

EXHIBIT 1

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-40-2456

REGINALD ANDRE BLANDING; WANDA BLANDING; AND

LEON LOTT, IN HIS OFFICIAL CAPACITY

BRITTANI BLANDING
 PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

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ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

MAY 09 2017

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Jocely Newman
 Circuit Court Judge 2757 April 20, 2017
 Judge Code Date

Jeanette W. McBride

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

Civil Action No.: 12-CP-40-2456)

Reginald Andre Blanding, Wanda Blanding, and)
Brittani Blanding, by and through her Guardian)
ad Litem, Reginald Andre Blanding and Wanda)
Blanding,)

Plaintiffs,)

ORDER)

v.)

RECEIVED)

Leon Lott, in his official capacity,)

MAY 09 2017)

Defendant.)

SC Court of Appeals)

2017 APR 20 PM 1:31
CHARLOTTE W. HOGBAIRD
Clerk of Court
SOUTH CAROLINA


This matter came before the Court for trial on November 28, 2016 at the Richland County Judicial Center for the sole cause of action of defamation. Present at the trial were counsel for Defendant, Robert D. Garfield, Esq. and Jasmine D. Wyman, Esq.; and for Plaintiffs, Robert J. Butcher, Esq. and Deborah J. Butcher, Esq. For the reasons discussed below, the Court grants Defendants' Renewed Motion for Summary Judgment.

I. PROCEDURAL BACKGROUND

On April 2, 2012, this action was originally brought in this Court by Plaintiffs against Defendants Richland County Sheriff's Department ("RCSD"), Sheriff Lott, and Lt. Chris Cowan for causes of action of negligence, negligent supervision, negligent training, trespassing, assault, battery, false imprisonment, and defamation.

On December 23, 2013, Plaintiffs filed an Amended Complaint against Defendants RCSD, Leon Lott, Lieutenant Cowan, Rickey Johnson, Jr., Frieda Wyatt, Adrian Thompson, Adam Cornwell, Sara Giron, George Becker, Michael Nawrockyj, and the unknown confidential informant, for alleged deprivations of their federal constitutional rights pursuant to 42 U.S.C. § 1983 as well as the aforementioned state court causes of action. On February 4, 2014, Defendants removed the matter to U.S. District Court.

On September 22, 2014, Defendants filed their motion for summary judgment in District Court. On August 17, 2015, District Court Judge J. Michelle Childs issued an Amended Order

1


and Opinion ("District Court Order") with respect to the present facts. *See. Blanding v. RCSD, et al.*, 2015 WL 4929251 (D.S.C.)(unpublished). In the District Court Order, Judge Childs granted Defendants' motion for summary judgment in part, as to all of Plaintiffs' federal claims, and as to Plaintiffs' state law claims of negligent supervision, negligent training, trespassing, assault, battery, and false imprisonment. The District Court declined to exercise supplemental jurisdiction over the remaining state law claims. The Court also remanded this case to this Court for further proceedings.

Following the remand of Plaintiffs' claims of gross negligence and defamation, the then-named Defendants moved for summary judgment pursuant to Rule 56, SCRPC. On March 4, 2016, the Honorable G. Thomas Cooper issued an order granting in part and denying in part Defendants' motion for summary judgment. The Court dismissed Plaintiffs' gross negligence claim with prejudice while denying the motion as to the defamation cause of action. Finally, all individuals were dismissed with prejudice and the Richland County Sheriff in his official capacity, was substituted in their stead. On March 18, 2016, the Defendant Sheriff filed a motion for reconsideration pursuant to Rule 59(e), SCRPC, respectfully addressing several items in which Judge Cooper overlooked when denying summary judgment as to the defamation claim. On April 22, 2016, the Court issued an Order denying this motion.

This matter was called for trial on November 28, 2016. Prior to the selection of the jury, this Court heard arguments concerning Defendant's motion in limine seeking preclusion of certain evidence in light of the earlier final judgments in the case which were valid and decided on the merits. Defendant's motion was based on grounds of collateral estoppel, judicial estoppel, and/or issue preclusion. On November 29, 2016, this Court made specific rulings as to the motion in limine as well as other rulings of law. On December 1, 2016, Defendant renewed his motion for summary judgment and this Court has agreed to hear and rule upon Defendant's dispositive motion.

II. RELEVANT FACTUAL BACKGROUND

The District Court Order contained certain factual findings within the section entitled, "Relevant Factual and Procedural Background." The following recitation is primarily derived from these findings of fact as outlined in the District Court's Order.

On Friday, October 14, 2011, the RCSD Drug Suppression Team ("DST") received a written complaint from then-County Councilperson Val Hutchinson about illegal narcotics sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. Senior Deputy Johnson was assigned and spearheaded the investigation into Hutchinson's complaint.

Johnson began collecting information with respect to the two trailers, and on October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. This process involved uniformed officers making contact with the individuals at both trailer locations and addressing concerns presented in Hutchinson's complaint. No arrests were made at this point, but officers interacted with individuals at the trailers, some of which were in possession of crack pipes.

On Tuesday, October 18, 2011, the DST initiated a narcotics controlled purchase investigation in the neighborhood. Johnson employed his confidential informant ("informant") in this investigation. At that point, the informant had been involved in approximately thirty narcotics investigations and was considered to be extremely trustworthy given his past results.¹

The informant was directed to inspect what drug sales or activity might be taking place at the trailers, and pursue the purchase of drugs. The informant returned twenty to thirty minutes later. The informant's debriefing yielded the following: The informant had a conversation with a male on a bicycle concerning the purchase of narcotics. The informant then made a purchase on the back porch of the residence at 402 Gibbs Road from "a black male named, Peanut." The informant also produced a white, rock-like substance, which he confirmed that he purchased from "Peanut." The informant then specifically pointed out the location where the purchase was made to Johnson and Cornwell. The substance was field tested and returned positive results for cocaine base.

The location of the purchase was cross-referenced using Richland County Geographic Information System mapping, used for tax purposes, which returned a location of 402 Gibbs Road. Johnson additionally ascertained that Blanding was the last name of the owner of the house. Johnson thereafter prepared a search warrant affidavit and associated warrant paperwork for the search of the house.

¹ In an Order issued on October 1, 2013, the Honorable Alison R. Lee denied Plaintiffs' motion to compel discovery of the identity of the informant and associated information with respect to this individual.

On October 20, 2011, Johnson then proceeded to Richland County Magistrate Judge Caroline W. Streater who issued the search warrant at about 12:20 p.m. The search warrant was primarily obtained for the search of the premises itself, rather than the occupants.

Within minutes of its issuance, the search warrant was executed at 402 Gibbs Road. Participating in the execution were Johnson, Wyatt, Thompson, and Giron. Once the investigators discovered the home was free of occupants, they left momentarily to allow Nawrockyj, the K-9 officer and his canine to enter and conduct a search. Meanwhile, Plaintiff Brittani Blanding ("Brittani") and her female cousin, Taylor Blanding, both approximately seventeen years of age, finished high school classes for the day and returned to 402 Gibbs Road. Officers approached Brittani, questioned her, and told her to contact her parents to have them return home as soon as practicable. Wyatt conducted a frisk search of the females with negative results. The search of the premises also yielded negative results, however, it was during this execution that the investigators discovered that "Peanut" (positively identified as Gregory Samuel) was actually Brittani's cousin.

Within an hour after Plaintiff Wanda Blanding returned home following the execution of the search warrant, she contacted two local television news stations. Ms. Blanding coordinated and invited the television news media into her house and permitted them to publicize personal information on television, including hers and her husband's names, their places of employment, and information related to her minor children. Ms. Blanding allowed an investigative journalist and a news camera to enter her house and film the interior. WIS-TV produced and aired the news segment depicting the condition of each room.

As part of this news segment, Major Cowan, then-Public Information Officer for the Defendant Sheriff was questioned by Jody Barr, a WIS-TV reporter as to the relevant events. Cowan's knowledge of the investigation stemmed solely from representations from Defendant investigators. Specifically, Cowan indicated that, "the drugs that we purchased out of that home -- we purchased from a family member of that home -- we purchased the drugs out of the home."

III. STANDARD OF REVIEW

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); Rule 56(c), SCRPC. In ruling on a motion for

summary judgment, the Court considers the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

“Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006) (citing *Bloom v. Ravoira*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000)). A party opposing summary judgment may not rest upon the mere allegations of the pleadings but must instead set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (Ct. App. 1994).

A motion for summary judgment may be renewed and heard in the discretion of the Court. *See*, Rule 56(b), SCRPC (“[a] party against whom a claim ... is asserted ... may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.”); *see also*, *Dorrell v. SCDOT*, 361 S.C. 312, 325, 605 S.E.2d 12 (2003) (“The trial judge had the discretionary authority to hear APAC’s renewed motion for summary judgment. That a different trial judge previously denied the motion did not preclude APAC from renewing its motion once new evidence came to light.”); *Croswell Enter., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992) (“If the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial.”); *PPG Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331 (Ct. App. 1998) (“Sanford argues that the trial court erred in reconsidering its initial denial of summary judgment because there is no such motion under the South Carolina practice. We find no merit to this contention. ... A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree.”)

IV. COURT'S RULINGS IN LIMINE

On November 29, 2016, this Court issued multiple rulings as to Defendant's motion in limine as well as other rulings of law. This Court determined, *inter alia*, that Plaintiffs were estopped from presenting certain evidence and testimony unrelated to the sole remaining claim of defamation. This Court additionally considered the issue as to whether a qualified privilege attached to Cowan's remarks.

The cause of action for defamation permits a plaintiff to recover "for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzschelter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.3d 497, 501 (1998). To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm. *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). However, under the law of defamation the defendant may assert the affirmative defense of qualified privilege. *Murray v. Holnam, Inc.*, 344 S.C. 129, 139, 542 S.E.2d 743, 748 (Ct. App. 2001). The Supreme Court in *Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E.2d 641(1946) found that a communication is qualifiedly privileged:

When one has an interest in the subject matter of a communication, and the person (or persons) to whom it was made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.

See, *Id.* at 495-95, 38 S.E.2d at 643. Stated another way, the essential elements of a qualifiedly privileged communication are: (1) good faith; (2) an interest to be upheld; (3) a statement limited in its scope to this purpose; (4) a proper occasion; and (5) publication in a proper manner and to proper parties only. *See generally, Murray, Supra.* at 749. ("It is the duty of the trial judge to determine if the statement is privileged.")

In performing its assessment as to whether qualified privilege applies in this matter, this Court, in light of the *Murray* criteria, has evaluated the ensuing facts in a light most favorable to Plaintiffs:

Whether Cowan's statement was made in good faith: Cowan was initially contacted by Curtis Wilson, whose duties included being a public information liaison with the media. Wilson advised Cowan that the local news outlet was pursuing information concerning the Defendant investigators executing a search warrant at a local residence. Wanting to ensure that the information provided was accurate, Cowan reasonably relied upon representations of Defendant's personnel, having reviewed Wilson's written notes and then having twice conferred with Inv. Wyatt, the DST supervisor. He additionally had a telephone conversation with Barr (prior to his statement later on camera) to clarify the facts. During this process, Cowan ascertained that the search warrant was executed at Plaintiffs' residence.

Whether Cowan had an interest in communicating the information: Cowan understood that the issue related to an active RCSD narcotics investigation in Richland County. RCSD had received numerous complaints that drugs were being sold in the subject residential area. Accordingly, RCSD conducted a controlled purchase from 402 Gibbs Road whereupon the sale of crack cocaine was made from the back door of the residence. Consequently, the local law enforcement agency with jurisdiction over the incident location possessed an interest in the subject matter.

Whether the media outlet had a corresponding interest: The facts demonstrate that this neighborhood, where Plaintiffs lived at the relevant times, had previous complaints of drug activity. At the request of a county councilperson to investigate this issue, RCSD's subsequent investigation revealed that crack cocaine was being sold from a residential property. The local media outlets deliver news to the public and -- at minimum -- the public has an interest in knowing about drug activity in residential neighborhoods in its own community.

Whether the statement was limited in its scope to this purpose: Cowan's remarks ("The drugs that we purchased out of that home -- we purchased from a family member of that home -- we purchased the drugs out of the home") were strictly limited to the scope of the drug purchase itself. The term "family member" referred to Plaintiff Reginald Blanding's brother's son and the drug transaction occurred on Plaintiffs' back porch. *See, e.g.*, S.C. Code Ann. §16-11-430 ("'Dwelling' means a building or conveyance of any kind, including an attached porch ...")

Whether the occasion was proper: Cowan, a trained public information officer, had been working in that capacity for approximately nine years at the relevant times. He made the

comments at RCSD headquarters and within the course and scope of his duties while conversing with a reporter of an established local media outlet.

Whether the statement was made in a proper manner and only to proper parties: No one at RCSD initiated contact with any press outlets. Cowan, only responding to direct questions from Barr, the news reporter, made statements which were captured on camera. Defendant did not generate a media release, nor was a press conference conducted. Based upon these uncontroverted facts, this Court ruled in limine that the circumstances under which Cowan made these remarks were one of qualified privilege.

V. ANALYSIS

In Defendant's renewal of his motion for summary judgment, Defendant points out that his renewed motion is made only after the posture of the case has been significantly modified and/or limited. As a result, if the trial were to proceed, Plaintiffs would be unable to present any evidence to the jury of the only triable issue of fact, specifically, whether Cowan acted with actual malice at the relevant times in Plaintiffs' Amended Complaint.

In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if: (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded. *Fulton v. Atlantic Coast Line R. Co.*, 220 S.C. 287, 67 S.E.2d 425, 485 (1951); *see also*, 53 C.J.S. *Libel and Slander* § 79 (1987).

When qualified however, the plaintiff may recover if he shows the communication was actuated by malice. *Id.* One publishing under a qualified privilege is liable upon proof of actual malice. *Constant v. Spartanburg Steel Products*, 316 S.C. 86, 447 S.E.2d 194 (1994); *see also*, *Hainer v. Am. Med. Int'l. Inc.*, 328 S.C. 128, 135, 492 S.E.2d 103, 106-07 (1997). To prove actual malice, the plaintiff must show that the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were

published with such recklessness as to show a conscious disregard for plaintiffs rights. *Holtzscheiter, Supra*, at 502; *see also, Swinton Creek Nursery, Supra*, at 134.

Following this Court's pretrial rulings, the Court explored in detail the issue of defamation with all counsel for Plaintiffs and Defendant. Based upon the proffers of evidence,² the Court finds that the record is devoid of any evidence that Cowan was acting with actual malice, *to wit*:

There is no evidence that Cowan was actuated by ill will. Conversely, the facts reveal that Cowan was acting in good faith to address what was in the mutual interest of law enforcement and the public. Similarly, there is no evidence of improper or malicious motives on the part of Cowan or an otherwise desire by Defendant or anyone on his behalf to target Plaintiffs.

There is no evidence that Cowan intended to harm Plaintiffs. Cowan had neither personally known nor had any previous information, interactions, or familiarity with Plaintiffs. Moreover, Cowan never identified or personally accused Plaintiffs of a crime or wrongdoing. By way of example, Cowan did not furnish any personal or identifying information such as pictures of the home, places of employment, or school affiliations.

There is no evidence that Cowan acted recklessly. Cowan's statement was based upon what he had learned from fellow RCSD investigators and solely centered on objective information reported to him, rather than subjective beliefs and opinions. Additionally, Cowan acted with due diligence and sufficiently checked the accuracy of his information before making his statement. *United States v. Pitt*, 382 F.2d 322, 324 (4th Cir. 1967) ("[P]robable cause can rest on the collective knowledge of the officers involved in an operation rather than solely on that of the officer who makes the arrest; *see also, United States v. Wells*, 98 F.3d 808, 810 (4th Cir. 1996) ("Under the collective knowledge doctrine, law enforcement officers cooperating in an investigation are entitled to rely upon each other's knowledge of facts when forming the conclusion that a suspect has committed or is committing a crime."))

In light of this Court's ruling that the statement made by Cowan was qualifiedly privileged, such a determination serves to rebut any inference of malice. Therefore, in order for Plaintiffs to overcome the defense, a showing would be required as to the existence of actual

² In the Amended Answer, Defendant raised the affirmative defenses for truth and qualified privilege. Following the Court's pretrial rulings, Defendant withdrew truth as an affirmative defense in this matter.


malice on part of Cowan toward Plaintiffs when making the statement. *Conwell v. Spur Oil Co. of Western South Carolina*, 240 S.C. 170, 125 S.E.2d 270 (1962). Thus, in light of discussions with counsel and in review of Plaintiffs' proffer of evidence,³ this Court finds that there was no evidence showing that Cowan was actuated by ill will or malice in making his statement to the media. See, *Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 32-33, 282 S.E.2d 599, 601 (1981) ("While abuse of privilege is ordinarily an issue for the jury ... in the absence of a controversy as to the facts ... it is for the court to say in a given instance whether or not the privilege has been abused or exceeded.")

WHEREAS, Plaintiffs will be unable to present a scintilla of evidence to the jury that Cowan acted with actual malice at the relevant times in Plaintiffs' Amended Complaint and

WHEREAS, in the interest of avoiding the waste of litigants' time as well as Court resources in continuing this litigation and proceeding with the trial, this Court finds that the motion for summary judgment should be granted.

THEREFORE the motion for summary judgment is hereby **GRANTED** and the above-entitled action is hereby **DISMISSED** with prejudice.

AND IT IS SO ORDERED.


The Honorable Jocelyn Newman
Presiding Judge, Fifth Judicial Circuit

April 7
~~February~~ 20, 2018
Columbia, South Carolina

³ Critically, and subsequent to this Court's pre-trial rulings, counsel for Plaintiffs were unable to point to any competent evidence for which to demonstrate actual malice on the part of Cowan.

EXHIBIT 2

Subject: order

Date: Friday, April 21, 2017 at 4:52:18 PM Eastern Daylight Time

From: ANNE HENLEY <HENLEYA@rcgov.us>

To: Deborah Butcher <dbutcher@camdensc-law.com>, rgarfield@dml-law.com <rgarfield@dml-law.com>, moakatty@gmail.com <moakatty@gmail.com>, Robert Butcher <rbutcher@camdensc-law.com>

Priority: High

Anne R. Henley
Civil Non-Jury Court Scheduler
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803-576-1943

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MAY 09 2017

SC Court of Appeals

From: ANNE HENLEY

Sent: Friday, April 21, 2017 4:51 PM

To: ANNE HENLEY

Subject: