

THE STATE OF SOUTH CAROLINA
In the Supreme Court
Case Tracking No. 2016-002080

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

Meredith Huffman Respondent

vs.

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

JOINT APPENDIX ON WRIT OF CERTIORARI
Volume III – 881-1021

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JOINT APPENDIX - TABLE OF CONTENTS

Record on Appeal	1
------------------------	---

COURT OF APPEALS/SUPREME COURT FILINGS

Huffman Final Brief.....	881
Aiken Electric Cooperative, Inc. Final Brief	905
Sunshine Recycling, LLC Final Brief.....	931
Huffman Final Reply Brief	957
Aiken Electric Cooperative, Inc. Petition for Rehearing	994
Sunshine Recycling, LLC Petition for Rehearing.....	1003
Huffman Return to Petition for Rehearing.....	1016

ORDERS/OPINIONS

Opinion Court of Appeals – Reversed and Remanded	978
Order Denying Petitions for Rehearing	1020

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,

v.

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

APPELLANT'S FINAL BRIEF

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues	1
Statement of the Case.....	1
Facts	2
Standard of Review.....	6
Arguments.....	6
I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR FALSE ARREST BECAUSE GENUINE ISSUES OF MATERIAL FACT REMAIN FOR A JURY.....	6
II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR MALICIOUS PROSECUTION BECAUSE GENUINE ISSUES OF MATERIAL FACT REMAIN FOR A JURY.....	9
Conclusion	18

TABLE OF AUTHORITIES

Cases

<i>Caldwell v. K-Mart Corp.</i> , 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991).	6
<i>Gibson v. Brown</i> , 245 S.C. 547, 141 S.E.2d 653 (1965)	10
<i>Gist v. Berkeley County Sheriff's Dep't</i> , 336 S.C. 611 (Ct. App. 1999).	7
<i>Hancock v. Mid-South Mgmt. Co.</i> , 381 S.C. 326, 673 S.E.2d 801 (2009).	6
<i>Illinois v. Gates</i> , 462 U.S. 213, 103 S. Ct. 2317 (1983)	15
<i>Jones v. City of Columbia</i> , 301 S.C. 62, 389 S.E.2d 662 (S.C. 1990)	7, 12, 13
<i>Jones v. Winn-Dixie Greenville</i> , 318 S.C. 171, 456 S.E.2d 429 (S.C. Ct. App. 1995)	7
<i>Law v. S.C. Dept. of Corrections</i> , 368 S.C. 424, 629 S.E.2d 642 (2006)	16
<i>L & W Wholesale, Inc. v. Gore</i> , 305 S.C. 250, 407 S.E. 2d 658 (Ct. App. 1991)	11
<i>Melton v. Williams</i> , 281 S.C. 182, 314 S.E.2d 612 (Ct. App. 1984).	13
<i>Ruff v. Eckerd's Drugs, Inc.</i> , 265 S.C. 563, 220 S.E.2d 649 (1975).	9
<i>S.C. Prop. & Cas. Guar. Ass'n v. Yensen</i> , 345 S.C. 512, 548 S.E.2d 880 (Ct. App. 2001).	6
<i>State v. Rogers</i> , 368 S.C. 529, 629 S.E.2d 679 (Ct. App. 2006)	16
<i>Wingate v. Postal Tel. & Cable Co.</i> , 204 S.C. 520, 30 S.E.2d 307 (1944).	7, 8
<i>Wortman v. Spartanburg</i> , 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992).	7, 12, 13

Rules

Rule 56, SCRPC	6
Rule 59, SCRPC	2

Treatises

52 Am. Jur. 2d <i>Malicious Prosecution</i> § 88	10
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STATEMENT OF ISSUES

1. Did the Circuit Court err in Granting Summary Judgment for False Arrest?
2. Did the Circuit Court err in Granting Summary Judgment for Malicious Prosecution?

STATEMENT OF THE CASE

On May 17, 2010, Plaintiff Meredith Huffman ("Huffman") lawfully sold scrap metal to Sunshine Recycling, LLC ("Sunshine Recycling") in Orangeburg, South Carolina for recycling. Almost fifteen (15) days later, Ms. Huffman was arrested based on false accusations made by both Sunshine Recycling and Aiken Electric Cooperative, Inc. ("Aiken Electric") that she had received stolen metal from Aiken Electric. After she was arrested and imprisoned, the criminal court dismissed the charge since Sunshine Recycling and Aiken Electric had accused the wrong person.

Huffman brought this civil action against Sunshine Recycling and Aiken Electric based on her wrongful arrest. Huffman alleged claims for Negligence, False Imprisonment, and Malicious Prosecution against the defendants. Huffman requested a jury trial.

The original complaint was filed 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. (R. p. 290-323). On April 9, 2014, the Circuit Court entered an Order granting summary judgment on all causes of action against Huffman. Huffman timely filed a Motion to Reconsider, Alter,

or Amend the Order Granting Summary Judgment pursuant to Rule 59(e), SCRCF. On June 19, 2014, the Circuit Court summarily denied Plaintiff's motion pursuant to Rule 59(e), SCRCF. Huffman filed the Notice of Appeal on July 11, 2014. This appeal follows.

FACTS

On May 17, 2010, Huffman lawfully brought in scrap metal for recycling to Sunshine Recycling. (R. pp. 750-751). The metal was from an abandoned mobile home located on property that Huffman owned. (R. p. 750). The metal consisted of *old* aluminum sheeting and *old* electrical wiring that was from the mobile home. (R. p. 751). Sunshine Recycling paid Huffman \$53.00. (R. p. 752). Several weeks later, she was wrongfully accused of being in possession of stolen metal from Aiken Electric.

Unbeknownst to Huffman, Aiken Electric had experienced a theft of *new* copper and *new* aluminum wiring. (R. p. 644). Mr. Mark Goss of Aiken Electric reported the theft to the Orangeburg County Sheriff's Department ("Sheriff's Department"). (R. pp. 644-645). The amount of the new metal stolen from Aiken Electric was estimated around \$330.00, and described as "(1) 60ft copper [wire], (2) #6 copper [wire], (1) roll of aluminum [wire]." (R. pp. 648-649). This metal is not anywhere close as the same *type, shape, color, or amount* that Huffman sold.

On the morning of May 17, 2010, Mr. Goss of Aiken Electric and Joseph Rich, owner of Sunshine Recycling, met with the Sheriff's Department regarding the stolen metal. (R. pp. 341; 651). Mr. Goss identified the metal that Huffman brought in as stolen from Aiken Electric. (R. pp. 344; 495-497; 657; 663). Mr. Goss and Mr. Rich showed Officer Aldridge the video of Huffman at Sunshine Recycling and a copy of her

receipt. (R. pp. 43; 344; 494-495; 498-499; 853). On the video, Mr. Goss and Mr. Rich identified Huffman as the person that sold the stolen metal from Aiken Electric to Sunshine Recycling. (R. pp. 43; 341; 344-345; 498-499; 792). Additionally, Mr. Goss told the officers 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.]” (R. pp. 405; 493). The next day, Mr. Rich told Officer Ethridge that “his employees that work in the copper area advised that Huffman was the individual who brought the merchandised in [to Sunshine Recycling].” (R. pp. 405; 499; 668-669; 850-851). An employee of Aiken Electric, Charles Rushton, also told the Sheriff’s Department that “Mark Goss ha[d] the identity of the woman who sold the wire,” referring again to Huffman.

After Sunshine Recycling and Aiken Electric had accused Huffman, Aiken Electric continued to strongly urge the Sheriff’s Department to arrest Huffman. (r. pp. 347; 373; 500-501). Officer Aldridge testified that Sunshine Recycling and Aiken Electric expressed a great “sense of urgency” to arrest Huffman. Sunshine Recycling and Aiken Electric pressed for the Sheriff’s Department to arrest Huffman and continued to accuse Huffman as the criminal, even though no evidence supported these baseless 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. (R. pp. 348-350; 506-507). 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. (R. pp. 348-350; 506-507). Huffman is not a male and not black. If the video was not enough, the receipts

proved that Huffman did not bring in the stolen metal, nor was she paid for the stolen metal. As indicated on the video and Huffman's receipt, the type of metal that she brought in (i.e. *old* aluminum sheeting, *old* electrical wiring) was not the type of *new and unused* metal that was stolen from Aiken Electric. (R. pp. 506-508). Also, Huffman did not sell the same quantity of metal. The metal that Huffman was paid for totaled \$53.00, whereas the metal that was stolen was valued at \$330.00. Any reasonable review of the totality of 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. (R. pp. 501-502). On June 2, 2010, Huffman was arrested and booked as an inmate at the Orangeburg-Calhoun Regional Detention Center. (R. pp. 754-758; 793-794; 504-506). Huffman told the arresting officer that he had arrested the wrong person because the metal that she took to Sunshine Recycling was old aluminum sheeting and old electrical wiring from her mobile home. (R. pp. 504; 678; 792). After being incarcerated, she was released on bond. (R. pp. 758; 794; 506). The Sheriff's Department then obtained a copy of the surveillance video from Sunshine Recycling that plainly showed the stolen goods were brought in by a black male. (R. pp. 348-350; 506-507). The video does not show Huffman with the type of metal that was stolen (new wiring vs. old aluminum sheeting), and the invoice 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, not Huffman's invoice of \$53.00. (R. pp. 506-508).

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. (R. pp. 406; 507). After the Sheriff's Department reviewed the video a second time with Sunshine Recycling for the purpose of pointing out that Ms. Huffman was not responsible, the owner of Sunshine Recycling, Mr. Rich, still pressed for her conviction and demanded to "come and testify [against Ms. Huffman] in court." (R. pp. 406; 507). The fact that Sunshine Recycling and Aiken Electric pressed the Sheriff's Department to continue to prosecute Huffman even after being confronted by the Sheriff's Department is appalling. (R. pp. 406; 507). 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.*" (R. pp. 407; 512-513). (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' accusation of her, and if they were told all the facts, then Huffman would not have been arrested. (R. pp. 406; 512-513). Sunshine Recycling and Aiken Electric continued to press the Sheriff's Department for her arrest in the face of no proof that Huffman was involved with stolen metal and overwhelmingly clear exculpatory evidence.

Ms. Huffman appeared in court for her scheduled court date. (R. p. 511). The charges against Ms. Huffman were dismissed on grounds consistent with her innocence.

(R. pp. 510-511). Afterwards, on June 21, 2010, the black male shown on the video was arrested and pled guilty. (R. pp. 348-350; 509).

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that summary judgment shall be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” “At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.” *S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). “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.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR FALSE ARREST BECAUSE GENUINE ISSUES OF MATERIAL FACT REMAINS FOR A JURY.

False arrest is “deprivation of a person’s liberty without justification.” *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 30, 410 S.E.2d 21, 23 (Ct. App. 1991). “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.* A defendant 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). “[W]here a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment.” *Id.*

“An action for false imprisonment may not be maintained where the plaintiff was arrested by lawful authority.” *Gist v. Berkeley County Sheriff’s Dep’t*, 336 S.C. 611, 615 (Ct. App. 1999). The fundamental issue in determining lawful authority turns on probable cause. *Wortman v. Spartanburg*, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (S.C. 1992); *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (S.C. 1990). Thus, the linchpin of a false arrest claim is causing a person to be arrested without probable cause.¹

Here, a genuine issue of material fact exists to support a claim against Sunshine Recycling and Aiken Electric for false arrest. The Circuit Court erred in finding that Sunshine Recycling and Aiken Electric did not deprive Huffman of her liberties. The Circuit Court incorrectly found that “plaintiff has failed to produce any evidence that

¹ The Circuit Court did not analyze or consider probable cause in granting summary judgment for False Arrest. However, probable cause is discussed in the following argument regarding malicious prosecution.

defendants deprived her of her liberty in any way. There has been no evidence produced that defendants physically restricted plaintiff or by their words or conduct, constructively restrained plaintiff.” (R. p. 7). This finding is both legally and factually erroneous.

First, the Circuit Court ignored the well-established legal principle that a private person 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). Huffman argued before the Circuit Court that summary judgment should be denied as to false arrest because Sunshine Recycling and Aiken Electric caused and instigated the Sheriff’s Department to arrest her. (R. pp. 106-108). The Circuit Court should be reversed based on this error of law.

Second, the Circuit Court misconstrued the evidence, failed to construe the evidence and all reasonable inferences in favor of Huffman, and omitted and ignored material evidence in finding that these defendants did not deprive Huffman of her liberty. 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. These two companies urged the Sheriff’s Department to arrest Huffman and intended to testify against her in the criminal proceeding. The allegations made by Sunshine Recycling and Aiken Electric caused Huffman to be wrongfully arrested, booked, and incarcerated. 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. Just because Sunshine Recycling

and Aiken Electric were not the parties that actually handcuffed and detained her, Sunshine Recycling and Aiken Electric caused the Sheriff's Department to arrest her. A genuine issue of fact remains for a jury to determine if Sunshine Recycling and Aiken Electric caused, instigated, or procured Huffman's arrest. Thus, the Circuit Court erred in granting summary judgment as to False Arrest.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR MALICIOUS PROSECUTION BECAUSE GENUINE ISSUES OF MATERIAL FACT REMAINS FOR A JURY.

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. Eckerd's Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975). A genuine issue of material fact exists to support all the elements of proof for Malicious Prosecution.

In dismissing the Malicious Prosecution claim, the Circuit Court found the following:

Plaintiff's cause of action against defendants for malicious prosecution fails because there is no evidence that the proceedings against her were initiated by the defendants maliciously and without probable cause. Here, the defendants assisted and cooperated with the investigation. They did not institute the investigation or prosecution, nor did they assist with malice. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes. Once the Hispanic employee reported that the plaintiff was the person who brought the stolen goods in for sale, that information would cause a reasonable person to believe that the plaintiff was guilty of the crime charged. In an action for malicious prosecution, a defendant must be absolved from liability unless the plaintiff shows that the prosecution

was instituted maliciously. Here, the defendants cooperated with law enforcement and discharged their civic and moral duty to cooperate fully and voluntarily with law enforcement. The Orangeburg County Sheriff's Department, not the defendants, made the decision to take out a warrant and have the plaintiff arrested. There is no evidence that the defendants acted maliciously in connection with the plaintiff's arrest or acted without probable cause. Furthermore, the plaintiff has failed to identify genuine issues of material facts related to the elements of malicious prosecution. I find that there are no genuine issues of material fact and that judgment should be entered in favor of the defendants. (R. pp. 8-9).

This holding is in error on many levels. First, the record is replete with evidence that Huffman was charged at the instance of Sunshine Recycling and Aiken Electric. While the Sheriff's Department formally charged Huffman, it was Sunshine Recycling and Aiken Electric who initiated the criminal charge. No one other than these two companies identified Huffman as the "suspect" and the person in possession of the stolen metal. (R. pp. 43; 341; 344-345; 498-499). The evidence is overwhelming that the Sunshine Recycling and Aiken Electric were affirmatively active in instigating or participating in the institution of charging Huffman with a crime. *See Gibson v. Brown*, 245 S.C. 547, 549, 141 S.E.2d 653, 654 (1965) ("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."); 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.”).

Sunshine Recycling and Aiken Electric did not merely “assist or cooperate with the investigation” as the Circuit Court concluded. At the outset, the fact that one is found to “assist or cooperate with the investigation” does not absolve a party from liability for malicious prosecution. This finding actually supports the first and second elements of malicious prosecution. The fact that one actively assists or cooperates with an investigation supports a claim for malicious prosecution, especially in this case by providing false information.

More importantly, the Circuit Court erroneously invaded the province of a jury by reaching this factual determination. At the summary judgment stage, the Circuit Court should not weigh the evidence. *L & W Wholesale, Inc. v. Gore*, 305 S.C. 250, 253, 407 S.E.2d 658, 659 (Ct. App. 1991) (stating at the summary judgment stage of litigation, the trial court does not weigh conflicting evidence regarding a disputed material fact and does not make credibility determinations). The Circuit Court weighed the evidence to conclude that the Respondents “assisted” and “cooperated” with the investigation instead of reviewing the record for a mere scintilla of evidence in dispute.

The record before this Court fully supports that Sunshine Recycling and Aiken Electric advised and procured the Sheriff’s Department in charging Huffman, and at the very least, aided and assisted in her arrest. Without dispute, these two companies contacted the Sheriff’s Department and affirmatively accused and identified Huffman as

the person who brought in the stolen metal. (R. pp. 43; 341; 344-345; 495-499; 651; 657; 663). Sunshine Recycling and Aiken Electric made these allegations without any truthful or credible evidence. These companies lied to the police about Huffman being in possession of the stolen metal. These accusations were made with reckless disregard for the truth, at the very least. But for Sunshine Recycling and Aiken Electric accusing Huffman and pressing for her arrest, Huffman would have never been arrested. The record is undisputed that they expressed a great “sense of urgency” to arrest Huffman. A reasonable person could easily conclude that Huffman’s arrest was by or at the instance of the Respondents.

Second, the Circuit Court erred in concluding that probable cause existed to arrest of Huffman as a matter of law. The Circuit Court reaches this conclusion *even though* Huffman had nothing to do with the alleged crime and there is no evidence, much less credible evidence, to support that she possessed stolen goods. The Respondents, as reflected in the Circuit Court’s Order, must concede that Huffman “was not involved in selling stolen goods.” (R. p. 2). At the very least, the reasonable inferences to be drawn from the facts support the conclusion that summary judgment should have been denied.

“Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise.” *Wortman v. Spartanburg*, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (S.C. 1992); *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (S.C. 1990). “In determining the presence of probable cause for arrest, the probability cannot be technical, but must be factual and practical considerations of everyday life on which reasonable, prudent and cautious men, not legal technicians, act.”

Id. (citations omitted). “The issue of probable cause is a question of fact and ordinarily one for the jury.” *Id.* (emphasis added). 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).

In the case at bar, a review of the facts in a light most favorable to Huffman creates a clear jury issue of whether probable cause existed for her arrest. Even a cursory review of the surveillance video clearly shows that a black male, not a white female, brought in the stolen metal. (R. pp. 348-350; 506-507). Respondents had this video at the time the accusations were made and showed the video to Sheriff’s Department before Plaintiff was arrested. Mr. Goss of Aiken Electric also falsely stated that he actually spoke with Huffman and saw her actually carrying the stolen metal from Aiken Electric. (R. p. 43). This was nothing more than a contrived lie. Respondents were also in possession of the scrap metal that Huffman sold.

As indicated on the video and Huffman’s receipt, the type of metal that she brought in (i.e. old aluminum sheeting, old electrical wiring) was *not the type, shape, color, or amount* of metal the alleged stolen metal. (R. pp. 506-508). 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. Based on the probable cause standard, there was no good faith belief that Huffman was guilty of a crime that would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. The only good faith belief is the only conclusion that the evidence yields – that Huffman was completely innocent!

Sunshine Recycling and Aiken Electric now concede that no evidence existed to believe that Huffman committed any crime. (R. pp. 680; 691-692; 857). A reasonable factfinder could undoubtedly determine that Huffman committed the crime was based upon a completely unsupported rash opinion of guilt and a reckless disregard for the truth.

In the Order, the Circuit Court found probable cause based on alleged statement from the unidentified “Hispanic employee” as a matter of law. This Circuit Court concluded that “[o]nce the Hispanic employee reported that the plaintiff was the person who brought the stolen goods in for sale, that information would cause a reasonable person to believe that the plaintiff was guilty of the crime charged” and that “there is no evidence that the defendants acted...without probable cause.” (R. p. 9). In finding of probable cause, the Circuit Court relied on wholly unsubstantiated statements made in Spanish from an unidentified “Hispanic employee” to establish probable cause. This court improperly weighed the evidence in favor of the Respondents instead of viewing the record in the light most favorable to Huffman in determining whether a genuine issue of fact existed.

A reasonable person viewing the evidence could easily disagree that mere reliance on what an unnamed “Hispanic employee” reportedly said is not enough to arrest a person for a crime. A jury could rightfully conclude that evidence sufficient to arrest a citizen requires more than what an unnamed person claimed. A jury could rightfully conclude that the totality of the evidence was exculpatory. A jury could rightfully conclude that an ordinarily prudent and cautious person, under the circumstances, would have never accused and arrested Huffman. Common sense fully negates probable cause. How can probable cause be established when a black male looks nothing like a white

female? How can probable cause be established when Aiken Electric's stolen metal did not, even closely, resemble the same *type, shape, color, or amount* of metal that Huffman sold? How can probable cause be established when the video surveillance and sales document clearly show that Huffman was not involved? These are questions for a jury to decide. In finding probable cause, the Circuit Court disregarded the fact that the video did not show Huffman with the metal and that Mr. Goss had to be lying when he said he personally spoke with Huffman when she was physically carrying the stolen metal. Further, the Circuit Court disregarded the fact that the Sheriff's Department even believed that Sunshine Recycling and Aiken Electric had given "false statements." As such, the Circuit Court wrongfully determined that an unnamed "Hispanic employee" can establish probable cause, especially here where the video and all evidence plainly showed that Huffman did not possess the stolen metal.² See *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, (1983) (holding that a "totality-of-the-circumstances analysis" must be used in determining probable cause"). At the very least, the record contains a mere scintilla of evidence of the lack of probable cause.

Further, the Circuit Court erred by concluding *as a matter of law* that probable cause exists based solely on what an unidentified "Hispanic employee" claimed to have said in Spanish to another person. To find that this supposed statement arises to the level of probable cause is a substantial legal error. The result would create bad law. The precedent established would be that probable cause can be established in criminal cases based solely on an unsubstantiated identification made by an unidentified person. This

² To demonstrate what little credibility was given to the double or triple hearsay attributed to the unidentified Hispanic employee, the Sheriff's Department did not rely on an unidentified "Hispanic employee" in swearing out an arrest warrant. This alleged person never gave a written statement.

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.”). The “Hispanic employee” never gave a written statement and nobody knows who this alleged person is. Probable cause cannot be established because some unknown person accuses Huffman of committing a crime, especially when this statement is not corroborated or substantiated by any evidence whatsoever. Based on the Circuit Court’s holding, probable cause would exist for any wrongful arrest if simply someone “reported” another of a crime based on an unsubstantiated hunch. Probable cause requires more than “reasonable suspicion” or an “inchoated and unparticularized suspicion or hunch.” The alleged statement from the “Hispanic employee” does not even rise to the level of reasonable suspicion, much less probable cause.

As to the Circuit Court’s finding of a lack of malice is equally erroneous. In a malicious prosecution claim, malice may be inferred at law based on the lack of probable cause. In *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006), the Supreme Court explained:

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.*

Here, malice is inferred as a matter of law due to material issues of fact that Sunshine Recycling and Aiken Electric lacked probable cause. Because of the factual issue regarding probable cause, a factual issue exists as to malice.

Furthermore, the evidence taken in the light most favorable to Huffman infers that the Respondents acted with legal malice. A jury would easily find that Sunshine Recycling and Aiken Electric acted with an "ill-regulated mind" because they displayed the desire to simply hold someone criminally responsible, while completely disregarding the evidence. Sunshine Recycling and Aiken Electric acted with disregard to the consequence of their actions for the injury that they inflicted on Huffman. The evidence reveals that the employees of Sunshine Recycling and Aiken Electric who were charged with investigating the stolen metal were more concerned with their own purpose of securing an arrest against somebody instead of acting in a sufficiently cautious manner. Under the malice standard, the failure to act sufficiently cautious implies proof of malice. Instead of acting in a sufficiently cautious manner, they expressed a great "sense of urgency" in demanding to have Huffman arrested.

Malice can be further shown by the fact that *after* Huffman was wrongfully arrested, Sunshine Recycling demanded that the Sheriff's Department not dismiss the charge. In fact, the owner of Sunshine Recycling still pressed for her conviction and he demanded to "come and testify [against Huffman] in court." (R. pp. 115; 507). These

malicious demands to continue prosecuting Huffman is strong evidence of their utter sense of disregard of accusing innocent people of crimes. The actions of Sunshine Recycling and Aiken Electric led to Officer Ethridge's conclusion that he was "not comfortable with this case due to the witnesses gave [sic] me false information the first time." (R. pp. 116; 512-513).

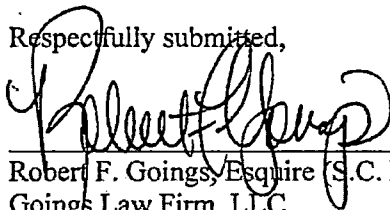
Accordingly, the Circuit Court erred in granting summary judgment against Huffman on her claim for Malicious Prosecution.

CONCLUSION

Accordingly, Huffman respectfully requests that the Court of Appeals reverse the Order of the Circuit Court and allow a jury trial on the merits.

Respectfully submitted,

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February 9, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 10 2015

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

SC Court of Appeals

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,

v.

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

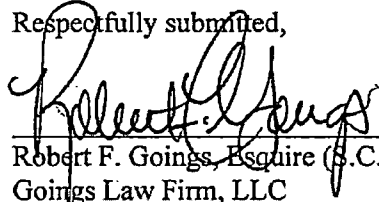
CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Brief complies with Rule 211(b), SCACR and the August 13, 2007 Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."

[SIGNATURE PAGE TO FOLLOW]

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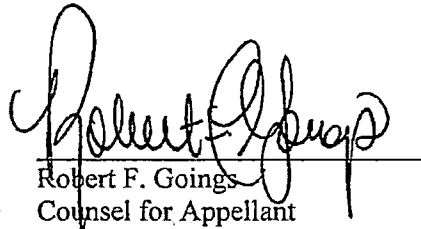
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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

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FEB 18 2015

SC Court of Appeals

Meredith Huffman Appellant

vs.

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

**FINAL BRIEF OF RESPONDENT
AIKEN ELECTRIC COOPERATIVE, INC.**

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

Meredith Huffman Appellant

vs.

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TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
FACTUAL BACKGROUND	1
APPELLANT'S INCORRECT FACTUAL STATEMENTS AND REFERENCES TO THE RECORD	7
ARGUMENT	11
I. SUMMARY JUDGMENT ON THE NEGLIGENCE CAUSE OF ACTION HAS NOT BEEN APPEALED BY THE APPELLANT AND IS THE LAW OF THE CASE	11
II. THE CIRCUIT COURT JUDGE CORRECTLY GRANTED SUMMARY JUDGMENT ON THE CAUSE OF ACTION FOR FALSE IMPRISONMENT SINCE THE PLAINTIFF HAD FAILED TO OFFER EVEN A SCINTILLA OF EVIDENCE THAT AIKEN ELECTRIC PHYSICALLY RESTRAINED THE APPELLANT OR BY ITS WORDS OR CONDUCT CONSTRUCTIVELY RESTRAINED HER	11
III. THIS COURT WHICH CAN AFFIRM BASED UPON ANY GROUND APPEARING IN THE RECORD SHOULD FIND THAT THE APPELLANT'S CLAIM FOR FALSE IMPRISONMENT IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS	15
IV. THE CIRCUIT COURT JUDGE, IN GRANTING SUMMARY JUDGMENT ON THE CLAIM FOR MALICIOUS PROSECUTION, CORRECTLY FOUND THAT THE APPELLANT HAD FAILED TO PROVE THE ABSENCE OF MALICE AND THE PRESENCE OF PROBABLE CAUSE	15
CONCLUSION	17

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<i>Argoe v. Three Rivers Behavioral Health, LLC</i> , 392 S.C. 462, 710 S.E.2d 67 (2011)	12
<i>Burton v. McNeil</i> , 196 S.C. 250, 13 S.E.2d 10, 11, 133 A.L.R., 603	13
<i>Elleston v. Dixie Home Stores</i> 231 S.C. 565, 571, 99 S.E.2d 384, 387 (1957)	16
<i>Georgetown Cnty League of Women Voters v. Smith Land Co.</i> 393 S.C.350, 357, 713 S.E.2d 287,291 (2011)	11
<i>Gist v. Berkeley County Sheriff's Dep't.</i> , 336 S.C. 611, 619, 521 S.E.2d 163, 166 (Ct. App. 1999)	12
<i>Law v. S.C. Dep't of Corrections</i> 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006)	15
<i>Manley v. Manley</i> 291 S.C. 325, 353 S.E.2d 312 (1987)	12
<i>McBride v. Sch. Dist. Of Greenville Cnty.</i> 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2002)	15
<i>Parrott v. Plowden Motor Co.</i> 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965)	16
<i>Warren v. Yarborough</i> 2012-UP-401, 2012 WL 10860503 (S.C. Ct. App. July 11, 2012)	11
<i>Wingate v. Postal Tel. & Cable Co.</i> , 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944)	13
<i>Zimbelman v. Savage</i> , 745 F.Supp.2d 664 (D.S.C. 2010)	12
 <u>Statutes and Rules</u>	
8 S.C. Jur.False Imprisonment A§7	12
Rule 220(c), SCACR	15
S.C. Code Ann. §15-3-550(1)	15

S.C. Code Ann. §16-3-1505 13

Act 1 §24 of the South Carolina Constitution 13

Act 1 §24(1) of the South Carolina Constitution 13

STATEMENT OF THE CASE

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

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

FACTUAL BACKGROUND¹

On May 16, 2010, a thief went onto Aiken Electric's property and stole some copper wire and aluminum wire having a value of \$463.19. (R. p. 35, ¶2) Aiken Electric had a video surveillance camera which showed the thief to be a black male. (R. p. 35 ¶2, R. p. 40) An Aiken Electric employee

1. The Appellant, in an apparent effort to create a genuine issue of material fact, has repeatedly misstated and/or misquoted the record. Aiken Electric therefore provides a more detailed factual background than would ordinarily be provided.

reported seeing a white pickup truck leaving Aiken Electric's property on the night of the theft. (R. p. 41) According to Mr. Goss, Mr. Rushton, Aiken Electric's office manager, met with a Sheriff's deputy who responded to the report of the theft.

"A I got dressed, got in the car and started heading that way. I contacted the manager of that office, Charles Rushton. He was getting dressed, heading that way, because he can get there before I do. The dispatch actually got on the phone with the sheriff's office and by the time that I got there, the person had already left, had already gotten away, and the sheriff's office was there, but the person was already gone." (R. p. 645, lines 14-21)

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

"On 5-16-10 this deputy responded to the above incident type. Upon arrival I spoke to the complainant (Charles Rushton) and he stated that the security camera showed a unknown subject on the premise at the incident location. This unit conducted a security check of the incident location and did not locate the subject. Complainant stated that it is unknown if any items were taken." (R. p. 39)

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

"I became involved in the matter on May 17, 2010. When Aiken Electric suffers a theft loss of this nature, I normally check with the metal recyclers in the area to see whether the thief has tried to sell the copper and aluminum. When I went to Sunshine Recycling, LLC on May 17, 2010, I saw the goods which had been stolen from Aiken Electric and sold to Sunshine Recycling, LLC. I had been told that the surveillance camera had filmed a black male in the Aiken Electric building but I had not actually seen the video and I did not have a copy." (R. p. 35, ¶4)

Mr. Goss also spoke with Sunshine Recycling's owner, Joseph Rich ("Joe"). According to Mr. Goss, Joe told him that he had talked with his Hispanic employees who had unloaded the copper wire and aluminum wire. A Hispanic employee, speaking in Spanish, told Joe that the Appellant was the person who brought in the copper wire and aluminum wire. (R. p. 35, ¶5) According to Mr. Goss, Joe

reported this to the Sheriff's deputy.

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

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

A Yes, sir.

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

A No, sir.” (R. p. 656, lines 12- 18)

Mr. Goss testified as follows:

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

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

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

A And we had --

Q --possibly a black male?

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

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

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

Q Yes, sir.

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

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

A Uh-huh.

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

A They have different places where different items are dropped off and in the back they have got a warehouse-type building back there that people can drive their cars and trucks through and unload the items that they have for copper and aluminum, and different things like that back there, that type of metal. It's got, if I'm not mistaken, another place for cars and appliances and things like that. He's got video back there for all of that stuff right there.” (R. p. 659, line 4-p. 660, line 17)

Mr. Goss testified as follows:

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

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

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

A Yes, sir.” (R. p. 661, lines 2-12)

Mr. Goss testified as follows:

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

A Yes, sir.

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

A Yes, sir.

Q How did she become the suspect?

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

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

A That was brought in.

Q That was brought in.

A Yes, sir. I have no way of knowing who brings what in. All I did was verify that the metal there matched the metal that I was looking for. At that time, my video showed a black male in there, but in the metal industry, it’s not uncommon for girlfriends and wives to bring metal in and drop them off. It happens all the time.” (R. p. 668, line 18-p. 669, line 21)

Mr. Goss testified as follows:

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

A No, sir.

MR. JOHNSON: Object –

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

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

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

MS. WALKER: Object to the form.

A The only way that her name is obtainable is through Sunshine Recycling on the stuff that she gave them and they signed – they keep great records there, okay, so that's – I mean, I have no way of having a name or a number, but, you know –“ (R. p. 673, line 2-p. 674, line 4)

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

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

A Yes, sir. We did

Q When did you provide that information?

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

Q Now, who's Alan?

A Alan Price.

Q Who is Alan Price with?

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

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

A Yes, sir.” (R. p. 852, line 25-p. 853, line 22)

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

“On 5-17-10 this deputy spoke to the above complainant (Mark Goss) in reference to Case #2010005803. Complainant stated that an unknown subject stole the following items from the incident location. (1) 60ft cooper, (2) #6 cooper, (1) roll of aluminum. Estimated value of items taken are \$330.00. Complainant stated that a white ford F-150 was seen on the security camera at the incident location. This incident type has been changed to burglary.” (R. p. 42)

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

“This unit met with Joseph Rich, owner of Sunshine Recycling, in reference to the subject bringing in metal that had been identified as stolen from the victim. This unit met with Mark Goss of Aiken Electric verify that the metals at Sunshine matched samples that he had brought. This unit observed the subject on video at the payment window, and this unit was also provided with a copy of the receipt. Mr. Rich advised that he would provide OCSO with a copy of the video. The subject was driving a black dodge pickup truck SC Tag: AFB106. This unit will forward this to R/O Dep. Huggins.” (R. p. 43)

Deputy Ethridge, who took over the investigation, did not interview the Hispanic employee or call for an interpreter to interview him. (R. p. 559, lines 6-22) He did not study the Appellant's sales receipt and compare it to the stolen goods. Deputy Ethridge did not wait to review the Sunshine Recycling video. Instead he contacted the Appellant to come in. (R. p. 560, lines 15-24, R. p. 563, lines 9-21) The Appellant met with Deputy Ethridge and denied that she had sold stolen copper wire and aluminum. (R. p. 563, line 24-p. 564, line 19) The Appellant brought in examples of the metal sheathing she had sold to Sunshine. (R. p. 564, lines 16-19) Notwithstanding, Deputy Ethridge proceeded to arrest her. The Appellant spent the better part of the day at the Orangeburg County Jail being booked and bonded out. (R. p. 564, lines 20-21) When the Sunshine Recycling video was available to review, Deputy Ethridge admitted that it showed that the Appellant did not bring in the copper wire and aluminum that was stolen from Aiken Electric. Deputy Ethridge dropped the charges against the Appellant. (R. p. 508, line 24-p. 510, line 9)

Mr. Goss never identified the Appellant as a suspect. Mr. Goss testified:

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

A Yes, sir.

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

A Yes, sir.

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

A No, sir.

MR. JOHNSON: Object –

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

A The only information that Meredith Huffman had given to anyone was to Sunshine Recycling. I had no way of getting any information about anyone. My subject at that time was unknown and a black male, that’s what I had video to show and that’s what I had a witness that saw that night. So when the employee in the back told Joe that the lady that had just drove through dropped all of that off, that’s when Ms. Huffman became the suspect.” (R. p. 672, line 20-p. 673, line 18)

APPELLANT’S INCORRECT FACTUAL STATEMENTS AND REFERENCES TO THE RECORD

The Appellant’s Initial Brief states many incorrect factual statements. The Appellant’s Initial Brief contains references to the record do not support the incorrect factual statements. This has occurred repeatedly in Appellant’s Initial Brief. Misstated facts and incorrect references to the record cannot be used to create a genuine issue of material facts and to defeat a motion for summary judgment.

Aiken Electric calls the Court’s attention to the following:

(1) On pages 2-3 of the brief, the Appellant has stated that Mr. Goss identified a metal that the Appellant brought in as stolen from Aiken Electric. This is a misstatement of the record. Mr. Goss did not identify the metal that the Appellant brought in as being stolen or connected to her to the theft. He merely identified the metal as being from Aiken Electric. (R. p. 668, line 18-p. 669, line 21 quoted

above)

(2) On page 3 of the brief, the Appellant states that “from the video, Mr. Goss and Mr. Rich identified the Appellant as the person who sold the stolen metal from Aiken Electric to Sunshine”. This is an incorrect statement. Mr. Goss did not identify the Appellant as the person who sold the stolen metal to Sunshine. See R. p. 673, line 2-p. 674, line 4 quoted above. Joe did not identify the Appellant as the person who sold the stolen metal to Sunshine. See R. p. 855, lines 16–24 quoted above. According to Mr. Goss, Joe reported that a Hispanic employee had told him that the Appellant was the person who sold the stolen metal.

(3) On page 3, the Appellant’s brief states:

“Additionally, Mr. Goss told the officers 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]”

The reference to page 19 of the second Ethridge deposition does not support this purported factual statement. In fact this yet another misstatement. Deponent Ethridge, on his second deposition on page 19, actually testified:

“Q And did he tell you anything more than he just had a casual conversation with her?

A More or less that he had spoken to her. He had actually saw her there and spoken to her.

Q Do you know what – but at that point, did he – was there any indication that she was the person who was selling the stolen items? I mean, did Mark Goss say I spoke to Ms. Huffman?

A No, I – when he spoke to her, I don’t think, he had knowledge that she was the individual that possibly had taken the metal in.” (R. p. 553, lines 11-22)

(4) On page 3 of the brief, the Appellant states as follows:

“An employee of Aiken Electric, Charles Rushton, also told the Sheriff’s Department that ‘Mark Goss ha[d] the identity of the woman who sold the wire,’ referring again to Huffman.”

This is a misstatement. No reference is made to this record to support the statement.

(5) On page 3 of the brief, the Appellant states the following:

“Officer Aldridge testified that Sunshine Recycling and Aiken Electric expressed a great ‘sense of urgency’ to arrest Huffman.”

This is a mischaracterization of the record. Mr. Aldridge testified:

“Q You testified that Mr. Goss of Aiken Electric imposed a sense of urgency regarding this case; is that correct?

A That’s correct.

Q Is it – well, explain what you meant by that.

A He just – I’m trying to think of the best way to word this.

When I spoke with Mr. Goss, he expressed to me that he wanted the sheriff’s office to help him conclude this case, probably a little more so than normal. However, it’s not uncommon for someone to be antsy when their job is to recover stolen property.

Now he did say that he’s been trying to work with the sheriff’s office to get this problem resolved as soon as he possibly could.

Q Okay. I guess it’s fair to say he was eager to see that the sheriff’s department arrest someone for this alleged crime; is that correct?

MR. JOHNSON: Object to the form

THE WITNESS: Yes.” (R. p. 379, lines 3-24)

(6) On pages 3-4 of the brief, the Appellant states that all Sunshine Recycling and Aiken Electric had to do was to review the video surveillance. Neither had any duty to review it. Judge Murphy granted summary judgment on the negligence claim. Furthermore, the record confirms that Mr. Goss reviewed it. After he reviewed it, he contacted the Sheriff’s Department to report that the Appellant was not the person who brought the stolen goods to Sunshine. (R. p. 680, line 1-p. 681, line 1)

(7) On page 4 of the brief, the Appellant has stated the following:

“Based upon 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. (R. pp. 501-502).”

However, Deponent Ethridge testified that it was his responsibility to decide whether or when to seek an arrest warrant.

“Q And as the law enforcement representative with the sheriff’s department, are you the person who is responsible, in this case, for deciding if and whether a warrant would be sought?

MR. GOINGS: Object to the form of the question.

You can answer it.

THE WITNESS: Yeah, I had the final say so whether to go speak with the judge and seeing if we had enough probable cause, yes.

BY MR. JOHNSON:

Q Who is the person, in this case, who had the responsibility for making the decision as to whether to seek a warrant or not?

A I did.” (R. p. 578, line 20-p. 579, line 8)

(8) On page 5, the Appellant’s Initial Brief states:

“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.”* (R. pp. 407; 512-513). (emphasis added).” This misstates the record. On deposition, Deputy Ethridge testified:

“Q -- due to the witnesses gave false information the first time. Did Mark Goss give you any false information?

A He was more – no. I mean, he – what he was giving was being relayed from what was at Sunshine. I mean, he – I mean, everything he had given me I would say, you know – because he knew what was taken and all this stuff. I mean, he –

Q He gave you the details on what was taken?

A Correct. I mean – no. I mean, I’m not saying that he -- I would say the only – the only false information that we’re speaking of is mainly what the individual in the back had –

Q Told.

A --had said that she was the only that actually had brought the metal in, and the video doesn’t show that.

Q Right. And does that—

A I’m not saying anybody lied, or I’m not trying –

Q Right.

A -- I’m just saying what they observed is not the same thing –

Q That the video –

A -- that’s on the video, and the video – if the video supported what they said, we would have been fine.

Q All right. Now let me ask you this, specifically.

A Okay.

Q You learned what the employees of Sunshine said through what Mr. Rich told you, correct?

- A Correct.
 Q Not from anything Mr. Goss told you?
 A No. It was coming from Mr. Rich.
 Q And is it correct that Mr. Goss did not give you any false information?

MR. GOINGS: Object to the form of the question
 You can answer it.

THE WITNESS: I mean, besides – I mean what – it’s according to what you’re going to say false, because if he was to tell me that Joel Rich’s people said that that – I mean, you see what I’m saying? I mean, I don’t recall him directly giving me anything that was more or less – I mean, what he – what took place at Aiken Electric – I mean, everything he told me, all that was true. I mean someone had –

BY MR. JOHNSON:

- Q Right.
 A -- taken everything, to our knowledge, so. (R. p. 572, line 6-p. 574, line 1)

I.

SUMMARY JUDGMENT ON THE NEGLIGENCE CAUSE OF ACTION HAS NOT BEEN APPEALED BY THE APPELLANT AND IS THE LAW OF THE CASE

The circuit court judge granted the Respondents’ motion for summary judgment on the Appellant’s cause of action for negligence. The Appellant has not appealed that ruling. An unappealed ruling, right or wrong, is the law of the case. *Georgetown Cnty League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 357, 713 S.E.2d 287, 291 (2011); *see also Warren v. Yarborough* 2012-UP-401, 2012 WL 10860503 (S.C. Ct. App. July 11, 2012) (the probate court order dated November 20, 2007, wherein the court found Appellant had breached his duty as Trustee was not appealed by Appellant. Thus, the findings of the probate court are the law of the case.). Thus, the ruling on the negligence cause of action and the findings upon which it is based are the law of the case.

II.

THE CIRCUIT COURT JUDGE CORRECTLY GRANTED SUMMARY JUDGMENT ON THE CAUSE OF ACTION FOR FALSE

**IMPRISONMENT SINCE THE PLAINTIFF HAD FAILED TO OFFER
EVEN A SCINTILLA OF EVIDENCE THAT AIKEN ELECTRIC
PHYSICALLY RESTRAINED THE APPELLANT OR BY ITS
WORDS OR CONDUCT CONSTRUCTIVELY RESTRAINED HER.**

False imprisonment is the deprivation of one's liberty without justification. *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 710 S.E.2d 67 (2011). In order to establish a cause of action for false imprisonment, the evidence must prove: (1) that the defendant restrained the plaintiff; (2) that the restraint was intentional; and (3) that the restraint was unlawful. *Id.* False imprisonment is an intentional tort; negligence is not an element. *Gist v. Berkeley County Sheriff's Dep't.*, 336 S.C. 611, 619, 521 S.E.2d 163, 166 (Ct. App. 1999). Although the tort of false imprisonment is not limited to physical interference with a plaintiff's liberty, a plaintiff must demonstrate that she submitted to apprehension of force reasonably to be understood from the defendant's conduct, although no force is used and there is no threat of imminent use of force. *See Zimbelman v. Savage*, 745 F.Supp.2d 664 (D.S.C. 2010); *see also* 8 S.C. Jur.False Imprisonment A§7. An action for false imprisonment cannot be maintained where the Appellant was arrested by lawful authority. *Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (1987).

Quite simply, Appellant has failed to produce any evidence that Aiken Electric deprived her of her liberty in any way. No evidence was produced that Aiken Electric physically restrained Appellant or by its words or conduct, constructively restrained Appellant. Since Appellant has failed to offer even a scintilla of evidence that would support her claim of false imprisonment, Aiken Electric is entitled to summary judgment as a matter of law on the claim for false imprisonment.

The Appellant has argued that the circuit court judge ignored a well established principle that a private person can be liable for the tort of false arrest even if the police effectuated the arrest, citing

Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944). However, the later *Manley* decision makes it clear that false imprisonment cannot be maintained where the person is arrested by lawful authority.

Other language from the *Wingate* case is relevant here. In *Wingate*, the court said:

“If respondent was arrested by the police officers on their own volition, neither the messenger boy nor his employer could be held liable. Where a person merely directs the attention of a police officer to what he supposes to be a breach of the peace, or gives to such officer facts indicating such, and the officer, without other direction, arrests the offender on his own responsibility, the person who did nothing more than communicate the facts to the officer is not liable for causing the arrest, even though it is made without a warrant. See annotation in Annotated Cases, 1917-E., at page 404. Where a person has information or knowledge that the law has been violated, he not only has a right, but frequently it is his duty, to communicate such information or facts to the proper officer so as to give such officer the opportunity, if in his judgment it is proper to do so, to take whatever steps may be necessary to apprehend the offender. As said in *Burton v. McNeil*, 196 S.C. 250, 13 S.E.2d 10, 11, 133 A.L.R., 603. ‘Those who honestly seek the enforcement of the law *** and who are supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages. At page 310-311 of 30 S.E.2d.

Here, Aiken Electric provided factual information to the Sheriff’s Department and honestly sought enforcement of the law *** and the circumstances were sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged. Such persons or entities should not be made unduly apprehensive that they will be held answerable in damages. After all, there was a Hispanic eyewitness who identified the Appellant.

In the South Carolina victims of crime have certain rights guaranteed by the South Carolina Constitution and by statute. Act 1 §24 of the South Carolina Constitution provides for the “Victim’s Bill of Rights. Act 1 §24(1) provides protection of victims, who are to be “free from intimidation, harassment or abuse”. S.C. Code Ann. §16-3-1505 which outlines the legislative intent of the statutes

regarding victim's rights, and recognizes "****the civil and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecuting agencies
 ***[recognizes] the importance of the citizen cooperation to state and local law enforcement efforts
 ****"

The Circuit Court Judge, in ruling on the negligence claim, ruled:

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

This is now the law of the case.

Here, Mr. Goss, who had not seen the second video, never directed the deputy to arrest the Appellant. Sunshine's owner merely told the deputies that which was told to him by his Hispanic employee. The deputy who obtained the warrant, Deputy Ethridge testified as follows:

"Q And as the law enforcement representative with the sheriff's department, are you the person who is responsible, in this case, for deciding if and whether a warrant would be sought?

MR. GOINGS: Object to the form of the question. You can answer it.

THE WITNESS: Yeah, I had the final say so whether to go speak with the judge and seeing if we had enough probable cause, yes.

BY MR. JOHNSON:

Q: Who is the person, in this case, who had the responsibility for making the decision as to whether to seek a warrant or not?

A I did." (R. p. 578, line 20-p. 579, line 8)

Aiken Electric did not arrest the Appellant. She was arrested as a result of the arrest warrant taken out by Deputy Ethridge. Aiken Electric's Mr. Goss merely cooperated and provided the information he had. Summary judgment should be affirmed.

III.

THIS COURT WHICH CAN AFFIRM BASED UPON ANY GROUND APPEARING IN THE RECORD SHOULD FIND THAT THE APPELLANT'S CLAIM FOR FALSE IMPRISONMENT IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS.

Rule 220(c), SCACR, provides that the appellate court "may affirm any ruling, order, decision or judgment upon ground(s) appearing in the Record on Appeal". Here, the alleged false imprisonment occurred on or about June 2, 2010. (R. p. 21, ¶6) The Amended Summons and Complaint which joined Aiken Electric to the action as a party defendant was not filed until on or about May 24, 2013. The statute of limitations for an action for false imprisonment is two years and ran on June 2, 2012. S.C. Code Ann. §15-3-550(1). This Court should find that the Appellant's claim for false imprisonment is barred by the two year statute of limitations and affirm judgment in favor of Aiken Electric on the claim for false imprisonment.

IV.

THE CIRCUIT COURT JUDGE, IN GRANTING SUMMARY JUDGMENT ON THE CLAIM FOR MALICIOUS PROSECUTION, CORRECTLY FOUND THAT THE APPELLANT HAD FAILED TO PROVE THE ABSENCE OF MALICE AND THE PRESENCE OF PROBABLE CAUSE.

The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *McBride v. Sch. Dist. Of Greenville Cnty.*, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2002). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence. *Law v. S.C. Dep't of Corrections*, 368 S.C. 424,

435, 629 S.E.2d 642, 648 (2006). Malice is defined as “the deliberate intentional doing of an act without just cause or excuse.” *Id.* at 437, 629 S.E.2d at 649. Malice can also be inferred from lack of probable cause. *Id.* Probable cause

is meant the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.

Parrott v. Plowden Motor Co., 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965). Thus, in an action for malicious prosecution, a defendant must be absolved from liability if the plaintiff fails to show the prosecution was instituted maliciously and without probable cause. Finally, “[i]t is in the interest of good order that criminals be brought to justice, and malicious prosecution actions are not encouraged.”

Elletson v. Dixie Home Stores, 231 S.C. 565, 571, 99 S.E.2d 384, 387 (1957).

In dismissing the malicious prosecution claim, the circuit court judge found the following:

“Plaintiff’s cause of action against defendants for malicious prosecution fails because there is no evidence that the proceedings against her were initiated by the defendants maliciously and without probable cause. Here, the defendants assisted and cooperated with an investigation. They did not institute the investigation or prosecution, nor did they assist with malice. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes. Once the Hispanic employee reported that the plaintiff was the person who brought the stolen goods in for sale, that information would cause a reasonable person to believe that the plaintiff was guilty of the crime charged. In an action for malicious prosecution, a defendant must be absolved from liability unless the plaintiff shows that the prosecution was instituted maliciously. Here, the defendants cooperated with law enforcement and discharged their civic and moral duty to cooperate fully and voluntarily with law enforcement. The Orangeburg County Sheriff’s Department, not the defendants, made the decision to take out a warrant and have the plaintiff arrested. There is no evidence that the defendants acted maliciously in connection with the plaintiff’s arrest or acted without probable cause. Furthermore, the plaintiff has failed to identify genuine issues of material facts related to the elements of malicious prosecution. I find that there are no genuine issues of material fact and the judgment should be entered in favor of the defendants.”

There is no evidence that Aiken Electric acted with malice and it is more than ludicrous to argue to the contrary. This theft involved only \$463.19. The wire was recovered within a day or two of the theft. Aiken Electric and its Mr. Goss did not even know the Appellant to act maliciously towards her. Probable cause was established by the Hispanic employee who told Joe that the Appellant brought the copper and aluminum wire in. Surely having an eyewitness satisfies probable cause. Summary judgment on the malicious prosecution claim should be affirmed.

CONCLUSION

Unfortunately the Appellant, an innocent person, was arrested. The Sheriff's Department could have or should have figured it out prior to obtaining a warrant for Appellant's arrest. The Appellant's receipt could have been compared to the list of stolen items. The Hispanic employee could have been interviewed by the Sheriff's Department's investigator. The video of the items being unloaded at Sunshine Recycling could have been reviewed by the Sheriff's Department. The Sheriff's Department had the duty and responsibility to do these things, not Aiken Electric. All Aiken Electric did was discharge its "civil and moral duty *** to cooperate fully and voluntarily with law enforcement". Aiken Electric, like the Appellant, is innocent in this matter. To hold otherwise would intimidate Aiken Electric and other victims from discharging their "civil and moral" duty to cooperate with law enforcement and would violate their constitutional right "to be free from intimidation, harassment, or abuse". The Order of Judge Murphy should be affirmed.



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Columbia, South Carolina
February 18, 2015

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

RECEIVED

FEB 18 2015

SC Court of Appeals

Meredith Huffman, ...Appellant

vs.

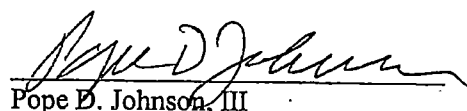
Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc. Respondents

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Brief of Respondent Aiken Electric Cooperative, Inc. complies with Rule 211(b), SCACR, and the August 13, 2007, Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in the Appellate Court Filings", as amended by the April 15, 2014, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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SC Court of Appeals

Meredith Huffman, ...Appellant

vs.

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

PROOF OF SERVICE

I, Susan J. Mondello, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Robert F. Goings and J. Todd Rutherford, attorneys for Appellant, and Breon C. M. Walker, attorney for Respondent Sunshine Recycling, LLC, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses this 18th day of February, 2015.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman, ...Appellant

v.

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

RESPONDENT SUNSHINE RECYCLING, LLC'S FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
INTRODUCTION	2
STATEMENT OF FACTS	3
ARGUMENT	9
I. Standard of Review.....	9
II. The Circuit Court Properly Granted Summary Judgment to Sunshine with Respect to Appellant’s False Imprisonment Claim.....	10
III. The Circuit Court Properly Granted Summary Judgment to Sunshine with Respect to Appellant’s Malicious Prosecution Claim.....	12
CONCLUSION.....	18

TABLE OF AUTHORITIES

Cases

<i>Argoe v. Three Rivers Behavioral Health, LLC</i> , 392 S.C. 462, 710 S.E.2d 67 (2011)	10
<i>Bankers Trust of South Carolina v. Benson</i> , 267 S.C. 152, 226 S.E.2d 703 (1976).....	9
<i>Baughman v. American Tel. and Tel. Co.</i> , 306 S.C. 101, 410 S.E.2d 537 (1991).....	9
<i>Brice v. Nkaru</i> , 220 F.3d 233 (4th Cir. 2000).....	13
<i>Campbell v. City of San Antonio</i> , 43 F.3d 973 (5th Cir.1995).....	16
<i>Davis v. Equibank</i> , 603 A.2d 637 (Pa. 1992).....	16, 17
<i>Elletson v. Dixie Home Stores</i> , 231 S.C. 565, 99 S.E.2d 384 (1957)	13
<i>Fleming v. Rose</i> , 350 S.C. 488, 567 S.E.2d 857 (2002)	9
<i>George v. Fabri</i> , 345 S.C. 440, 548 S.E.2d 868 (2001)	9
<i>Gist v. Berkeley Cnty. Sheriff's Dep't</i> , 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999)	10
<i>Gramenos v. Jewel Cos.</i> , 797 F.2d 432 (7th Cir.1986).....	13
<i>King v. Massarweh</i> , 782 F.2d 825 (9th Cir.1986)	13, 14
<i>Koester v. Carolina Rental Ctr., Inc.</i> , 313 S.C. 490, 443 S.E.2d 392 (1994).....	9
<i>Law v. S.C. Dep't of Corrections</i> , 368 S.C. 424, 629 S.E.2d 642 (2006).....	12, 13
<i>Lundberg v. Scoggins</i> , 335 N.W.2d 235 (1983)	15, 16
<i>Main v. Corley</i> , 281 S.C. 525, 316 S.E.2d 406 (1984)	9
<i>McBride v. Sch. Dist. Of Greenville Cnty.</i> , 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2002)	12
<i>Parrott v. Plowden Motor Co.</i> , 246 S.C. 318, 143 S.E.2d 607 (1965).....	13
<i>Reaves v. Westinghouse Electric Corp.</i> , 683 F. Supp. 521 (D.Md.1988).....	11
<i>Swierkiewicz v. Sorema</i> , 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (1989).....	16
<i>Zimbelman v. Savage</i> , 745 F. Supp. 2d 664 (D.S.C. 2010)	10

Court Rules

Rule 56, South Carolina Rules of Civil Procedure	9
--	---

Statutes

8 S.C. Jur. False Imprisonment Â§ 7	10, 11
66 A.L.R.3d 10 Summary § 3 (1975)	14
52 Am.Jur.2d <i>Malicious Prosecution</i> § 23 (1970).....	14
54 C.J.S. Malicious Prosecution § 17	14

STATEMENT OF ISSUES ON APPEAL

- I. STANDARD OF REVIEW
- II. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO SUNSHINE WITH RESPECT TO APPELLANT'S FALSE IMPRISONMENT CLAIM
- III. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO SUNSHINE WITH RESPECT TO APPELLANT'S MALICIOUS PROSECUTION CLAIM

INTRODUCTION

The circuit court's grant of summary judgment in favor of Sunshine Recycling ("Sunshine") should be affirmed because Appellant Meredith Huffman ("Appellant") has failed to present any evidence creating a genuine issue of material fact with respect to the claims asserted.

This case arises out of stolen property and an unfortunate arrest of an innocent person. On May 16, 2010, copper was stolen from the premises of Respondent Aiken Electric. The next day, Aiken Electric's Loss Control and Safety Coordinator, Mark Goss, went to Sunshine's facility with a list of the items stolen to inquire if anyone brought the items in to sell. Goss observed copper and aluminum matching what was stolen from Aiken Electric in a pile on the floor. A Hispanic employee informed the owner of Sunshine, Joseph Rich, that he observed Appellant dropping off the metal Goss observed. The Orangeburg County Sherriff's Department was then called to Sunshine and upon an officer's arrival, Goss showed the officer samples of the metal from Aiken Electric that matched the metal at Sunshine. The officer then reviewed Sunshine's surveillance video and observed Appellant at the payment window. He was also provided a supporting receipt from Sunshine for Appellant's transaction. Another officer returned to Sunshine the next day after receiving a telephone call from Goss, photographed the metal, and returned the items to Goss.

Several days later, a warrant was obtained by the Sherriff's Department for Appellant's arrest in connection with the stolen metal. Appellant turned herself in approximately two weeks later, and informed the arresting officer that although she did sell metal to Sunshine, the metal she sold was not stolen. Appellant was then released on

bond. Subsequent to her release, an officer viewed the surveillance video of the day in question and observed Appellant selling a different type of wire to Sunshine than that which was stolen from Aiken Electric. The charges were dismissed against Appellant.

Appellant filed this lawsuit against Sunshine, Aiken Electric, and the Sheriff's Department¹, alleging negligence, false imprisonment / false arrest, and malicious prosecution. However, Appellant has failed to present a scintilla of evidence that would create a genuine issue of material fact with respect to these claims against Sunshine. Appellant alleges that because she was misidentified, Sunshine, who is not the victim or the police, falsely imprisoned and arrested her and maliciously prosecuted her. In short, Appellant seeks to hold Sunshine liable for its good faith cooperation and assistance with the police with a criminal investigation.

The circuit court correctly determined that no genuine issues of material fact exist with respect to Appellant's claims against Sunshine. The circuit court's decision should be affirmed.

STATEMENT OF FACTS²

This case arises out of an incident involving trespass and stolen property at Respondent Aiken Electric's facility in North, South Carolina on May 16, 2010. Mark Goss, Aiken Electric's Loss Control and Safety Coordinator, testified that this facility has more thefts than any other of Aiken Electric's locations because of its proximity to two recycling centers in the area, Orangeburg Recycling and Respondent Sunshine Recycling.

¹ The Sheriff's Department is no longer a party to this action.

² Respectfully, Appellant has mischaracterized the facts and Sunshine's participation in this investigation and ultimate arrest. The citations referenced by Appellant do not support her version of the facts and attempt to paint Sunshine with actions and intentions it simply did not do or have.

(R. pp. 61-62). On or about May 16, 2010, Goss received a call from Aiken Electric's dispatch informing him that someone was under a shed stealing copper on the premises. (R. p. 62).

Charles Rushton, the manager of the North facility, also received the call from dispatch and both men headed to the facility from their respective houses. Rushton reported the trespass to the Orangeburg County Sheriff's Department and Officer Huggins responded to the report. Goss testified that by the time he arrived at the facility, the thief was already gone and Officer Huggins was on the scene. (R. pp. 63-64). Goss and Rushton were unable to determine what, if anything, had been taken from the facility and had to wait until the following morning for the linemen to arrive to make the determination. On May 17, Goss supplemented the incident report to Huggins, informing him that Aiken Electric was able to determine that approximately \$330.00 of copper and wire aluminum was stolen from its facility and that a white Ford F-150 was seen on the security camera. (R. pp. 65-68).

According to Goss, he went to Sunshine the same morning with the list of stolen items to inquire if anyone tried to sell the items matching those on the list. Goss met with Joseph Rich, the owner of Sunshine, and Rich led Goss to the metal drop-off area and the location of the surveillance video. Goss testified that he observed copper and aluminum matching what was stolen from Aiken Electric in a pile on the floor. (R. pp. 67; 69). According to Goss, Rich spoke to a Hispanic Sunshine employee in Spanish and translated that the employee said "a lady dropped off the metal." (R. pp. 71). Goss testified that he informed Rich that the person in Aiken Electric's surveillance video was a black male in a white Ford pick-up truck. (R. p. 70).

Officer Aldridge of the Sheriff's Department responded to a call at Sunshine. Upon Aldridge's arrival, Goss showed him samples of the metal from Aiken Electric that matched the metal at Sunshine. Aldridge then reviewed Sunshine's surveillance video, on which he observed Appellant at the payment window. He was also provided a supporting receipt from Sunshine of Appellant's transaction. (R. pp 72-73). Aldridge testified Rich advised him he would provide the Sheriff's Department with a copy of the surveillance video.

On May 18, Officer Etheridge of the Sheriff's Department was contacted by Goss, who informed Etheridge that he was at Sunshine at the time Appellant brought the metal in and that he actually spoke with Appellant and identified the stolen metal after Appellant left Sunshine. Thereafter, Officer Etheridge went to Sunshine and met with Goss and Rich. He was given the invoice and receipt of Appellant's transaction. (R. pp. 198-200). He testified he photographed the metal and returned it to Goss. Officer Etheridge admitted that he did not observe the surveillance video of the back area of Sunshine. Etheridge testified he wanted to view the video before making a determination in the case, but the video player was malfunctioning. (R. pp. 206-207; 210). Additionally, Etheridge testified Goss called him several times inquiring what he was doing to further the case along. (R. pp. 209-210). Etheridge testified that Goss's employer, Aiken Electric, was the victim in this case. (R. pp. 226).

Thereafter, on May 21, Officer Etheridge obtained a warrant for Appellant's arrest in connection with the stolen metal. Appellant was unaware of the warrant for several days, but turned herself in on June 2, 2010. Appellant informed Officer Etheridge that she did sell metal to Sunshine, but that the metal she sold was not stolen. Appellant

provided Etheridge with samples of the metal and pictures of a trailer owned by her family where she obtained the metal. Appellant was released on bond. (R. pp. 213-218).

After Appellant's arrest, Officer Etheridge met with a representative of Sunshine's outside vendor, Palmetto Security Cameras, to review the video of the day in question. According to Etheridge's report, he observed Appellant on the video selling copper similar to the copper that was taken from Aiken Electric, but that Appellant's aluminum was sheeting while the aluminum stolen from Aiken Electric was aluminum wire. (R. p. 218). Officer Etheridge later dismissed the charges against Appellant. (R. p. 221). Etheridge has admitted that he did not observe this video until after Appellant was arrested and that had he viewed the video prior to the arrest, he would never have arrested Appellant. (R. pp. 218; 221).

Etheridge was later contacted by Goss and Sunshine, who informed Officer Etheridge that they reviewed the surveillance video again and observed an unidentified black male in a white pick-up truck at Sunshine's property at the same time as Appellant. The male was later identified by Officer Etheridge as Eugene James with SC Tag Number 6087CM. Officer Aldridge met with Goss on June 11 at Sunshine, at which time Goss provided him with photographs of Eugene James. Officer Aldridge obtained the surveillance video from Sunshine at that time, but testified he did not view the video. (R. pp. 198-200).

Goss testified that, in his opinion, Sunshine did not do anything wrong in this case. He confirmed that he was the one who identified the stolen metal in the back at Sunshine, and that Rich only relayed the Hispanic employee's identification of "a lady" as dropping off the metal. (R. p. 76). He also testified that it was normal practice for

Sunshine to permit Aiken Electric or investigating officers to view or copy its surveillance videos. (R. p. 77). Goss testified that the false arrest would not have occurred if the investigating officers would have reviewed the surveillance tape prior to arresting Appellant. (R. pp. 74-75). Likewise, Officer Etheridge testified that Sunshine was not the victim in this case and never pushed for Appellant's arrest or prosecution. Rather, he believed Sunshine cooperated fully in the investigation and was pleasant to deal with. In fact, Officer Etheridge testified that he did not recall speaking to Rich after his initial visit of May 18. (R. p. 224).

Plaintiff brought suit against the Sheriff's Department, Aiken Electric, and Sunshine, alleging causes of action for negligence, false imprisonment, and malicious prosecution.

Both Sunshine and Aiken Electric filed motions for summary judgment in the trial court. In its motion, Sunshine asserted Appellant failed to produce any evidence that would even tend to prove Sunshine was negligent or careless in ignoring that Appellant was not the suspect in the case, failing to conduct a proper investigation, and for any other acts or omissions. Sunshine also asserted Appellant failed to produce any evidence tending to prove that Sunshine maliciously instituted and continued criminal proceedings against Appellant or that criminal proceedings were instituted and continued at the request of Appellant.

The circuit court granted summary judgment to Sunshine and Aiken Electric.³ (R. pp. 1-9). In doing so, the circuit court held that imposition of a duty of care on Sunshine and Aiken Electric would be inconsistent to the rights and duties of crime witnesses and

³ The Order was filed on April 9, 2014.

victims. It further held that law enforcement, not the victims or witnesses of a crime, have a duty to investigate a crime and determine whether and when to seek a warrant. The circuit court stated that “if a crime victim or a witness to a crime can be sued in negligence for reporting to law enforcement whatever information the victim or a witness to a crime had, such would discourage them from discharging their civil and moral duty which is to cooperate with law enforcement.” (R. p. 6). Additionally, the circuit court held summary judgment was proper with respect to the false imprisonment claim, finding that Appellant failed to produce any evidence that Sunshine and Aiken Electric deprived her of her liberty in any way.

Finally, the circuit court held that Appellant’s malicious prosecution claim failed because there is no evidence that the proceedings against her were initiated by Sunshine or Aiken Electric maliciously and without probable cause. The circuit court noted that Sunshine and Aiken Electric merely assisted and cooperated with an investigation, and neither instituted the investigation or prosecution, nor did they assist with malice. The circuit court observed that citizens are encouraged, if not obligated, to assist in investigations of potential crimes and Sunshine and Aiken Electric cooperated with law enforcement and discharged their civic and moral duty to cooperate fully and voluntarily with law enforcement. (R. p. 9).

The circuit court denied Appellant’s motion to alter or amend the Order granting summary judgment on June 16, 2014, finding the motion did not raise any novel issues for the court’s consideration. (R. p. 10). Thereafter, Appellant filed a Notice of Appeal.

ARGUMENT

I. Standard of Review

“When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court.” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming*, 350 S.C. at 493-94, 567 S.E.2d at 860.

A motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC (emphasis added). On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. *E.g.*, *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994); *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one party must lose *as a matter of law*.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984) (emphasis added); *see also Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (standard for summary judgment “mirrors” standard for directed verdict).

II. The Circuit Court Properly Granted Summary Judgment to Sunshine with Respect to Appellant's False Imprisonment Claim.

Appellant contends the circuit court erred in granting summary judgment as to the false imprisonment claim because a genuine issue of material fact exists to support the claim of false imprisonment / false arrest.⁴ Appellant contends the circuit court erred in finding neither Respondent deprived Appellant of her liberties, in ignoring the principle that a private person can be liable for the tort of false arrest even if the police effectuate the arrest, and in misconstruing the evidence. For the reasons set forth below, Sunshine submits the circuit court properly granted summary judgment as to this claim, as no genuine issue of material fact exists.

False imprisonment is the deprivation of one's liberty without justification. *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 710 S.E.2d 67 (2011). In order to establish a cause of action for false imprisonment, the evidence must prove: (1) that the defendant restrained the plaintiff; (2) that the restraint was intentional; and (3) that the restraint was unlawful. *Id.* False imprisonment is an intentional tort; negligence is not an element. *Gist v. Berkeley Cnty. Sheriff's Dep't*, 336 S.C. 611, 619, 521 S.E.2d 163, 166 (Ct. App. 1999). Although the tort of false imprisonment is not limited to physical interference with a plaintiff's liberty, a plaintiff must demonstrate that she submitted to apprehension of force reasonably to be understood from the defendant's conduct, although no force is used and there is no threat of imminent use of force. *See Zimbelman v. Savage*, 745 F. Supp. 2d 664 (D.S.C. 2010); *see also* 8 S.C. Jur. False Imprisonment § 7.

⁴ Appellant does not appeal the circuit court's grant of summary judgment to Sunshine with respect to her negligence cause of action.

Appellant has failed to produce any evidence that Sunshine deprived her liberty in any way without justification. There has been no evidence presented that Sunshine physically restrained Appellant or, by its words or conduct, constructively restrained Appellant. Furthermore, as discussed above, any misidentification on the part of Sunshine, which may have ultimately led to a later restraint by other parties, was not intentional. Sunshine and its employees merely relayed information and documentation which it believed, in good faith, to be relevant and helpful in assisting law enforcement in solving a crime. At its worst, Sunshine's actions constituted misidentification and mistake. However, this will not support a cause of action for false imprisonment. *See, e.g., Reaves v. Westinghouse Electric Corp.*, 683 F. Supp. 521, 523 (D.Md.1988) ("The tort of false arrest is predicated upon *knowing* misconduct Negligence or other mistake in providing incorrect information to lawful authorities does not give rise to liability.").

Respectfully, the circuit court did not ignore the legal principle that a private person can be liable for the tort of false arrest even if the police effectuated the arrest. In fact, the court's order makes no mention of the distinction between private citizens and police officers in the context of false arrest / false imprisonment claims. Rather, the circuit court simply found that Appellant had failed to present even a scintilla of evidence against Sunshine that would support a false arrest or false imprisonment claim. Furthermore, the circuit court did not misconstrue the evidence presented, as Appellant suggests. Rather, the evidence presented leads to only one reasonable inference – that Sunshine cooperated with a police investigation and relayed information that it, in good

faith, believed to be true and relevant to the investigation. Thus, the grant of summary judgment was proper and this Court should affirm.

III. The Circuit Court Properly Granted Summary Judgment to Sunshine with Respect to Appellant's Malicious Prosecution Claim.

Next, Appellant contends the circuit court erred on many levels in granting summary judgment to Sunshine with respect to the malicious prosecution claim. First, Appellant contends the record is "replete" with evidence that she was charged at the instance of Sunshine and Aiken Electric, and it was these entities that initiated the criminal charge. Appellant also contends the circuit court erred in weighing the evidence as it did, and that it erred in concluding probable cause existed to arrest Appellant and improperly invading the province of the jury. Likewise, Appellant maintains the circuit court erred in finding a lack of malice on the part of Sunshine or Aiken Electric. Appellant asserts that malice is inferred as a matter of law due to the lack of probable cause, and that the evidence reveals Sunshine and Aiken Electric acted with legal malice. For the reasons set forth below, Sunshine submits the circuit court properly granted summary judgment as to this claim, as no genuine issue of material fact exists.

The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *McBride v. Sch. Dist. Of Greenville Cnty.*, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2002). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence. *Law v. S.C. Dep't of Corrections*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006). Malice is defined as "the deliberate intentional doing of an act

without just cause or excuse.” *Id.* at 437, 629 S.E.2d at 649. Malice can also be inferred from lack of probable cause. *Id.* Probable cause

is meant the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.

Parrott v. Plowden Motor Co., 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965). Thus, in an action for malicious prosecution, a defendant must be absolved from liability if the plaintiff fails to show the prosecution was instituted maliciously and without probable cause. Finally, “[i]t is in the interest of good order that criminals be brought to justice, and malicious prosecution actions are not encouraged.” *Elletson v. Dixie Home Stores*, 231 S.C. 565, 571, 99 S.E.2d 384, 387 (1957).

The Fourth Circuit Court of Appeals opinion in *Brice v. Nkaru*, 220 F.3d 233 (4th Cir. 2000), is instructive. In *Brice*, the plaintiff filed suit against a security guard for malicious prosecution based upon the security guard’s misidentification of him as a suspect to a crime. The Fourth Circuit, interpreting Virginia law, stated “[w]e find no authority supporting [the] contention that a witness who provides the police with incorrect information during a criminal investigation ipso facto ‘institutes’ or ‘procures’ the prosecution if he provides that information unequivocally.” *Id.* at 238. The court further stated:

[W]e are aware of no authority supporting the novel proposition that a witness, by honestly providing information to a law enforcement official, may be held responsible for the official's execution of his independent duty to investigate. *See, e.g., Gramenos v. Jewel Cos.*, 797 F.2d 432, 434 (7th Cir.1986) (“Police often arrest suspects on the basis of oral reports from witnesses, and the state may prosecute against the wishes of all witnesses.”); *King v. Massarweh*, 782 F.2d 825, 828–29 (9th Cir.1986)

(injuries from arrest are not proximately caused by private party, absent some showing that private party “had some control” over state officials' decision). In this case, [the security guard] simply provided the police with information within his knowledge, and the police reasonably believed him. *See id.* at 439 (explaining that police have reasonable grounds to believe a guard at a supermarket, because there are inherent safeguards against the making of false charges in the institutional employment setting), *see also* 66 A.L.R.3d 10 Summary § 3 (1975) (normally a malicious prosecution plaintiff must show that defendant did more than merely give information that included an identification, *e.g.*, that he requested the initiation of proceedings, signed a complaint, or swore out an arrest warrant against plaintiff); 52 Am.Jur.2d *Malicious Prosecution* § 23 (1970) (plaintiff must show defendant was affirmatively active in instigating or participating in the prosecution); *id.* § 24 (no liability for mistaken, but reasonable and in good faith, misidentification of perpetrator of crime).

Id. at 238-39.

Ultimately, the court rejected the plaintiff's contention that there was sufficient evidence to support an inference that the security guard acted in bad faith in providing law enforcement with information, and concluded, as a matter of law, that the plaintiff could not maintain his claim for malicious prosecution. *Id.* at 241. Indeed, “[m]erely providing information to the police and leaving the decision to bring charges to the sole discretion of the police cannot constitute the initiation of criminal proceedings for purposes of a malicious prosecution claim. *See* 54 C.J.S. *Malicious Prosecution* § 17 (stating a “civilian complainant, by merely seeking police assistance or furnishing information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for malicious prosecution”),

Here there is absolutely no evidence presented that indicates Sunshine or its employees acted with malice in reporting information and providing documentation to the police. First, it is undisputed that Sunshine did not institute or have instituted the

proceedings against Appellant—Sunshine was merely a cooperating witness. Secondly, there is absolutely no evidence of malice on the part of Sunshine in this matter. At Goss's request, Sunshine permitted Goss to examine the metal and view the surveillance tape. Furthermore, once the Sheriff's Department arrived, Sunshine relayed information regarding Appellant's transaction at the yard, permitted the officers to view the surveillance tape, and cooperated with the Sheriff's Department investigation. In fact, the evidence demonstrates Sunshine had minimal involvement beyond May 18. Finally, assuming the malicious prosecution could lie against a witness, not a victim, there is no evidence Sunshine lacked "probable cause" in doing what it did. Indeed, all evidence indicates Rich spoke with his Hispanic employee and merely translated what the employee told Rich regarding Appellant. The only facts that Sunshine knew or could have known were those which the employee stated and Sunshine's observation of Appellant at the center.

In short, the only reasonable inference based upon the evidence in this case is that Sunshine cooperated with the Sheriff's Department in providing information and documentation, and the Sheriff's Department ultimately exercised its discretion in arresting Appellant, free from any influence or pressure from Sunshine.⁵

Additionally, public policy demands that the circuit court be affirmed. In *Lundberg v. Scoggins*, 335 N.W.2d 235 (1983), the defendant, who was the victim of a

⁵ Appellant cites to several deposition and incident report excerpts in support of her arguments. Respectfully, however, none of the excerpts cited, and no testimony at all, indicates that Sunshine or its employees or agents initiated or attempted to initiate or continue criminal proceedings against Appellant. In fact, because Sunshine was not the victim in this matter, Sunshine had absolutely no incentive to maliciously attempt to prosecute or have the Sheriff's Department prosecute Appellant for the copper wire, nor does the evidence support even an inference of such.

sexual assault, identified plaintiff as her attacker during a lineup. The plaintiff was arrested and placed in custody until it was determined that he could not have been the person who sexually assaulted the defendant. The plaintiff then brought an action against the defendant, alleging that she negligently accused and misidentified him as her attacker.

The Supreme Court of Minnesota affirmed the trial court's dismissal of the complaint:

[O]ur decision is controlled by a well-established body of law relating to an analogous claim of malicious prosecution. This action has always been carefully circumscribed, and not favored in law, the reason being that 'public policy favors prosecutions and affords such protection of another in good faith and on reasonable grounds as is essential to public justice.' . . .

The public policy limiting malicious prosecution actions applies with especial force to actions which would make witnesses or victims liable for their negligence in assisting criminal investigations or prosecutions. Persons having knowledge of crimes, as a fundamental duty of citizenship, are encouraged, if not obligated, to report and assist in investigation and prosecution of these crimes. . . . A threat of an action-which does not include an element of maliciousness-would serve to further discourage citizen participation in criminal investigations and prosecutions.

Id. at 235-26. Thus, the court held that a complaint of negligent accusation and misidentification of a criminal suspect does not state a claim upon which relief can be granted for longstanding public policy reasons. *Id.* In *Campbell v. City of San Antonio*, 43 F.3d 973, 981 (5th Cir.1995), *overruled in part on other grounds by Swierkiewicz v. Sorema*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (1989), the Fifth Circuit Court of Appeals stated: "To hold ... that [defendant's] negligent misidentification of [plaintiff] is actionable would in substance convert the Texas tort of *malicious* prosecution into one of *negligent* prosecution. This we decline to do." (emphasis in original).⁶

⁶ In *Davis v. Equibank*, 603 A.2d 637 (Pa. 1992), a Pennsylvania court reached a similar conclusion:

Although Appellant attempts to lump the actions and assistance of Sunshine into her reprimands of Aiken Electric and Mark Goss, the only inference that can be drawn from the evidence presented is that Sunshine assisted and cooperated with an investigation. It did not institute the investigation or prosecution, nor did it assist with malice. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes. To permit a claim for malicious prosecution to stand against Sunshine in this instance would discourage citizens from relaying information and documentation to police officers and impede the criminal justice system. Thus, Sunshine is entitled to summary judgment as a matter of law in this instance. Furthermore, Appellant has failed to present genuine issues of material facts related to the elements of malicious prosecution. Therefore, the circuit court properly granted summary judgment to Sunshine and this Court should affirm.

CONCLUSION

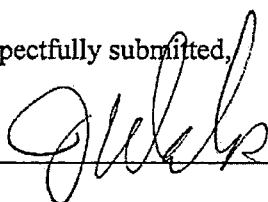
The circuit court properly granted Sunshine's motion for summary judgment. Viewing the facts in a light most favorable to Appellant, there is no evidence to support an inference of liability on the part of Sunshine with respect to causes of action for false

It is safe to say that Pennsylvania . . . certainly has an interest in effective law enforcement. We further recognize that the potential of civil liability for the provision of mistaken information to law enforcement agents would have a chilling effect on citizen cooperation and the provision of valuable information by citizens to police. Further, we are in agreement that the public interest in investigation of crime outweighs the recognition of a negligence action for negligent identification of a suspect. . . . Relying upon the weight of authority and a weighing of policy considerations, we decline to recognize a cause of action for negligent identification of another as a perpetrator of a crime.

Id. at 641.

imprisonment and malicious prosecution. Thus, the circuit court properly granted summary judgment to Sunshine and Sunshine respectfully requests this Court affirm the circuit court's grant of its Motion for Summary Judgment.

Respectfully submitted,



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February 9, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman, ...Appellant

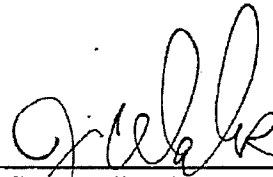
v.

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

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Brief of Respondent Sunshine Recycling, LLC complies with Rule 211(b), SCACR and the August 13, 2007, Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in the Appellate Court Filings," as amended by the April 15, 2014, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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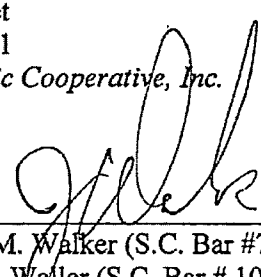
I certify that I have served Final Brief of Respondent Sunshine Recycling, LLC,
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Maite D. Murphy, Circuit Court Judge

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,
v.

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ARGUMENTS.....	1
I. THE FACTS MUST BE CONSIDERED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF	1
II. RESPONDENTS' ARGUMENTS THAT HUFFMAN MISSTATED THE FACTS IS WHOLLY WITHOUT MERIT	3
III. REPLY TO RESPONDENTS' FALSE ARREST ARGUMENTS.....	9
IV. THE STATUTE OF LIMITATIONS DOES NOT BAR THE CLAIM FOR FALSE ARREST AS TO AIKEN ELECTRIC	12
V. REPLY TO RESPONDENTS' MALICIOUS PROSECUTION ARGUMENTS	13
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	1
<i>Burnett v. Family Kingdom</i> , 387 S.C. 183, 691 S.E.2d 170 (Ct. App. 2010)	10
<i>Conner v. City of Forest Acres</i> , 348 S.C. 454, 560 S.E.2d 606 (2002)	3
<i>Gist v. Berkeley County Sheriff's Dep't</i> , 336 S.C. 611, 615 (Ct. App. 1999)	11
<i>Jones v. City of Columbia</i> , 301 S.C. 62, 389 S.E.2d 662 (S.C. 1990)	12
<i>Law v. S.C. Dept. of Corrections</i> , 368 S.C. 424, 629 S.E.2d 642 (2006)	10, 13, 14
<i>Madison v. Babcock Ctr., Inc.</i> , 371 S.C. 147, 638 S.E. 2d 650 (2006)	10
<i>Melton v. Williams</i> , 281 S.C. 182, 186, 314 S.E.2d 612, 614-15 (Ct. App. 1984)	12
<i>Shirley's Iron Works, Inc. v. City of Union</i> , 387 S.C. 389, 693 S.E.2d 1 (Ct. App. 2010)	1
<i>Vaughn v. A.E. Green Co., Inc.</i> , 277 S.C. 392, 287 S.E.2d 493 (1982)	1
<i>Wingate v. Postal Tel. & Cable Co.</i> , 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944)	9
<i>Wortman v. Spartanburg</i> , 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992)	12

ARGUMENTS

I. THE FACTS MUST BE CONSIDERED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF

The Statement of Facts presented by the Respondents ignores the standard of review on a Motion for Summary Judgment. The facts Respondents chose to present are heavily slanted in favor of the Respondents, often omitting critical details that support the presence of a genuine issue of material fact. As this Court is well aware, the documents, testimony, and record must be viewed in the light most favorable to Huffman and all reasonable inferences construed in her favor, not the Respondents. See Rule 56, SCRCP.

“At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.” *Shirley’s Iron Works, Inc. v. City of Union*, 387 S.C. 389, 397, 693 S.E.2d 1, 4 (Ct. App. 2010) (emphasis added); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) (“At the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”). Summary judgment should be granted only where it is perfectly clear that no issue of fact is involved.” *Vaughn v. A.E. Green Co., Inc.*, 277 S.C. 392, 393, 287 S.E.2d 493, 494 (1982) (emphasis added).

The Respondents’ version of the facts is best to be presented before a jury, but for purposes of this appeal, this court should only view the facts in Huffman’s favor as true. The significant divergence between the facts presented by the parties demonstrates that summary judgment was not proper.

In Respondents' attempt to paint the facts favorable to them instead of Huffman, they fail to mention or even address the following significant facts:

- a) A black male looks nothing like a white female;
- b) The metal that Huffman brought into Sunshine Recycling did not match *at all* the same type, shape, color, or amount of the alleged stolen metal (R. pp. 406; 451; 752);
- c) Respondents utter disregard to review the surveillance video before accusing Huffman;
- d) The sale documents and invoice clearly establish that Huffman was not in possession of the stolen metal (Id);
- e) Mr. Goss was lying when he claimed he spoke personally with Huffman while at Sunshine Recycling and she was physically carrying the stolen metal. Mr. Goss told the police he spoke with Huffman while she was selling Aiken Electric's metal to Sunshine Recycling, but, in his deposition, admitted this did not occur. This admitted false statement to the police helped provide a reason for the police to arrest her for the crime. (R. pp. 405; 407; 662-663; 500-502; 590-591);
- f) The Sheriff's Department refused to prosecute because the witnesses from Sunshine Recycling and Aiken Electric gave the police "false information the first time." (R. p. 407);
- g) The Respondents admit in their depositions that any reasonable person who watched the video would clearly see Huffman did not have the stolen metal. (R. pp. 676-680; 684; 686; 692). Sunshine told the Sheriff's Department that Huffman was shown on the video with the stolen metal (R. p. 508). Yet, Respondents had the video and chose not to view it or disregard what they saw (R. pp. 693; 720; 846-847; 849-850; 783);
- h) The owner of Sunshine Recycling demanded to "come and testify [against Huffman] in court after all physical evidence, including the video, fully exonerated Huffman. (R. p. 520);
- i) Aiken Electric expressed with a great "sense of urgency," the desire to have Huffman arrested when it was in possession of physical evidence that proved she was not involved; and
- j) Probable cause cannot be based on unsubstantiated hearsay from an unnamed "Hispanic" employee who did not give a statement.

II. RESPONDENTS' ARGUMENTS THAT HUFFMAN MISSTATED THE FACTS IS WHOLLY WITHOUT MERIT.

Respondents argue throughout their Briefs that Huffman has “repeatedly misstated and/or misquoted the record” and “mischaracterized the facts” (See generally Aiken Electric Brief; Sunshine Recycling Brief). Respondents would have this Court believe that Huffman just made up facts that do not have evidentiary support. The facts of this case are heavily disputed, which is why summary judgment was not proper. *Conner v. City of Forest Acres*, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002) (“Since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues.”). Respectfully, Huffman did not misstate the facts, but, rather, properly presented the facts in the light most favorable to her.

In particular, Aiken Electric devotes a section of its Brief captioned “Appellant’s Incorrect Factual Statements and References to the Record.” (Aiken Brief, p. 7-11). Aiken Electric outlines eight (8) “incorrect” and “misstated” factual positions asserted by Huffman. As set forth below, Aiken Electric is simply wrong about the eight (8) points that it believes are not supported in the record. The points below will show that Respondents’ repeated urging to the Court that Huffman’s position is belied in “misstatements” and lacks evidentiary support rings hollow and untrue. Huffman will address these eight (8) arguments in the order as presented in Aiken Electric’s Brief.

1. It is not a misstatement that Mr. Goss stated he identified metal that Huffman brought in as stolen from Aiken Electric. The record fully supports this fact in numerous places. Some of the specific references to the record to support this assertion are as follows:

Deputy Ethridge testified as follows:

Q: "Who told you that Meredith Huffman was the individual that came in with the stolen property of Aiken Electric?"

A: "I'm pretty sure it was Mark Goss....Mark had actually talked with her. He was actually there because he made the comment, I see here in my notes that he -- he had actually spoke with her in line and she was obtaining payment for the property. So he -- he had saw her and spoke to her on the property of Sunshine."¹

(R. pp. 500-502).

Deputy Ethridge further testified as follows:

Q: "Who provided you, if anyone, the name Meredith Huffman?"

A: "Mark Goss and Sunshine Recycling."

Deputy Ethridge further testifies that Mr. Goss and Sunshine Recycling both identified Huffman as the person in possession of the stolen metal.

(R. pp. 502-504).

In the Offense Report completed by Deputy Ethridge, he states Goss advised him as follows:

"While [Goss] was there he actually spoke and carried on a conversation with Huffman while she was waiting to get paid for the items that she had

¹ Again, Mr. Goss lied to the police about talking to Huffman when she sold the metal. Mr. Goss and Huffman were not at Sunshine at the same time, and Mr. Goss finally admitted in his deposition that he did not see or speak with her. (R. p. 662).

just brought in. Goss said that he viewed the items after she left and identified them as being theirs.”

(R. p. 405).

“Mr. Rushton stated that Mark Goss spotted their wire at Sunshine. They have the identity of the woman who sold the wire”

(R. p. 407).

In the May 17, 2010 Incident Report of Deputy Aldridge, Deputy Aldridge describes Mr. Goss identifying the metal and Huffman as the suspect.

(R. p. 43).

In Goss’ deposition, he testifies as follows:

Q: You thought she was a suspect?

A: I had no way of knowing that she was not.

(R. pp. 688-689).

In Deputy Ethridge’s deposition, he testified as follows:

“[Goss and Rich] were guaranteeing that the metal that she brought in was the metal – Mr. Goss was saying this is 100 percent our metal from Aiken Electric and the ticket was showing the weights, everything, was -- everything was looking the same. And they had the ticket.”

(R. pp. 498-500; 590-591; 602-603).

2. It is not an incorrect statement that “Mr. Goss and Mr. Rich identified Appellant as the person who sold the stolen metal from Aiken Electric to Sunshine.” Again, the facts before this Court fully support this statement. The references to the record set forth in the paragraph above support factual statements. The deposition

testimony from the sheriff's deputies, the police records, and the deposition testimony of Mr. Goss and Mr. Rich fully support that they identified Huffman. Furthermore, Deputy Ethridge testified that Sunshine Recycling told him that Huffman was shown on the video with the stolen metal. (R. pp. 508-509).

3. Respondents claim the following factual statement by Huffman in her Brief is "yet another misstatement" as follows: "Mr. Goss told the deputies that he 'actually spoke and carried on a conversation with Huffman while she was 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].'" (Aiken Electric Brief p. 8). While Respondents boldly accuse Huffman of making "incorrect factual statements," they apparently did not comprehend the record. The very statement that Respondents claim, "yet another misstatement," was in fact cited *verbatim* from Deputy Ethridge's Offense Report. (R. pp. 405; 500-502; 590-591).

4. Respondents take issue with the sentence in Huffman's Brief that says "An employee of Aiken Electric, Charles Rushton, also told the Sheriff's Department that Mark had the identity of the woman who sold the wire, referring again to Huffman. (Aiken Electric Brief p. 8). Respondents claim "this is a misstatement. No reference is made to this in the record to support the statement." (Aiken Electric Brief p. 9). Again, this is not a misstatement and the substance of this statement is nearly identical to Deputy Huggins' interview note of May 18, 2010. (R. p. 438). Deputy Huggins' note states, "I talked to Mr. Rushton on 5/18/10. Mr. Ruston statement [sic] that Mark Goss spotted them while at Sunshine. They have the identity of the woman who sold it." This statement is also reflected on the final page of the Offense Report. (R. p. 407). Again, Respondents fail to appreciate the record.

5. Respondents claim that Huffman's statement in her Brief that "Deputy Aldridge testified that Sunshine Recycling and Aiken Electric express a great 'sense of urgency' to arrest Huffman" is a "mischaracterization of the record." (Aiken Electric Brief p. 9). There is nothing incorrect about this statement, either. This was Deputy Aldridge's actual testimony. In his deposition testimony, Deputy Aldridge was asked "Do you recall anything that you haven't told us that was said by Mr. Goss of Aiken Electric?" (R. p. 365). He answered, "*The one thing that does stick out in my head as far as my interaction with Mr. Goss was that he imposed a sense of urgency on the case.*" (Id. emphasis added; see also R. pp. 384-385; 388).

6. Respondents complain about Huffman stating in her Brief that all Sunshine Recycling and Aiken Electric had to do was to review the video surveillance to determine that she was innocent. (Aiken Electric Brief p. 9). Again, there is nothing incorrect about this statement. The video completely debunks any thought that Huffman was responsible for this crime. Mr. Goss admitted in his deposition that any reasonable person who watched the video would absolutely know that Huffman did not have the stolen metal. (R. pp. 676-680; 684; 686; 692; 693; 720). Mr. Goss testified that he was in possession of the video but chose not to review it. (Id.). Mr. Goss conceded that nothing prevented him from reviewing the video. (R. p. 684). Yet, the Respondents told the Sheriff's Department that Huffman was shown on the video with the stolen metal. (R. p. 508).

7. Respondents assert that Huffman's position that the Sheriff's Department secured a warrant "based upon accusations of Sunshine Recycling and Aiken Electric" is not supported by the evidence. (Aiken Electric Brief p. 9-10). Respondents

then argue that the Sheriff's Department had the responsibility to determine whether to seek a warrant. The Respondents miss the point. Of course the Sheriff's Department made this determination, but that determination was solely based on false information provided by Sunshine Recycling and Aiken Electric. Yet again, there is nothing incorrect about Huffman's factual statement. Deputy Ethridge unequivocally testified that he pressed charges based on "what [he] was told at Sunshine by Sunshine Recycling and what Mark Goss was giving me [as] information." (R. pp. 514-515). Deputy Ethridge testified that he believed what Sunshine Recycling and Aiken Electric told him, and relied on their assertions. (Id.) Mr. Goss of Aiken Electric also attempts to blame Sunshine Recycling for providing the false information to the Sheriff's Department. (R. pp. 672-674). Then, Mr. Goss was asked: "If you didn't tell Orangeburg County Sheriff's Department that Meredith Huffman was a suspect, the only other person would have been or entity would have been Sunshine Recycling, correct?" His answer, "Yes, sir." (R. p. 674). However, Sunshine Recycling attempts to place blame on Aiken Electric. Rich testified the Sheriff's Department arrested Huffman because "the weights that Mr. Goss provided [the Sheriff's Department] coincided with Huffman's ticket somewhat and that's how he did his investigation." (R. p. 858). But now after reviewing Huffman's ticket, it does not match what was stolen. (R. pp. 752; 738). Thus, the totality of the record fully supports a genuine issue of fact that Huffman's arrest was based upon accusations of Sunshine Recycling and Aiken Electric.

8. Finally, Respondents assert that Huffman "misstates the record" by stating that "Deputy 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.'" (Aiken Electric

Brief p. 10-11). This again lacks all merit. In fact, this statement is an exact quote from Deputy Ethridge's Offense Report that was made contemporaneously in June 2010. Instead of acknowledging the plain language of this statement in the record, Respondents try to impugn Huffman as "misstating the record." While the Respondents would like to rely on Deputy Ethridge's deposition to soften this statement after litigation is filed, this is an argument for the jury, not as to whether a genuine issue of material fact exists.

III. REPLY TO RESPONDENTS' FALSE ARREST ARGUMENTS.

Respondents argue that Huffman "has failed to produce any evidence" that they "deprived her liberty." (Aiken Electric Brief p. 12; Sunshine Brief p. 11). They contend that "no evidence" was produced that either Respondents physically restrained or constructively restrained her. These arguments simply lack merit, in part because the Respondents are misinterpreting the law. The well-established law of this state holds **"[t]he 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) (emphasis added). **"[W]here a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment."** *Id.*

The evidence is overwhelming, and in fact, uncontroverted that the arrest was based on information provided to the Sheriff's Department by the Respondents. Huffman's arrest was caused, instigated or procured by the Respondents, and at their request. Not only is there a "mere scintilla" of evidence to support this finding, but the totality of the evidence is overwhelming to this fact. This evidence is demonstrated

through the investigation reports, the depositions of Deputies Ethridge and Aldridge, and the admissions of Mr. Goss and Mr. Rich. (R. pp. 508-509). To this point, Deputy Ethridge was directly asked “The information that you based your decision to swear that warrant out was based on information that you’d received from Aiken Electric and Sunshine Recycling. Isn’t that correct?” Deputy Ethridge responded, “Correct.....I was going off what I was told at Sunshine by Sunshine Recycling and what Mark Goss was giving me[,] the information.” (R. pp. 514-515). The question of whether Huffman’s arrest was caused, instigated, requested or procured by the Respondents is a jury question, and further goes to the issue of causation. *See generally, Madison v. Babcock Ctr., Inc.*, 371 S.C. 147, 638 S.E.2d 650, 662 (2006) (“The question of proximate cause ordinarily is one of fact for the jury.”); *Burnett v. Family Kingdom*, 387 S.C. 183, 191, 691 S.E.2d 170, 175 (Ct. App. 2010) (“Only on the rarest occasion should the trial court determine the issue of proximate cause as a matter of law”).

Further, it remains for a fact finder to determine whether Sunshine was acting “honestly” or in “good faith” as the Respondents argue. The intentions and honesty of the witnesses is for a jury to weigh, not this Court on summary judgment. The intention of the Respondents is a question for a jury. A jury could easily find that Respondents acted overly hasty and without a sufficient good faith basis to accuse her. *See Law v. S.C. Dept. of2*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006) (defining “malice” under a false arrest case to mean a “mind which is not sufficiently cautious” acting with “a disregard of the consequences”). A fact finder may conclude that Respondents’ actions were “not sufficiently cautious” or that they acted in a manner without regard to the consequences. Even more, a jury could easily find that Respondents made actual false

statements to police and lied about the evidence for purposes of securing an arrest. The evidence supports the fact that Sunshine Recycling told the Sheriff's Department that Huffman was shown on the video with the stolen metal. (R. p. 508). However, Huffman discovered in this litigation that Sunshine Recycling never once reviewed the video. (R. pp. 849-850). Additionally, Mr. Goss had a copy of the video, but never viewed it. The Respondents falsely led the Sheriff's Department into believing that the video depicted her of being in possession of the stolen metal. Furthermore, Mr. Goss lied to the Sheriff's Department when he said that he personally spoke with Huffman while at Sunshine Recycling and she was physically carrying the stolen metal. Mr. Goss told the police that he actually spoke with Huffman while she was selling Aiken Electric's metal at Sunshine Recycling. (R. pp. 407; 500-502; 590-591). These statements obviously caused the Sheriff's Department to believe it had the correct suspect. When asked in his deposition, Mr. Goss testified that he did not speak with Huffman and never states that he saw her on the date in question. (R. p. 662). This significant discrepancy could lead a jury to conclude that Mr. Goss was providing false statements to the police in order to procure an arrest. At the very least, a "mere scintilla" of evidence existed for a jury to determine if arrest was caused, instigated, requested or procured by the Respondents.

As with the cause of action for malicious prosecution, the linchpin of this claim is the lack of probable cause. "An action for false imprisonment may not be maintained where the plaintiff was arrested by *lawful authority*." *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 615 (Ct. App. 1999) (emphasis added). The fundamental issue in determining 'lawful authority' turns on probable cause. *Wortman v. Spartanburg*, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (S.C. 1992); *Jones v. City of Columbia*, 301 S.C. 62, 389

S.E.2d 662 (S.C. 1990). “*The issue of probable cause is a question of fact and ordinarily one for the jury.*” *Id.* (emphasis added): In determining whether probable cause exists, 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).

Not only does the totality of the evidence suggest that probable cause did not exist to arrest Huffman, but the Respondents admit that probable cause was lacking. Goss was posed the direct question “Do you believe Meredith Huffman was falsely arrested?”, and he answered “Yes, sir.” (R. p. 691). Summary judgment should have been denied based on this admission alone. Then, Mr. Goss was asked “there was no probable cause to arrest Meredith Huffman for stealing Aiken Electric’s metal, was there?” (R. p. 716). He answered “no, sir, not that I know of...” (Id.) He also concedes that probable cause should have been based on the unsubstantiated statements attributed to the Hispanic male that worked at Sunshine Recycling. (Id.) Similarly, Mr. Rich testified “I don’t know” to the question of whether probable cause existed to arrest Huffman, and that he never received any information that would link Huffman to the crime. (R. pp. 855-857).

IV. THE STATUTE OF LIMITATIONS DOES NOT BAR THE CLAIM FOR FALSE ARREST AS TO AIKEN ELECTRIC.

Aiken Electric argues for the first time on appeal the statute of limitations bars the claim for false arrest as to it. The statute of limitations defense would not apply to Sunshine Recycling. This defense was not raised to the lower court and was not the substance of any dispositive motion. If the statute of limitations were to be properly raised to the trial court, Huffman would argue this defense has been waived or should be equitably tolled.

V. REPLY TO RESPONDENTS' MALICIOUS PROSECUTION ARGUMENTS.

The Respondents' arguments regarding the claim for malicious prosecution lack meaningful substance on appeal. Aiken Electric provides little analysis, other than to say "it is more than ludicrous to argue" that malice existed and that "Probable cause was established by the Hispanic employee who told Joe." (Aiken Electric Brief p. 17). "In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution." *See Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006). Malice is satisfied when evidence establishes that a person was "not sufficiently cautious" or acting with "a disregard of the consequences." Aiken Electric was not acting sufficiently cautious when it accused Huffman of a crime when the physical evidence, including a video, did not support her involvement. Aiken Electric was not acting sufficiently cautious or was acting with a disregard of the consequences when Mr. Goss told the Sheriff's Department that he actually saw Huffman carrying the stolen metal, and spoke with her. This false statement was designed to give the police the assurance that Huffman was the correct perpetrator of the crime. Further, Goss claimed that the type and weight of the metal stolen "coincided with Huffman's ticket", but, in fact, there was no correlation between the two. (R. p. 848). Finally, the Respondents represented to the Sheriff's Department that the video showed Huffman as the criminal.

At any rate, it is error for Aiken Electric to argue that probable cause is established as a matter of law "by the Hispanic employee who told Joe." (Aiken Electric Brief p. 17). This statement was not used in the arrest warrant to establish probable cause. The statement that is attributed to this unknown Sunshine Recycling Hispanic

employee hardly satisfies probable cause. The lack of meaningful support for relying on the Hispanic employee is reinforced by the fact that no one knows his name and he never gave a written statement. Again, to allow probable cause to be based on triple hearsay from an “unknown Hispanic employee” renders the probable cause standard meaningless. Mr. Rich even admits that probable cause should not be based on hearsay from his Hispanic employee. (R. pp. 691; 716; 855-857). To borrow the words of Aiken Electric, “it is more than ludicrous to argue” that probable cause exists as a matter of law to justify for *anyone’s* arrest simply because *someone accuses you* of committing a crime.

Sunshine Recycling, on the other hand, ignores South Carolina law in analyzing probable cause and malice, instead devoting its argument to the law of foreign jurisdiction. Sunshine Recycling cites to cases that interpret laws of Virginia, Minnesota, Texas, and Pennsylvania. Respectfully, this court does not need to look any further than South Carolina’s established law to determine if a genuine issue of fact exists for malicious prosecution. Since malice can be inferred from a lack of probable cause, the threshold question is whether probable cause existed. Mr. Goss and Mr. Rich admit that probable cause was lacking for Huffman’s arrest. (R. pp. 691; 716; 855-857). Also, the fact that no physical evidence existed to link Huffman further shows that probable cause was missing. The lack of probable cause also creates a jury question as to malice. “In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.” *See Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006). Additionally, malice is satisfied when evidence establishes that a person was “not sufficiently cautious” or acting with “a disregard of the consequences.” The fact that Respondents accused Huffman of committing this crime when the video and

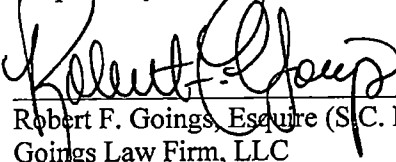
physical evidence completely shows otherwise creates a disputed fact as to malice. A jury could find that Respondents were not "cautious" or were operating with "a disregard of the consequences."

CONCLUSION

In viewing the facts and inferences in the light most favorable to Huffman, this Court should find that a "mere scintilla" of evidence exists as to the causes of action for False Arrest and Malicious Prosecution. Accordingly, the Order of the Circuit Court should be reversed for a trial on the merits.

Respectfully submitted,

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February 9, 2015

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,

v.

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

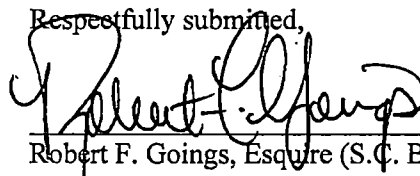
CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Reply Brief complies with Rule 211(b), SCACR and the August 13, 2007 Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."

[SIGNATURE PAGE TO FOLLOW]

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PROOF OF SERVICE

I certify that I have served Appellant's Final Reply Brief by having a copy of the same hand-delivered, on February 10, 2015, to the following:

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February 10, 2015
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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Meredith Huffman, Appellant,

v.

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

Appellate Case No. 2014-001492

Appeal From Orangeburg County
Maité Murphy, Circuit Court Judge

Opinion No. 5417
Heard May 4, 2016 – Filed June 22, 2016

REVERSED AND REMANDED

J. Todd Rutherford, of The Rutherford Law Firm, LLC,
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Gallivan, White & Boyd, P.A., of Columbia, for
Respondent Sunshine Recycling, LLC.

Pope D. Johnson, III, of Columbia, for Respondent Aiken
Electric Cooperative, Inc.

GEATHERS, J.: In this action for false imprisonment and malicious prosecution, Appellant Meredith Huffman seeks review of the circuit court's order granting summary judgment to Respondents, Sunshine Recycling, LLC (Sunshine) and

Aiken Electric Cooperative, Inc. (Aiken) (collectively, Respondents). Huffman argues there were genuine issues of material fact concerning whether Respondents caused, instigated, or procured her arrest and the extent of Respondents' participation in law enforcement's charging Huffman with receiving stolen goods. We reverse and remand for a trial on the merits of Huffman's false imprisonment and malicious prosecution claims.¹

FACTS/PROCEDURAL HISTORY

On May 16, 2010, an unidentified black male broke into Aiken's Orangeburg facility. Shortly thereafter, a white Ford F-150 truck was seen leaving the facility's parking lot. The next day, Mark Goss, Aiken's Loss Control and Safety Coordinator, viewed the surveillance video and advised Deputy Maurice Huggins of the Orangeburg County Sheriff's Department that several pounds of solid copper and several pounds of aluminum tie wire had been stolen from Aiken. At that time, Goss estimated the value of the stolen metal to be approximately \$330.

On that same day, Goss also checked with Sunshine, a metal recycling business, to see if anyone had tried to sell the stolen metal to Sunshine. Goss discovered the stolen metal at Sunshine and spoke with Sunshine's owner, Joseph Rich. Goss told Rich he was looking for a black male in a white Ford pickup truck.

Officer Ashley Aldridge of the Orangeburg County Sheriff's Department also appeared at Sunshine to investigate the theft. Rich, who claimed to speak Spanish, spoke to an unnamed Spanish-speaking employee working in the metal drop-off area but failed to mention that Goss was looking for a black male in a white Ford pickup truck. Rich's employee allegedly told Rich that a white woman was the first person to drop off metal that morning. Although the individual who stole the metal from Aiken was a black male, Goss testified in his deposition that in the metal industry, "it's not uncommon for girlfriends and wives to bring metal in and drop them off. It happens all the time."

¹ We decline to address Aiken's additional sustaining ground. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("It is within the appellate court's discretion whether to address any additional sustaining grounds." (footnote omitted)); *id.* at 421, 526 S.E.2d at 724 ("[T]he respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." (footnote omitted)).

Rich told Officer Aldridge and Goss they were welcome to view the receipts documenting the amount paid to customers who had sold metal to Sunshine and the time-stamped video footage of customers waiting at the payment window. Officer Aldridge viewed this video and saw Huffman waiting for her payment. Officer Aldridge also obtained a receipt for the metal sold by Huffman, which indicated a payment of \$53 to her.

Subsequently, Goss spoke with Officer James Ethridge of the Orangeburg County Sheriff's Department and told Officer Ethridge that he had spoken with Huffman while she was waiting to get paid for "the items that she had just brought in."² Goss also told Officer Ethridge that "he viewed the items after she left and identified them as" belonging to Aiken. Actually, when Goss identified the metal left in Sunshine's drop-off area as the metal stolen from Aiken, he was viewing what had been commingled with the metal left by Huffman. Goss recognized that some of the copper and aluminum in the area had characteristics distinguishable from those of the copper and aluminum stolen from Aiken. Goss admitted in his deposition, "it was all right there in like a big pile kind of, and I don't remember if it was on top of each other or what. It was all right there in one section." When Rich advised Goss that Huffman left the stolen metal, Goss apparently did not mention the distinction he had made between the different types of copper and aluminum in the area. Further, Rich's employee apparently did not tell Rich that a black male in a white Ford pickup truck dropped off metal immediately after Huffman dropped off her metal.

On the next day, May 18, 2010, Officer Ethridge visited Sunshine to photograph the metal identified as stolen. While he was there, he also spoke with Rich, who stated he had not yet obtained a copy of the video showing customers dropping off their metal but he would contact Palmetto Security Cameras to request Alan Price to "burn" a copy of the video for Officer Ethridge. During the next three days, Goss called Officer Ethridge several times, asking him what he was going to do with the case. During this same time period, Officer Ethridge called Rich several times, asking when he could obtain the video of customers dropping off metal.

While still waiting on this video, Officer Ethridge contacted a local magistrate on May 21, 2010, to obtain a warrant for Huffman's arrest for receiving stolen goods.³

² In his deposition, Goss denied ever speaking with Huffman.

³ This offense is considered a "misdemeanor triable in magistrate[']s court or municipal court . . . if the value of the property is two thousand dollars or less." S.C. Code Ann. § 16-13-180 (C)(1) (2015).

After Huffman learned about the warrant, she advised Officer Ethridge that she sold metal to Sunshine but it was not stolen; rather, it was salvaged from a mobile home belonging to her and her husband after they tore down the home. Officer Ethridge instructed Huffman to meet him at the Sheriff's Department at 9:00 a.m. the next morning, June 2, 2010. At that time, Huffman gave a statement to Officer Ethridge, and he formally served Huffman with the arrest warrant. Officer Ethridge then placed Huffman in handcuffs, and she was required to change into a prison jumpsuit and wait for the next bond hearing. She was unable to telephone her home to check on her children, who were not being supervised by an adult, and she was required to appear at the bond hearing handcuffed and shackled. Huffman obtained a personal recognizance bond, and she was finally released at approximately 5:00 p.m.

After Huffman's arrest and release, Officer Ethridge finally was able to view the video of Huffman dropping off her metal at Sunshine. Goss viewed this video around the same time that Officer Ethridge viewed it, although Goss had actually received the video **before** Huffman was arrested. Rich never viewed the video.

In his report, Officer Ethridge stated that he watched "the video of where [Huffman] took the items off of her truck and she did have some copper that resembles what was taken in the back of her truck, but the aluminum was sheeting[,] not wire." He further stated he advised Rich "that after viewing the video, it does not show her with the same items that w[ere] taken. Due to these facts[,] there is not enough evidence to support this case. I will be dismissing these charges on Huffman." Notably, the video also showed that the customer following Huffman was the black male Goss had seen on Aiken's surveillance video, Eugene James, unloading metal from the white Ford pickup truck he was driving.

Near the end of his report, Officer Ethridge noted, "At this time[,] I am not comfortable with this case due to the witnesses gave [sic] me false information the first time." After Officer Ethridge dropped the charge of receiving stolen goods against Huffman, the Sheriff's Department finally located James. James ultimately pled guilty to the charges brought against him.

On May 9, 2012, Huffman filed a complaint against the Sheriff's Department and Sunshine, asserting claims for negligence, false imprisonment, and malicious prosecution. In May 2013, Huffman amended her complaint to add Aiken as a defendant. On or about June 27, 2013, Aiken filed a motion to dismiss Huffman's complaint against it. Huffman later settled her claims against the Sheriff's Department, and the two parties filed a stipulation dismissing the Sheriff's

Department from the action on or about December 18, 2014. Several weeks later, Sunshine filed a motion for summary judgment, and the circuit court conducted a hearing on this motion as well as Aiken's motion to dismiss on March 10, 2014. Upon Aiken's request, the circuit court converted Aiken's motion to dismiss into a summary judgment motion.

On or about April 3, 2014, the circuit court granted Respondents' summary judgment motions. The circuit court later denied Huffman's motion to alter or amend the written order granting summary judgment. This appeal followed.

ISSUES ON APPEAL

1. Were there issues of fact material to whether Huffman's arrest was lawful?
2. Were there issues of fact material to whether Respondents caused, instigated, or procured Huffman's arrest?
3. Were there issues of fact material to whether there was probable cause to charge Huffman with receiving stolen goods?
4. Were there issues of fact material to Respondents' participation in local law enforcement's charging Huffman with receiving stolen goods?

STANDARD OF REVIEW

This court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009). Rule 56(c), SCRPC, provides summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009); *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

Further, "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Id.*

Moreover, "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*, 381 S.C. at 330, 673 S.E.2d at 803. "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). "[B]ecause summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues." *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014).

LAW/ANALYSIS

I. False Imprisonment

Huffman contends the circuit court erred in granting summary judgment to Respondents on her false imprisonment claim because there were genuine factual issues material to the unlawfulness of her arrest and the complicity of both Sunshine and Aiken in the arrest. We agree.

A. Probable Cause

The essence of the tort of false imprisonment consists of depriving a person of his liberty *without lawful justification*. To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.

The fundamental issue in determining the lawfulness of an arrest is *whether there was probable cause to make the arrest*. Probable cause is defined as a good faith

belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. *Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.*

McBride v. Sch. Dist. of Greenville Cty., 389 S.C. 546, 567, 698 S.E.2d 845, 856 (Ct. App. 2010) (emphases added) (quoting *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440-41, 629 S.E.2d 642, 651 (2006)).

Here, it is undisputed that Officer Eldridge intended to restrain Huffman's liberty when he arrested her. Therefore, we need only consider whether there was a scintilla of evidence, viewed in the light most favorable to Huffman, **from which a juror could reasonably conclude** that the restraint was unlawful, i.e., made without probable cause. *See Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."). In other words, to send this false imprisonment claim to the jury, the court need only find a scintilla of evidence, viewed in the light most favorable to Huffman, from which a juror could reasonably conclude that Officer Ethridge's belief in Huffman's guilt did **not** rest "on such grounds as would induce an ordinarily *prudent and cautious* man, under the circumstances, to believe likewise." *McBride*, 389 S.C. at 567, 698 S.E.2d at 856 (emphasis added) (defining probable cause) (quoting *Law*, 368 S.C. at 441, 629 S.E.2d at 651)). As we engage in such an analysis, we must "review all *ambiguities*, conclusions, and inferences arising in and from the evidence in a light most favorable to [Huffman]." *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 (emphasis added).

Officer Ethridge relied on the following information in forming his belief in Huffman's guilt: (1) Officer Aldridge's report indicating Rich and Goss told him Huffman brought Aiken's stolen metal into Sunshine's facility; (2) Rich's oral statement to Officer Ethridge that "his employees [who] work in the copper area advised that Huffman was the individual who brought the merchandise in"; (3) a video of Huffman waiting at the payment window in the main office to get paid for the metal she brought in and her presentation of her driver's license to complete the transaction; (4) Goss's oral statement that he spoke to Huffman while she was at Sunshine's main office "waiting to get paid for the items that she had just brought in" and that Goss "viewed the items after she left and identified them as being

theirs," i.e., the metal stolen from Aiken; and (5) the ticket/receipt showing Sunshine's payment of \$53 to Huffman for the aluminum and copper she left at Sunshine.

As to the statements made by Rich and Goss to Officers Aldridge and Ethridge, Officer Ethridge knew this information was based on Rich's allegations that (1) an unidentified Spanish-speaking employee stated a "white woman" brought in metal resembling the metal Goss identified as stolen from Aiken and (2) Rich spoke and understood Spanish.⁴ Neither the employee nor Rich provided a written statement to police. In a light most favorable to Huffman, this evidence indicates an unreliable ground on which to rest a belief in Huffman's guilt.

Further, the receipt for \$53 stands in stark contrast to the \$330 estimate of the value of the stolen metal. A juror could reasonably conclude that this anomaly would prevent an ordinarily prudent and cautious man from believing Huffman sold the metal stolen from Aiken. *See Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below."). A juror could also reasonably conclude that an ordinarily prudent and cautious man would have waited to view the video showing Huffman dropping off her metal, which Rich promised was forthcoming, before seeking an arrest warrant.

Probable cause may be decided as *a matter of law* only "when the evidence yields but one conclusion." *McBride*, 389 S.C. at 567, 698 S.E.2d at 856 (quoting *Law*, 368 S.C. at 436, 629 S.E.2d at 649). This is not a case where the sole conclusion to be reached is that there was probable cause to arrest Huffman. The question should have gone to the jury.

B. Respondents' Complicity

⁴ Officer Ethridge's report states that Officer Aldridge observed "the business video surveillance and observed Huffman bringing the merchandise in and selling it to Sunshine." However, the video Officer Aldridge observed merely showed Huffman waiting at the payment window; it does not show Huffman dropping off her metal in the back area of Sunshine's facility.

[W]here a private person induces an officer by *request, direction or command* to unlawfully arrest another, he is liable for false imprisonment. 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) (emphases added). On the other hand,

Where a person merely directs the attention of a police officer to what he supposes to be a breach of the peace, or gives to such officer facts indicating such, and the officer, without other direction, arrests the offender on his own responsibility, the person who did nothing more than communicate the facts to the officer is not liable for causing the arrest, even though it is made without a warrant. Where a person has information or knowledge that the law has been violated, he not only has a right, but frequently it is his duty, to communicate such information or facts to the proper officer so as to give such officer the opportunity, if in his judgment it is proper to do so, to take whatever steps may be necessary to apprehend the offender. . . . "Those who honestly seek the enforcement of the law . . . and who are *supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty* of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages."

Id. at 527-28, 30 S.E.2d at 310-311 (second alteration by *Burton v. McNeill*, 196 S.C. 250, 253, 13 S.E.2d 10, 11 (1941)) (emphasis added) (citations omitted) (quoting *Burton*, 196 S.C. at 253-54, 13 S.E.2d at 11).

1. Aiken

The following information was available to Goss prior to Huffman's arrest: (1) Rich's oral statement about what his Spanish-speaking employee told him, i.e., a

white woman was the first person to drop off metal on the morning in question; (2) the metal Goss identified as being stolen was actually commingled with Huffman's metal, a fact Goss apparently did not share with anyone before Huffman's arrest; (3) the video of Huffman and James dropping off metal at Sunshine, although Goss failed to view the video until after Huffman's arrest; and (4) the \$53 receipt for Huffman's metal, although Goss did not ask Rich to show him the receipt until after Huffman's arrest. A reasonable juror could conclude that Goss was not "supported by circumstances sufficiently strong to warrant a cautious man in the belief that [Huffman was] guilty of the offense charged." *Wingate*, 204 S.C. at 528, 30 S.E.2d at 310-311 ("Those who honestly seek the enforcement of the law . . . and who are supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages." (alteration by *Burton*) (quoting *Burton*, 196 S.C. at 253-54, 13 S.E.2d at 11)).

Further, Huffman points to the following evidence showing that Goss, as Aiken's agent, induced her arrest: (1) Officer Ethridge stated in his report that Goss called him "several times about moving further with the case" and (2) Officer Aldridge testified that Goss indicated "a sense of urgency" in obtaining a resolution to the case and that he was "eager to see that the [S]heriff's [D]epartment arrest someone for this alleged crime." Officer Aldridge was not certain whether Goss expressed this sense of urgency in May 2010, before Huffman's arrest, or in June 2010, before the Sheriff's Department located James. Aldridge later testified that his "urgency" comment could have referred to arresting either Huffman or James. Officer Aldridge elaborated,

A And [Goss] told me that he would like to see something done. You said earlier that it's not uncommon for someone to want to see something done, especially within his line of work.

Now, that being said, he also expressed to me that he was a reserve deputy sheriff and he expected something to be done.

Moreover, Officer Ethridge testified,

I didn't have the video at that point in time so [Goss] wanted to know what I was going to do. Was I going to

try and arrest her, lock her up, you know, speak with a magistrate, what to do. On the 21st, that's what I did is [sic] I went and spoke with a magistrate.

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

...

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

...

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

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

...

-- going to arrest her, yeah.

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

This evidence belies Aiken's contentions that Goss was merely providing "factual information" to the Sheriff's Department. A juror could reasonably conclude from the foregoing evidence that Goss induced Officer Ethridge "by request, direction or command to unlawfully arrest" Huffman or "cause[d], instigate[d] or procure[d]" the arrest. *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 ("[W]here a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment. 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."); *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be

granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

2. Sunshine

Officer Ethridge testified that when he visited Sunshine, "[t]hey were guaranteeing that the metal that [Huffman] brought in was the metal -- [Goss] was saying this is 100 percent our metal from [Aiken] and the [receipt] was showing the weights, everything, was -- was co- -- everything was looking the same." (emphasis added). It is unclear whether "they" referred to Rich, as Sunshine's agent, or Goss, as Aiken's agent, or both. Therefore, a jury could reasonably infer that either or both men made this representation.

Further, Rich admitted he did not bother to ask his Spanish-speaking employee to identify the second or third person who had dropped off metal on the morning in question. He stated, "That's what the cameras are for." Yet, Rich never bothered to view the video himself despite the fact that he could have obtained a copy of the video before Huffman's arrest.⁵

Moreover, in explaining why he did not view the video of Huffman dropping off her metal before arresting Huffman, Officer Ethridge indicated that he called Alan Price, with Palmetto Security Cameras, several times. The following exchange then occurred:

Q So either -- you didn't personally see the video or watch the video at Sunshine. You were told by Sunshine that it showed [Huffman] --

A Correct.

Q -- with the -

...

⁵ Goss was able to obtain a copy of the video before Huffman's arrest. Therefore, presumably, Rich was able to do so as well.

[A] She -- yes, yes.

A juror could reasonably infer from this testimony that Rich, who never bothered to view the video himself, represented to Officer Ethridge that the video would show Huffman dropping off the \$330 worth of metal stolen from Aiken. Based on the foregoing circumstances, a reasonable juror could conclude that Rich's representation to Officer Ethridge was not "supported by circumstances sufficiently strong to warrant a cautious man in the belief that [Huffman was] guilty of the offense charged." *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 (quoting *Burton*, 196 S.C. at 253-54, 13 S.E.2d at 11). A reasonable juror could also conclude that Rich "cause[d], instigate[d] or procure[d]" Huffman's arrest. *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311.

In sum, Huffman showed, at the very least, a scintilla of evidence that both Goss and Rich induced Officer Ethridge "by request, direction or command to unlawfully arrest" Huffman or "cause[d], instigate[d] or procure[d]" the arrest. *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311. Therefore, we reverse summary judgment for Respondents on Huffman's false imprisonment claim. See *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n 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."); *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

II. Malicious Prosecution

Huffman maintains the circuit court erred in granting summary judgment to Respondents on her malicious prosecution claim because there were genuine factual issues material to probable cause as well as the complicity of both Sunshine and Aiken in proceeding with the charge of receiving stolen goods against her. We agree.

"[T]he elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."

McBride, 389 S.C. at 565-66, 698 S.E.2d at 855. "In this cause of action, malice is 'the deliberate intentional doing of a wrongful act without just cause or excuse.'" *Id.* (quoting *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982)). "Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition" *Law*, 368 S.C. at 437, 629 S.E.2d at 649.

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.

Id. (emphases added). It is the plaintiff's burden "to show that the prosecuting person or entity lacked probable cause to pursue a criminal or civil action against him." *Id.* at 436, 629 S.E.2d at 649.

Probable cause means "the extent of such facts and circumstances as would excite the belief in a *reasonable mind* acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or *should have been known* to the prosecutor at the time he instituted the prosecution should be considered." In determining the existence of probable cause, the facts must be "regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be." . . . Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.

Id. (emphases added) (citations omitted).⁶

In the light most favorable to Huffman, there is at least a scintilla of evidence, as highlighted in our discussion of the false imprisonment claim, from which a juror could reasonably conclude (1) Officer Ethridge lacked probable cause to pursue a warrant for Huffman's arrest and (2) this pursuit was "at the instance of" both Respondents. *See supra*; *Law*, 368 S.C. at 437, 629 S.E.2d at 649 ("In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution."); *McBride*, 389 S.C. at 565-66, 698 S.E.2d at 855 (setting forth the elements of a malicious prosecution claim); *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n 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."); *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

Based on the foregoing, we reverse summary judgment for Respondents on Huffman's malicious prosecution claim.

CONCLUSION

When we view all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to Huffman, as we are required to do,⁷ we find at least a scintilla of evidence from which a juror could reasonably conclude that Officer Ethridge's pursuit of a warrant for Huffman's arrest and her subsequent

⁶ Notably, the plaintiffs in *Law* were indicted by a grand jury for the offenses for which they were arrested, and our supreme court noted, "South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution." *Id.* However, the offense for which Huffman was arrested, receiving stolen goods, is a misdemeanor triable in magistrate's or municipal court. *See supra* n.2. Charges prosecuted in magistrate's court are exempt from the requirement that an indictment be presented to a grand jury before a criminal charge is prosecuted. S.C. Const. art. I, § 11; S.C. Code Ann. § 17-19-10 (2014).

⁷ *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333.

arrest were made without probable cause and that Goss and Rich set these actions in motion. Because this evidence should have gone to the jury, we reverse the circuit court's order and remand for a trial on the merits of Huffman's false imprisonment and malicious prosecution claims.

REVERSED AND REMANDED.

HUFF and KONDUROS, JJ., concur.

80128

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

Meredith Huffman Appellant

vs.

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

AIKEN ELECTRIC COOPERATIVE, INC'S PETITION
FOR REHEARING AND REHEARING *EN BANC*

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S. Court of Appeals

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Respondent Aiken Electric Cooperative, Inc. hereby files this petition for rehearing and rehearing *en banc*. Respondent respectfully submits that rehearing or issuance of a new opinion affirming the circuit court judge's decision is warranted. The grounds for this petition are that the Panel's opinion in this matter overlooked or misapprehended several matters of fact and law. This matter is of exceptional importance as it involves the South Carolina Constitution and the statute enacted pursuant thereto.

In Opinion No. 5417 filed June 22, 2016, a Panel of this Court reversed the circuit court judge's order granting the Respondent's motion for summary judgment. The Panel overlooked or misapprehended several matters of law and fact in rendering the opinion. First, the Panel ignored and did not mention Article 1, Section 24. Second, the Panel overlooked, ignored and did not mention S.C. Code Ann. Section 16-3-1505 et seq. Third, the Panel improperly concluded that there was genuine issue of material fact which precluded summary judgment. Respondent's final brief is incorporated as herein by reference. As a result, this court should grant rehearing or rehearing *en banc* in this matter and upon rehearing, affirm the Trial Judge's grant of summary judgment.

MEMORANDUM IN SUPPORT OF PETITION

Respondent hereby petitions the Court for rehearing *en banc* or rehearing upon the following grounds:

1. The panel of the Court of Appeals overlooked and failed to address and consider whether Meredith Huffman's ("Huffman") claims against Aiken Electric Cooperative, Inc. were barred by the plain language of Article 1, Section 24, Victims Bill of Rights under the South Carolina Constitution and S.C. Code Ann. Section 16-3-1505 et seq.

The Circuit Court Judge, in ruling on the negligence claim, ruled:

'In addition, imposition of such a duty of care would be inconsistent to the rights and duties of a crime victim and a witness to a crime under S.C. Code Ann. Section 16-3-1505 *et seq.* Section 16-3-1505 states that the crime victims and witnesses to a crime have a civic and moral duty to cooperate fully and voluntarily with law enforcement. Nothing in the Act suggests that a victim cannot press law enforcement to proceed with an arrest. Law enforcement, not the crime victim and witnesses to a crime, has the duty to investigate a crime and to decide whether and when to seek a warrant."

There was no appeal of the Circuit Court Judge's granting of summary judgment on the negligence claim. Thus, the ruling is the law of the case.

2. Respondent made the following argument in its brief:

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

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

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

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

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

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

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

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SC Court of Appeals

The General Assembly, pursuant to Article I, Section 24, enacted statutes guaranteeing crime victim's certain rights.

5. S.C. Code Ann. Section 16-3-1505 provides as follows:

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

6. The Panel overlooked and did not mention these constitutional and statutory provisions in reversing the circuit court judge.
7. The Panel concluded that since the Respondent contacted law enforcement several times about "moving further with the case", this presented a question of fact as to whether Respondent was legally responsible for law enforcement's decision to arrest the Appellant. However, Article I, Section 24(7) grants a crime victim the right to confer with law enforcement and to confer about a reasonable disposition of the criminal case.

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

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

Article 1, Section 24(6) provides:

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

The Panel's decision, which ignored the constitution and statutory provisions, waters the rights guaranteed to victims of crime by the Constitution and statutes regarding victims of crime.

8. The decision of the Panel is based upon inadmissible evidence. The decision is based upon opinion testimony from Officer Aldridge that Goss, in communicating with law enforcement, "had a sense of urgency". This is opinion testimony by a lay witness which is inadmissible. Rule 701, SCRE.
9. The Panel also improperly relied on testimony of Officer Aldridge since there is no evidence that Officer Aldridge was communicated his opinions to Officer Etheridge who made the decision to arrest.
10. The only other evidence relied upon by the Panel was from Officer Ethridge who testified:

"Moreover, Officer Ethridge testified,

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

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

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

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

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

...

Going to arrest her, yeah.

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

However, Goss had constitutional and statutory rights to have the communications.

CONCLUSION

A three judge panel of the Court of Appeals should not be allowed to erode and water down rights guaranteed by the South Carolina Constitution and by statute by failing to address them. In ruling on motion for summary judgment, only evidence that would be admissible can be considered. Rule 50(e), SCRPC. If the constitutional and statutory provisions are to have meaning, Gross' communication to Officer Ethridge must be deemed protected. Rehearing or rehearing en banc should be ordered and the order of the circuit court judge should be affirmed.



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

Columbia, South Carolina
July 5, 2016

RECEIVED

JUL 05 2016

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

Meredith Huffman, ...Appellant

vs.

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

PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Robert F. Goings, attorney for Appellant, and Breon C. M. Walker, attorney for Respondent Sunshine Recycling, LLC, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses this 5th day of July, 2016.

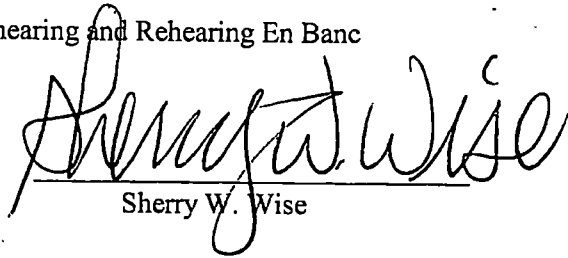
COUNSEL SERVED:

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Breon C. M. Walker, Esquire
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PLEADINGS:

Aiken Electric Cooperative, Inc's Petition for Rehearing and Rehearing En Banc


Sherry W. Wise

RECEIVED

JUL 05 2016

SC Court of Appeals

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July 5, 2016

(Via Hand Delivery)

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JUL 05 2016

SC Court of Appeals

Re: Meredith Huffman v. Sunshine Recycling, LLC and Aiken Electric
Cooperative, Inc.
Appellate Case No. 2014-001492

Dear Ms. Kitchings:

Enclosed herewith are the original and seven (7) copies of Aiken Electric Cooperative, Inc.'s Petition for Rehearing and Rehearing En Banc. Also enclosed is a check in the amount of \$25.00 for the filing fee. Please file the original and clock and return the additional copy to me.

With a copy of this letter to Robert F. Goings, attorney for the Appellant, and Breon C. M. Walker, attorney for Respondent Sunshine Recycling, LLC, I am serving a copy of the Petition for Rehearing upon them.

Sincerely,


Pope D. Johnson, III

PDJIII/sww
Enclosures

cc: Robert F. Goings, Esquire
Breon C. M. Walker, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

RECEIVED
JUL 07 2016
SC Court of Appeals

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman, ...Appellant

v.

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

RESPONDENT SUNSHINE RECYCLING, LLC'S PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENT
SUNSHINE RECYCLING, LLC

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent Sunshine Recycling, LLC (“Sunshine”) hereby petitions for the Court for rehearing. The opinion of the Court (Opinion No. 5417) was filed June 22, 2016. The opinion reversed the grant of summary judgment in favor of Sunshine on the causes of action of false imprisonment and malicious prosecution. Sunshine petitions this Court for rehearing.¹

I. INTRODUCTION

The Court’s decision, in an unprecedented manner, reverses the proper grant of summary judgment in favor of Sunshine, a mere cooperating witness to a criminal investigation, on the causes of action of false imprisonment and malicious prosecution. The decision not only penalizes a witness who cooperates with law enforcement, it also imposes a heretofore non-existent duty on a witness, to review evidence and fact-check information, duties traditionally placed on law enforcement, before speaking with and cooperating with police. Moreover, the court permits the causes of action of false imprisonment and malicious prosecution to lie against mere witnesses. Furthermore, the Court misconstrued the facts in the record and misapplied the law to Sunshine, and failed to recognize the distinction between Sunshine and Aiken, in this malicious prosecution and false imprisonment litigation.

Rehearing is warranted on multiple grounds. As detailed below, the Court’s opinion misapprehends facts, law, and arguments critical to its determination. Sunshine therefore respectfully requests that the Court grant its petition for rehearing.

II. STANDARD OF REVIEW

¹ In addition to the arguments and facts contained herein, Sunshine incorporates the arguments and facts contained in its Final Brief.

The purpose of a petition for rehearing “is to aid the court in deciding correctly a case heard by it.” Arnold v. Carolina Power & Light Co., 168 S.C. 163, 172, 167 S.E. 234, 238 (1933). Where, as here, the existing record does not support the decision, a petition for rehearing is appropriate. See, e.g., Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., 409 S.C. 487, 492 n.4, 763 S.E.2d 19, 21 n.4 (2014) (“If, based on the current record, we have misapprehended the scope of PCS’s indemnification claim against Ross, we invite a rehearing petition. . . .”); Arnold, 168 S.C. at 172, 167 S.E. at 238 (court is “bound by the transcript of record as to the facts of the cause.”). See Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument.”); Rule 221(a), SCACR (petition shall state the points “supposed to have been overlooked or misapprehended”). These standards are met here.

III. ARGUMENT

A. The Court’s Opinion Imposes an Unprecedented Duty on Witnesses of Criminal Investigations.

First, the Court’s opinion imposes a duty on witnesses in criminal investigations which as heretofore never been recognized by this State. The Court’s analysis essentially imposes a duty on a witness to independently investigate potential evidence prior to providing the same to law enforcement, the entity charged with the duty of investigating criminal activity. In holding that a juror could reasonably conclude that Sunshine, via Joe Rich, “cause[d], instigate[d] or procure[d]” or “induce[d]” the arresting officer by “request, direction or command,” Huffman’s arrest, the Court stated:

Further, Rich admitted he did not bother to ask his Spanish-speaking employee to identify the second or third person who had dropped off metal on the morning in questions. He stated, ‘That’s what the cameras are for.’

Yet, Rich never bothered to view the video himself despite the fact that he could have obtained a copy of the video before Huffman's arrest.

Moreover, in explaining why he did not view the video of Huffman dropping off her metal before arresting Huffman, Officer Ethridge indicated that he called Alan Price, with Palmetto Security Cameras, several times. The following exchange then occurred:

So either – you didn't personally see the video or watch the video at Sunshine. You were told by Sunshine that it showed [Huffman] –

Correct.

--With the –

She – yes, yes.

A juror could reasonably infer from this testimony that Rich, who never bothered to view the video himself, represented to Officer Ethridge that the video would show Huffman dropping off the \$330 worth of metal stolen from Aiken. Based on the foregoing circumstances, a reasonable juror could conclude that Rich's representation to Officer Ethridge was not 'supported by circumstances sufficiently strong to warrant a cautious man in the belief that [Huffman was] guilty of the offense charged.'

(Op. pp. 13-14).

First, the Court relies on Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) in reversing summary judgment. However, Wingate involved an agent of the *victim* who demanded an arrest from an incident the night before. The facts of the case are distinguishable from those involving Sunshine, a mere witness and/or scene of a crime. As such, the law cited in Wingate is inapplicable to the case *sub judice*, as Sunshine, as a matter of law, did not and could not cause, instigate or procure Huffman's arrest.

Moreover, beyond the distinction of Wingate, the opinion imposes a duty on witnesses to investigate and analyze evidence in the same manner law enforcement is obligated to, and essentially relieves law enforcement of any obligation to conduct a criminal investigation. This opinion essentially absolves law enforcement of its most

important duty.² With its opinion, the Court essentially mandates that witnesses act as amateur detectives, and that should they fail to do so, mistaken information relayed to the police can lead to civil liability. This is not the law of South Carolina and other states have categorically refuted such a standard on public policy grounds. See also, e.g., Davis v. Equibank, 603 A.2d 637, 641 (Pa. 1992) (“We further recognize that the potential of civil liability for the provision of mistaken information to law enforcement agents would have a chilling effect on citizen cooperation and the provision of valuable information by citizens to police.”); Reaves v. Westinghouse Electric Corp., 683 F. Supp. 521, 523 (D.Md.1988) (“The tort of false arrest is predicated upon *knowing* misconduct Negligence or other mistake in providing incorrect information to lawful authorities does not give rise to liability.”). See Ramsden v. Western Union, 138 Cal.Rptr. 426, 431 (Ct. App. 1977) (no cause of action for negligently reporting a crime to the police); Campbell v. City of San Antonio, 43 F.3d 973, 981 (5th Cir.1995), overruled in part on other grounds by Swierkiewicz v. Sorema, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (1989) (“To hold ... that [defendant's] negligent misidentification of [plaintiff] is actionable would in substance convert the Texas tort of *malicious* prosecution into one of *negligent* prosecution. This we decline to do.”) (emphasis in original)).³

² Certainly, information provided by victims and witnesses is part of a criminal investigation. But law enforcement cannot rely solely on such information, fail to do any independent investigation, and then point the finger at the cooperating witnesses who provide information. Here, should this opinion stand, Sunshine, as a mere witness, is now being subject to civil liability the officers failed to perform their job properly—this is wholly at odds with the public policy behind witness cooperation and the factual circumstances in the case at bar.

³ Moreover, in its order granting summary judgment, the circuit court stated: “Law enforcement, not the crime victim and witnesses to a crime, has the duty to investigate a crime and to decide whether and when to seek a warrant.”

The Court's misapprehension and misapplication of the law warrants rehearing on both the false imprisonment and malicious prosecution claim as a matter of law.

B. The Court's Opinion Misapprehends the Record Evidence in Finding that Huffman Offered a Scintilla of Evidence to Withstand Summary Judgment in Favor of Sunshine.

Secondly, this cited evidence does not lead to a *reasonable* inference that Sunshine, as a mere witness with absolutely no stake in the criminal investigation, caused, instigated, or procured Huffman's arrest. In its opinion, the Court misconstrued the record evidence. "It is not sufficient [to defeat a motion for summary judgment] that one create an inference which is not reasonable or an issue of fact that is not genuine." Shuler v Tuomey Reg'l Med. Ctr., 313 S C 225, 437 S E 2d 128, 129 (Ct. App. 1993).

The evidence cited above does not create a reasonable inference or a genuine issue of material fact. In addition to the citation above, the Court cites the following to support a reasonable inference: Officer Ethridge testified that when he visited Sunshine, "[t]hey were guaranteeing that the metal that [Huffman] brought in was the metal – [Goss] was saying this is 100 percent our metal from [Aiken] and the [receipt] showing the weights, everything, was – was co- -- everything was looking the same." (Op. p. 13). The Court then morphs what is clearly a clarification by Ethridge that Goss was speaking the entire time to a genuine issue of material fact that a jury could reasonably infer that Rich made this representation. (Op. p. 13). This leap, which grasps at straws, is unsupported by the quoted testimony and does not, in any event, create a *reasonable* inference to support Huffman's causes of action.

As the circuit court properly found, there is absolutely no evidence to support a reasonable inference of either false imprisonment or malicious prosecution. In its opinion reversing summary judgment, the Court concludes that there is a scintilla of evidence that

Rich, on behalf of Sunshine, induced Officer Ethridge “by request, direction, or command to unlawfully arrest” Huffman or “cause[d], instigate[d] or procure[d] the arrest.” The Court’s opinion fails to appreciate that Sunshine was acting as a witness, providing unfiltered information to the officers. There is absolutely nothing in the record to support a reasonable inference that Sunshine induced prosecution or demanded prosecution of Huffman, thereby failing to create a genuine issue of material fact as to probable cause as a matter of law.⁴ Rather, as the circuit court properly found, the objective evidence leads to only one reasonable conclusion—that Sunshine cooperated with a law enforcement investigation and relayed information that it, in good faith, believed to be true.

Thus, the Court misapprehended the facts and the standard for summary judgment, and erred in concluding that Huffman offered a scintilla of evidence to withstand summary judgment in favor of Sunshine. For this reason, the petition for rehearing should be granted and summary judgment in favor of Sunshine reinstated.

C. The Court’s Opinion Misapprehends the Law and Facts Regarding Malicious Prosecution.

The Court erred as a matter of law in reversing the grant of summary judgment in favor of Sunshine as to the malicious prosecution claim. In its opinion, the Court relies on its probable cause discussion in the false imprisonment section to also reverse the

⁴ In addition to these cited excerpts from the opinion, the Court also seemingly faults Sunshine for: Sunshine’s “employee apparently not tell[ing] Rich that a black make in a white Ford pickup truck dropped off metal immediately after Huffman dropped off her metal[;]” “Rich never view[ing] the video[;]” for failing to thoroughly interview his employee, who was presumably available for interview to law enforcement; and for the difficulty Palmetto Security Cameras had in copying the video. (Op. pp. 3-4; 13). Respectfully, the Court’s opinion misconstrues this evidence, and overlooks the abundant, objective record evident that exists and that supports only one reasonable inference – that Sunshine cooperated with a police investigation and did not institute or demand the arrest or prosecution of Huffman.

grant of summary judgment as to the malicious prosecution claim. As noted above, the opinion misapprehends the record facts and the applicable law in finding that there was a scintilla of evidence to support a finding of lack of probable cause on the part of Sunshine, a mere cooperating witness.

Moreover, the Court misapplies the law of malicious prosecution as it relates to other pertinent elements. The Fourth Circuit Court of Appeals opinion in Brice v. Nkaru, 220 F.3d 233 (4th Cir. 2000), is instructive. In *Brice*, the plaintiff filed suit against a security guard for malicious prosecution based upon the security guard's misidentification of him as a suspect to a crime. The Fourth Circuit, interpreting Virginia law, stated "[w]e find no authority supporting [the] contention that a witness who provides the police with incorrect information during a criminal investigation ipso facto 'institutes' or 'procures' the prosecution if he provides that information unequivocally."

Id. at 238. The court further stated:

[W]e are aware of no authority supporting the novel proposition that a witness, by honestly providing information to a law enforcement official, may be held responsible for the official's execution of his independent duty to investigate. *See, e.g., Gramenos v. Jewel Cos.*, 797 F.2d 432, 434 (7th Cir.1986) ("Police often arrest suspects on the basis of oral reports from witnesses, and the state may prosecute against the wishes of all witnesses."); *King v. Massarweh*, 782 F.2d 825, 828–29 (9th Cir.1986) (injuries from arrest are not proximately caused by private party, absent some showing that private party "had some control" over state officials' decision). In this case, [the security guard] simply provided the police with information within his knowledge, and the police reasonably believed him. *See id.* at 439 (explaining that police have reasonable grounds to believe a guard at a supermarket, because there are inherent safeguards against the making of false charges in the institutional employment setting), *see also* 66 A.L.R.3d 10 Summary § 3 (1975) (normally a malicious prosecution plaintiff must show that defendant did more than merely give information that included an identification, *e.g.*, that he requested the initiation of proceedings, signed a complaint, or swore out an arrest warrant against plaintiff); 52 Am.Jur.2d *Malicious Prosecution* § 23 (1970) (plaintiff must show defendant was affirmatively active in

instigating or participating in the prosecution); *id.* § 24 (no liability for mistaken, but reasonable and in good faith, misidentification of perpetrator of crime).

Id. at 238-39.

The Fourth Circuit Court of Appeals ultimately rejected the plaintiff's contention that there was sufficient evidence to support an inference that the security guard acted in bad faith in providing law enforcement with information, and concluded, as a matter of law, that the plaintiff could not maintain his claim for malicious prosecution. *Id.* at 241. Merely providing information to the police and leaving the decision to bring charges to the sole discretion of the police cannot constitute the initiation of criminal proceedings for purposes of a malicious prosecution claim. See 54 C.J.S. Malicious Prosecution § 17 (stating a "civilian complainant, by merely seeking police assistance or furnishing information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for malicious prosecution"),

First, Brice makes clear that as a matter of law, malicious prosecution cannot lie in this instance against Sunshine as a witness. Secondly, as the law states, "[t]he burden is on the plaintiff to show that *the prosecuting person or entity* lacked probable cause to pursue a criminal or civil action against him." Parrott, 246 S.C. at 322, 143 S.E.2d at 609, Law v. S.C. Dep't of Corr., 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006). Huffman has failed to meet this burden or produce a scintilla of evidence regarding institution of proceedings. Rather, the record evidence leads to only one reasonable inference -- Sunshine did not institute or have instituted the proceedings against Huffman at its instance, but rather was merely a cooperating witness.

Moreover, there is absolutely no evidence presented that indicates Sunshine or its employees acted with malice in reporting information and providing documentation to the police, and as discussed above, the Court misapprehended the facts to conclude that there was an issue of material fact with respect to the lack of probable cause.⁵ Sunshine permitted Goss, at his request, to examine the metal and view the surveillance tape; Sunshine relayed information from an employee regarding Huffman's transaction at the yard; Sunshine permitted the officers to view the surveillance tape; and Sunshine indicated it would testify should the need arise. In essence, the Court's opinion erroneously and inversely infers malice and a lack of probable cause on the part of Sunshine because Sunshine failed to investigate and filter information in its possession. This is not the law of malicious prosecution.

For these reasons, the petition for rehearing should be granted and summary judgment reinstated in favor of Sunshine.

IV. CONCLUSION

The Court's opinion seemingly blends the actions of Goss and Respondent Aiken Electric, the victims, with those of Sunshine and Rich, mere witnesses. However, the record evidence is clear that the actions of the two are distinguishable, it is a distinction with a difference. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes to which they are witnesses. However, they are not required to conduct an independent investigation of the information in their possession before relaying the same to the police. The Court erred in imposing such a duty. Furthermore, public policy

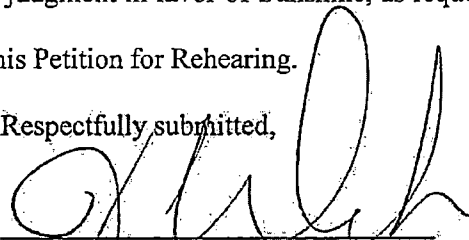
⁵ In fact, because Sunshine was not the victim in this matter, Sunshine had absolutely no incentive to maliciously attempt to prosecute or have the Sheriff's Department prosecute Huffman for the copper wire, nor does the evidence support even an inference of such.

dictates that a witness, even one who provides bad information, cannot be held civilly liable for malicious prosecution—the chilling effect of such legal threat would greatly inhibit the ability of law enforcement to properly investigate and prosecute criminals.

Even assuming these causes of action could lie as a matter of law against Sunshine, the only *reasonable* inference that can be drawn from the evidence presented is that Sunshine assisted and cooperated with an investigation. It did not institute the investigation or prosecution, nor was the same done at the “instance” of Sunshine, a *mere witness*. The Court has misapprehended the facts, failed to distinguish the actors at play, and misapplied the facts to the applicable law.

For the foregoing reasons, Sunshine submits that this Court misapprehended or overlooked matters of both law and fact that compel a different outcome in this case. Accordingly, rehearing is warranted and the Court should withdraw its current opinion and issue a new opinion affirming summary judgment in favor of Sunshine, as requested by Sunshine in its appellate briefing and in this Petition for Rehearing.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT
 SUNSHINE RECYCLING, LLC.

July 7, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

JUL 07 2016

SC Court of Appeals

Maite D. Murphy, Circuit Court Judge

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman, ...Appellant

v.

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

CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

Respondent Sunshine Recycling, LLC's Petition for Rehearing

[Continued on Next Page]

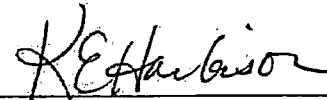
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Date: July 7, 2016



Legal Assistant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,

v.

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

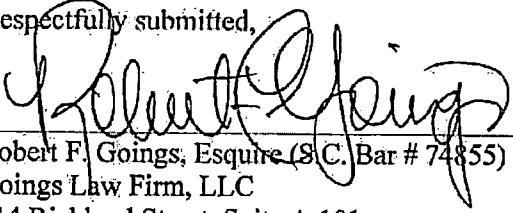
**APPELLANT'S RETURN TO RESPONDENTS' PETITION FOR REHEARING
AND REHEARING *EN BANC***

Appellant Meredith Huffman respectfully submits that the Court of Appeals neither overlooked any arguments nor misapprehended any point of law in its well-reasoned and thorough opinion. To the contrary, the Court recited all relevant facts, detailed the applicable law, and undertook an in-depth application of the facts to the law. The Court correctly held that a genuine issue of material fact exists on the causes of action for false arrest and malicious prosecution. Accordingly, Appellant believes Respondents' Petition for Rehearing should be denied.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

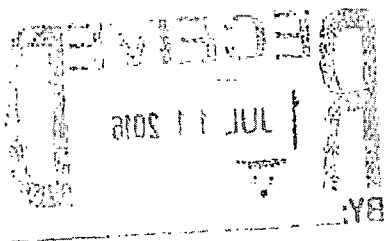
By:


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Attorneys For Appellant

Columbia, South Carolina
July 8, 2016



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No.: 2014-001492

Meredith Huffman.....Appellant,

v.

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

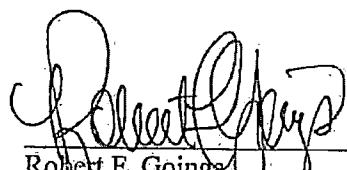
PROOF OF SERVICE

I certify that I have served Appellant's Return to Respondents' Petition for Rehearing and Rehearing *En Banc* upon Respondents by mailing a copy of the same, via United States Mail, on the date set forth below:

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Recycling, LLC*

Pope D. Johnson, III, Esquire
Pope. D. Johnson, III, Attorney at Law
1230 Richland Street
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*Attorney for Respondent, Aiken Electric
Cooperative, Inc.*

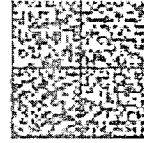
Columbia, South Carolina
July 8, 2016


Robert F. Goings
Counsel for Appellant

*Goings Law Firm*

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Columbia, South Carolina 29201**

29201-325700



The South Carolina Court of Appeals

Meredith Huffman, Appellant,

v.

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

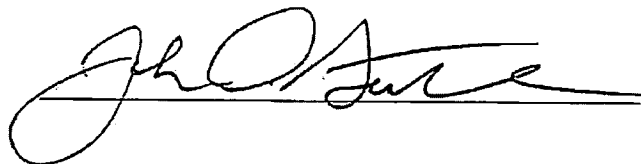
Appellate Case No. 2014-001492

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

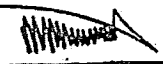
 J.

 J.

Columbia, South Carolina

cc:

Robert Fredrick Goings, Esquire
James Todd Rutherford, Esquire
Breon C. M. Walker, Esquire
Pope D. Johnson, III, Esquire
Jessica Ann Waller, Esquire

FILED
9/15/16 



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 15, 2016

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1201 Main St.
Suite 1200
Columbia SC 29201

Re: Meredith Huffman v. Sunshine Recycling
Appellate Case No. 2014-001492

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. The petition for rehearing en banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Fredrick Goings, Esquire
James Todd Rutherford, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY S.C. SUPREME COURT
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Case No. 2012-CP-38-00672

Court of Appeals Tracking No. 2014-1492

Meredith Huffman Respondent

v.

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

PETITION FOR A WRIT OF CERTIORARI OF SUNSHINE RECYCLING, LLC

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