-mail, despite evidence in the record supporting the jury’s verdict. This position ignores the other evidence of conduct and communication which can constitute defamation, and results in the Court determining the credibility of the witnesses – not the jury. Under

this standard, if a defendant denies publication, all other evidence of defamation is disregarded and a cause of action cannot stand.

If this is to be the law of South Carolina, then it is unlikely that any cause of action for defamation can ever stand if a defendant denies publication, despite other evidence to the contrary. Credibility was an issue for the jury; the jury could have concluded that since Appellants considered Kennedy the thief, they left the memo out (and also communicated their belief through words and conduct) in order to harm Kennedy. This argument is bolstered because the jury specifically found that the Appellants acted with actual malice.

Furthermore, the jury could have concluded that Eric Barnes was not credible because he testified that there had been no petty thefts at Spring Valley High School since March 2011, R. p. 361, l. 1-7, even though an assistant principal testified there were 100+ thefts a year at Spring Valley. Similarly, Chuck Earles could have been considered not credible because he testified that he didn't recall seeing the baseball team on the videotape from the night in question (although it was undisputed they were there that night), and despite others having "access and opportunity", he never spoke to anyone on the team or otherwise. R. p. 443, l. 11-13, R. p. 434, l. 17- p. 435, l. 10; R. p. 560.

3. Appellants solely focused on Jeffrey Kennedy in investigating the missing money and believed from the very beginning that he was the thief, despite others having access and opportunity and despite the admittedly suspicious behavior of the Athletic Director in leaving the money out. R. p. 272, l. 11-17; R. p. 351, l. 15 – p. 352, l.2.

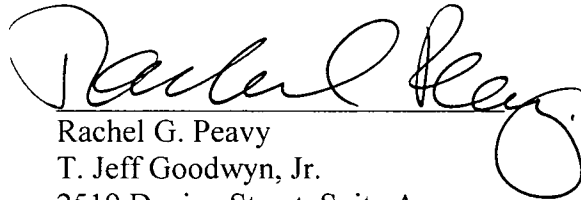
4. Mr. Kennedy testified that he heard that Appellants said he was the thief. R. p. 168, l. 5-23.

Conclusion

This Opinion fails to address the entire record before the Court and deviates from the applicable standard of review. The Court has failed to consider all of the evidence in the record and, accordingly, rehearing is necessary to correct these errors and to issue an opinion which fully addresses the application of existing South Carolina law to the facts presented.

The opinion of the Court only addressed the e-mail evidence and whether or not there was publication of the e-mail by the Appellants; however, that was not the only evidence in the record upon which the trial court relied upon in denying the motions for directed verdict and JNOV and, accordingly, Petitioner respectfully requests that the Court grant this Petition. Upon such further review, Petitioner requests that the Court withdraw its opinion, address all the evidence in the record, and affirm the lower court's rulings and the jury's verdict in this matter.

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Dated: February 9, 2017

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February 9, 2017

VIA HAND DELIVERY

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

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FEB 09 2017

SC Court of Appeals

RE: ***Jeffrey Kennedy v. Richland County School District Two, Eric Barnes and Chuck Earles***
Appellate Case No.: 2015-000613
Our File No.: 3000-0106

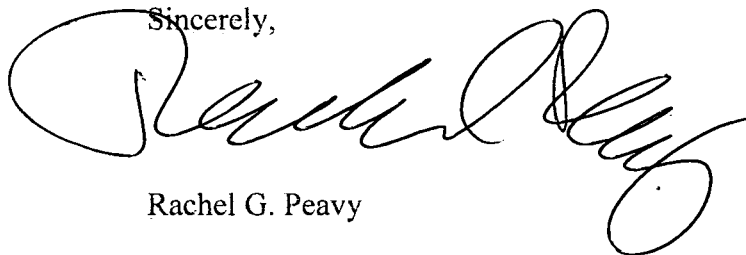
Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of Respondent's Petition for Rehearing, the Proof of Service and filing fee check in the amount of \$25.00 in regard to the above referenced matter. I would appreciate it if you would file same in your office and return a clocked copy to the courier.

By copy of this letter to Thomas K. Barlow, Esquire and Kathryn Long Mahoney, Esquire, attorneys for the Appellants, I am serving him with a copy of same.

Thank you for your assistance with this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



Rachel G. Peavy

RGP/msb
Enclosure

cc: Thomas K. Barlow, Esquire (w/encl.)
Kathryn Long Mahoney, Esquire (w/encl.)
Jeffrey Kennedy (w/encl.)

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APPEAL FROM RICHLAND COUNTY
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Jeffrey Kennedy.....Respondent,

v.

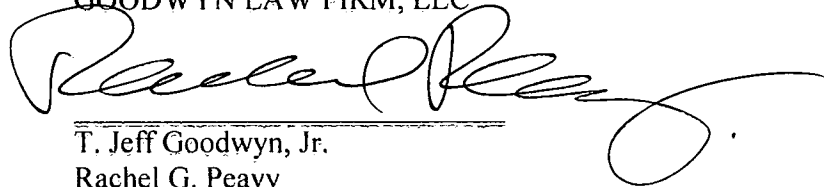
Richland County School District Two, Eric Barnes and Chuck Earles.....Appellants.

PROOF OF SERVICE

I certify that I have served the **Respondent's Petition for Rehearing** on Thomas K. Barlow, Esquire and Kathryn Long Mahoney, Esquire, Attorneys for the Appellants, at the address listed below by depositing a copy of same in the United States Mail, postage prepaid, on February 9, 2017.

Thomas K. Barlow
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