

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

RECEIVED

APR 24 2017

SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2013-CP-18-0735
Appellate Case No. 2015-000058

William McFarland and Jennifer McFarland,

Appellants,

v.

Mansour Rashtchian and Amy Rashtchian,

Respondents.

**APPELLANTS' REPLY TO
RESPONDENT'S RETURN TO PETITION FOR REHEARING**

YOUNG CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Counsel for Appellants

In further support of their petition for rehearing, the McFarlands would make the following points in reply to the Rashtchians' return:

Re: Argument/Ground No. 1 in the Petition

1. In their return, the Rashtchians did not actually offer any rebuttal to the McFarlands' points that the trial court erred in instructing the jury that self-defense is an "absolute" (as opposed to "qualified") defense and in incorrectly equating justification and provocation with self-defense and conflating these concepts in the charge.

2. Rather, the Rashtchians' counterargument is of a general nature: They contend that the charge is correct as a *whole*. (Return pp. 1-2.) Tellingly, however, in making this argument, they isolate but small *parts* of the charge—parts which do not include the aforementioned (unrefuted) errors. (*Id.* at p. 2.) A jury charge, like the subject charge, that is cluttered with irrelevant and inapplicable principles—and, indeed, that includes incorrect statements on such principles—cannot reasonably be deemed to be correct on the whole. See Cole v. Raut, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008) (“A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury[']s confusion affects the outcome of the trial.”).

Re: Argument/Ground No. 2 in the Petition

1. Here, the Rashtchians' argument reflects a fundamental misunderstanding of the legal standard. According to the Rashtchians, "The *jury's finding* supports the charge." (Return p. 4 (emphasis added).) It is, however, the *evidence*, not the jury's finding, that must support the charge—indeed, besides confusing the jury about the applicable law, a charge that is given erroneously without evidentiary support invites the jury to find facts erroneously without evidentiary support. Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) ("When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and *developed by the evidence in support of those issues.*") (emphasis added).

2. As the McFarlands have already explained, the subject charge was given erroneously without evidentiary support. And the Rashtchians' argument here actually provides a convenient opportunity not only to underscore this point (about the lack of evidentiary support for the charge) but also the McFarlands' point about the substantive incorrectness of the legal principles charged to the jury equating justification and provocation with self-defense and conflating these concepts. The Rashtchians claim "that the incident on April 26, 2011 was precipitated by years of racially charged insults towards Mr. Rashtchian, as well as Mr. McFarland's inconsiderate actions immediately prior to their interaction where

Mr. McFarland directed two cars around his landscaper's truck and onto the Rashtchian property.” (Return p. 3.) But even assuming, arguendo, this were so,^{1 2} it does not constitute evidence of a defamatory attack by Bill (much less Jennifer) against Mansour (much less Amy) before Mansour ran from his house to initiate the patently non-defensive and obviously ill-willed confrontation with Bill on the date in question; the Rashtchians are themselves mistaking what might (at most) be evidence going to *provocation* for evidence supporting a claim of *self-defense*. Compare Cartwright v. Herald Publ'g Co., 220 S.C. 492, 498, 68 S.E.2d 415, 417 (1951) ([regarding self-defense:] “Statements made in an honest endeavor to vindicate one's character or to protect one's interests are usually regarded as qualifiedly privileged, even though they are false, if they are made in good faith

¹ Without actually citing to the record, the Rashtchians assert, “The record is clear that the incident on April 26, 2011 was precipitated by years of racially charged insults towards Mr. Rashtchian” (Id.) The McFarlands flatly deny this assertion—and, indeed, it is *clear* that the record is not “clear” as the Rashtchians claim. (See R. [Testimony of Bill McFarland:] pp. 98:7–99:11, p. 174:9–17, pp. 176:16–177:2, p. 184:12–14, pp. 184:24–185:4]; [Jennifer McFarland:] pp. 299:16–300:16; see also [Stephon Johnson:] p. 239:16–20; R. p. 242:8–15.)

² Also contrary to the Rashtchians' assertion in their return, Bill did not direct the two cars “onto the Rashtchian property” (Return p. 3); rather, they were directed onto the “right-of-way' grass” adjacent to the paved surface of the road, which was not actually the Rashtchians' property, and at that, there is no evidence in the record of any property damage in any event. (R. [Testimony of Mansour Rashtchian:] pp. 404:11–405:3, pp. 441:19–446:25, pp. 463:12–468:20; see also [Plaintiffs' Counsel's Opening Statement:] pp. 63:19–64:5; [Stephon Johnson:] p. 248:3–12; [Lance Johnson:] pp. 365:18–367:7, p. 367:19–22, p. 379:6–13, p. 399:12–22; [Amy Rashtchian:] p. 790:12–17, p. 492:11–17.)

and without malice. Thus, it seems to be definitely settled that when one person assails another in the public press, the latter is entitled to make reply therein, and so long as the reply does not exceed the occasion, he cannot be held responsible for any resultant injury. . . . On the other hand, however, it is clear that a defensive communication will lose its privileged character if the person making it goes beyond the scope of the original attack or indulges in language that is unnecessarily defamatory.”) (quoting 33 Am. Jur. Libel and Slander § 134) with Johnston v. Life & Cas. Inc. Co., 192 S.C. 518, 7 S.E.2d 463, 465 (1940) ([regarding provocation:] “Why may not the defendant say: ‘I spoke the words, but under great provocation, or in sudden heat and passion,’ . . . ? It is true that the defendant cannot avail himself of the defense which the truth of the charge affords without pleading justification; but it does not follow that in all such cases the verdict must be the same without regard to the facts and circumstances of aggravation or mitigation.”).

CONCLUSION

Again, the McFarlands ask this Honorable Court to grant their petition, rehear this matter, and issue a re-filed opinion that reverses the defense verdict and judgment in favor of the Rashtchians and remands this matter for a new trial.

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: 

Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Counsel for Appellants

Charleston, South Carolina

Dated: 4/20/17

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2013-CP-18-0735
Appellate Case No. 2015-000058

William McFarland and Jennifer McFarland,

v.

Mansour Rashtchian and Amy Rashtchian,

RECEIVED

APR 24 2017

SC Court of Appeals

Appellants,

Respondents.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Counsel for Appellants

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Appellants, hereby certify that **APPELLANTS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR REHEARING** was served on all other parties to this matter by depositing a copy of same in the U.S. Mail on April 20, 2017, properly posted for delivery to the following addressees:

David C. Cleveland, Esquire
Michael L. Leech, Esquire
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
Counsel for Respondents

RECEIVED

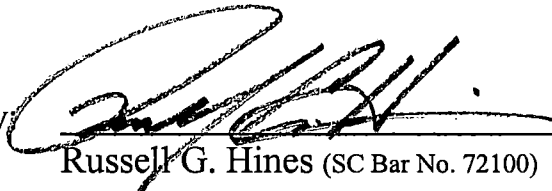
APR 24 2017

SC Court of Appeals

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By

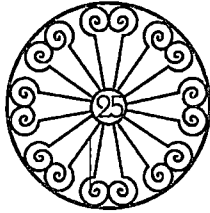


Russell G. Hines (SC Bar No. 72100)

Counsel for Appellants

Charleston, South Carolina

Dated: 4/20/17



YCR LAW

Russell G. Hines
Partner

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
E-mail: rhines@ycrlaw.com

April 20, 2017

VIA U.S. MAIL

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

RECEIVED

APR 24 2017

SC Court of Appeals

Re: McFarland v. Rashtchian
Appellate Case No.: 2015-000058
Circuit Court Case No.: 2013-CP-18-0735
YCR File: 15508-20150131

Dear Ms. Kitchings:

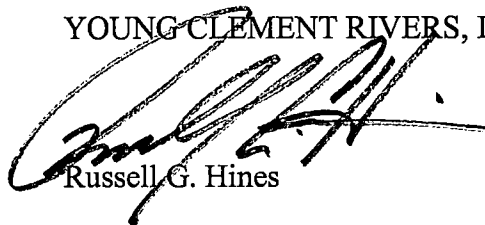
Enclosed for filing in the above-referenced matter, please find the original and seven (7) copies of **Appellants' Reply to Respondents' Return to Petition for Rehearing** and the original and one (1) copy of a **Proof of Service** regarding the same.

Kindly file the original and return one court-stamped copy of each document to me using the pre-stamped envelope provided. Thank you for your assistance with this matter. With best wishes and kindest regards, I am

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

Enclosures

cc: Michael L. Leech, Esquire, Clawson & Staubes, LLC (via US Mail)
David C. Cleveland, Esquire, Clawson & Staubes, LLC (via US Mail)

FIRST CLASS MAIL

04/27/2017

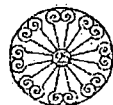
US POSTAGE

\$002.87



ZIP 29401
011E1265055

FIRST CLASS MAIL



YCR LAW

25 Calhoun Street, Suite 400
P.O. Box 993
Charleston, SC 29402-0993

KBB
15508-
20150131

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

RECEIVED

APR 24 2017

SC Court of Appeals

