THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

JOCELYN NEWMAN, CIRCUIT COURT JUDGE

CASE NO. 2012-CP-40-02456
APPELLATE CASE NO. 2017-001124

REGINALD ANDRE BLANDING, WANDA BLANDING, AND BRITTANI BLANDING, BY AND THROUGH HER GUARDIAN AD LITEMS, REGINALD ANDRE BLANDING AND WANDA BLANDING,

PLAINTIFFS,

OF WHOM REGINALD ANDRE BLANDING WANDA BLANDING, AND BRITTANI BLANDING ARE

APPELLANTS,

V.

LEON LOTT, IN HIS OFFICAL CAPACITY,

RESPONDENT.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN FINDING AND APPLYING ISSUE PRECLUSION BASED UPON PREVIOUS SUMMARY JUDGMENT ORDERS THAT SOLELY CONSIDERED INADMISSABLE EVIDENCE AND STATE OF MIND EVIDENCE FOR THE DETERMINATION OF PROBABLE CAUSE AND OBJECTIVE REASONABLENESS?

II. DID THE TRIAL COURT ERR IN APPLYING THE PRECLUDED ISSUES AND ENTERING SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS FOR THE DEFAMATION CLAIM?

III. DID THE TRIAL COURT ERR IN FINDING THAT A PUBLIC AFFAIRS OFFICER HAD A DUTY TO COMMUNICATE WITH THE PRESS WHEN ANALYZING THE DEFENSE OF QUALIFIED PRIVILEGE FOR THE DEFAMATION CLAIM?

STATEMENT OF THE CASE

Appellants filed a summons and complaint on April 2, 2012 in the Richland County Court of Common Pleas alleging various torts against the Richland County Sheriff's Office, Leon Lott, and Lieutenant Chris Cowan. (R.48-61). The Defendants in the action filed an answer on June 13, 2012. Answer, June 13, 2012. (R. 62-68). On December 9, 2013 the Appellants obtained an order to amend their complaint adding parties and several constitutional claims pursuant to 42 U.S.C. § 1983. (R. 1-2). The Appellants filed their amended complaint on December 23, 2013. Amended Complaint, December 23, 2013. (R.69-83)

The Defendants removed the case to the United States District Court for the District of South Carolina on February 4, 2014. (R. 84-87). The Defendants filed a motion for summary judgment on September 22, 2014. (R. 327). Appellants filed their response on October 14, 2014. (R.330-356). Plaintiffs dismissed the Negligent Supervision Claim, Negligent Training Claim, Trespassing Claim, Assault Claim, Battery Claim, False Imprisonment Claim, and the 42 U.S.C. § 1983 Claims against the individual defendants. (R.330-351)

On July 6, 2015 the District Court issued an Order and Opinion on Defendants' Motion for Summary Judgment, dismissing all of Appellants' federal claims and their negligent supervision, negligent training, trespassing, assault, batter, and false imprisonment state claims. Order and Opinion, July 6, 2015. (R. 3-12). The District Court denied summary judgment on Appellants' gross negligence and defamation claims, declined to exercise supplemental jurisdiction of those claims, and remanded the claims to the Richland County Court of Common Pleas. (R. 3-12). An Amended Order and Opinion was issued on August 17, 2015. Amended Order and Opinion, August 17, 2015. (R.13-22).

The Defendants filed another Motion for Summary Judgment with the Richland County Court of Common Pleas on December 8, 2015. (R. 88-121). The Defendants' Motion for Summary Judgment was heard by the Honorable G. Thomas Cooper, Jr. on January 13, 2016. (R. 23). Both the Defendants and the Appellants submitted their response and exhibits to the bench. In their Motion for Summary Judgment, Defendants first raised the doctrine of issue preclusion based upon the District Court's findings of fact in its Amended Opinion and Order remanding the case. (R. 88-121). The trial court issued an Order disposing of Plaintiff's gross negligence claims but denying summary judgment for Appellants' defamation claim. (R. 23-31). The Richland County Sheriff was substituted as the sole remaining party. *Id.*

Defendants filed a motion to alter or amend on March 16, 2016. (R. 385-390). Appellants filed their response on April 7, 2016. (R. 391-392). This motion was denied on April 22, 2016.

With the parties and issues narrowed down to a defamation cause of action against Leon Lott, Respondent filed a Motion in Limine at the call of the trial of this matter. (R. 393-432). The Respondent sought to preclude Plaintiffs from, "challenging, contesting, or disputing" numerous facts that were part of the District Court's findings of facts in its August 17, 2015 Amended Opinion and Order and the trial court's summary judgment order. (R. 393-432). Appellants were allowed to file a short brief in response to the Respondent's motion in limine. (R. 557-558).

After pre-trial arguments, the trial court precluded Appellants from challenging numerous facts that were recited in the District Court's findings of facts in its August 17, 2015 Opinion and Order. The trial court instructed Respondent to elect his defense – the defense of truth or

qualified privilege. (R. 578). Respondent elected to assert the defense of qualified privilege. Transcript, (R. 582).

With the order precluding certain facts, the trial court converted the Respondent's motion in limine into a Motion for Summary Judgment and dismissed the case. (R. 32.) The trial court issued a written order granting summary judgment on April 20, 2017. (R. 33-42)..

Reginald Blanding, Wanda Blanding, and Brittani Blanding appeal the trial court's ruling that certain evidence was precluded by a District Court order where the District Court recited the factual background in its order granting summary judgment dismissing Plaintiff's constitutional claims based upon the probable cause standard. *Blanding v. Richland County Sheriff's Department*, 2015 WL 4929251, 2015 U.S. Dist. LEXIS 87564, *2-5 (D.S.C. August 17, 2015). This initial error of precluding the evidence by the trial court cascaded into preventing Plaintiffs from presenting any competent evidence to the jury of the only triable issue of fact, whether Major Chris Cowan, the Public Information Officer for the Richland County Sheriff's Office, exceeded qualified privilege in his libelous statements to the public.

FACTS

I. BACKGROUND OF THE BLANDING FAMILY.

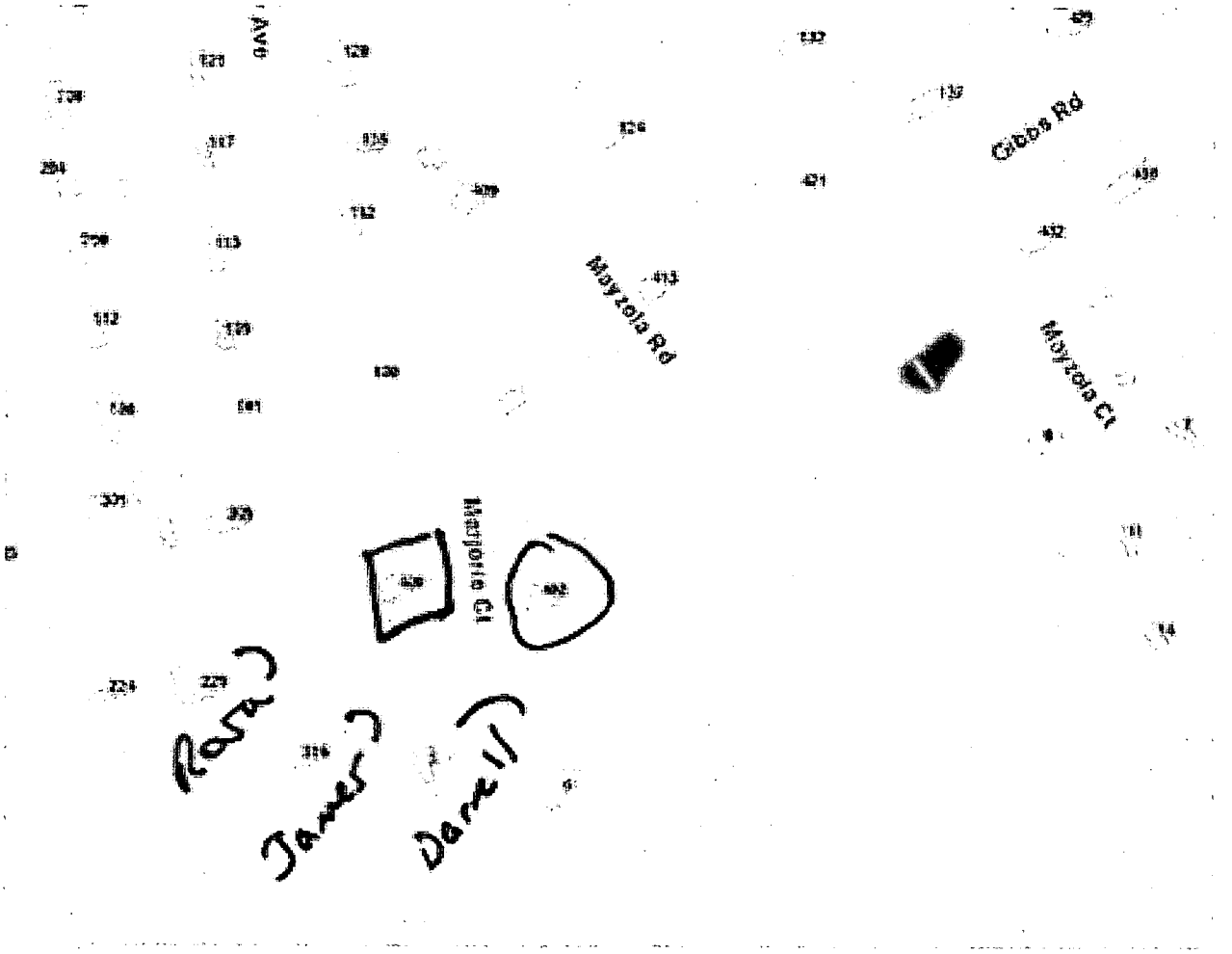
Plaintiffs Reginald Andre Blanding and Wanda Blanding reside at 402 Gibbs Road, Columbia, South Carolina with their three children, the oldest being Brittani Blanding. (R. 149-150, 256-257). Reginald and Wanda Blanding have lived in their 1249 ft^2 home since 1991. (R. 226-227). The Blandings' home is neat and orderly and well taken care of by the family. (R. Video Submitted to Chambers, Ex. 5 at 0:41.)

Despite Defendants' assertions that the Blandings live in such a horrible, high drug

neighborhood, the Blandings have never had the need to call the police and the police have never been to the Blanding residence for any other reasons. (R. 254-255)

Reginald Blanding has worked for Pepsi since 1993. (R. 251). He worked for the South Carolina Department of Corrections for six years before that. (R. 105). Wand Blanding has been an employee of the South Carolina Department of Corrections since 1990. (R. 266). Brittani Blanding is a college student at Winthrop University. (R. 148) She has never been arrested or even stopped for a speeding ticket. (R. 151).

None of the Blanding's' have been arrested or convicted of a crime. (R. 232, 253). None of the Blanding's' use drugs or associate with people who abuse drugs. *Id.*, at Ex. 2, Reginald Depo, 46:18 – 20; 111:2 – 9.



The Blanding's live in the home marked above with a circle. (R. 234-235). Reginald Blanding's mother and father lived in the house marked with a square and their house is located at 316 Gibbs Road. (R. 235-236). Reginald Blanding's sister, Rosa Samuel, lived next door to their parents. (R. 234-235). Rosa Blanding also owned a trailer behind and south of the Blanding's property. (R. 233, 235).

There was no direct pathway or road from the Blanding's home to the trailer where "Peanut" Gregory Samuels' stayed, identified as the "Blue" trailer in Defendants' motion for summary judgment. (R. 208). When Reginald Blanding saw people cut through his yard, he

would confront them and tell them not to walk through his yard. (R.237-238).

Roosevelt Blanding was Reginald Blanding's father (he has since passed) and Brittani Blanding's grandfather. (R. 208-209). Roosevelt Blanding was retired and spent the majority of the time at his home and fixing things and working on his tractor. *Id.* Roosevelt Blanding kept an eye on his son's property. (R. 214).

Reginald Blanding testified that with his father and other relatives living next door, they would call him at work if somebody pulled up in his driveway when he was away from the home. (R. 228-229). Reginald Blanding's relatives did their best to keep close eyes on the house during the day and during the night. R. (229, 240-241).

Reginald Blanding testified that the entire family makes sure that the house is locked when they leave. (R. 238).

II. COMPLAINT ABOUT DRUG ACTIVITY

On Friday, October 14, 2011, the Drug Suppression Team ("DST") of the Richland County Sheriff's Department ("RCSD") received a written complaint from then-County Councilperson Val Hutchinson about illegal narcotics activity sales taking place at two trailers, both of which are in the vicinity of Plaintiffs' residence. (R. 323-324).

Senior Deputy Ricky Johnson was assigned and spearheaded the investigation into the councilperson's complaint. (R. 298-299, 321-322).

III. KNOCK AND TALK

On Monday, October 17, 2011, Johnson and other DST members went to the two trailer locations to conduct a "knock and talk" investigation. (R. 299, 302). This process involves

uniformed officers making contact with individuals at both trailer locations, address concerns presented in the Hutchinson complaint, and exploring whether there was any validity to the claims. (R. 299). While no arrests were made at that time, the officers interacted with individuals at the trailers, some of whom were in possession of crack pipes. (R. 323-324). The Blanding's home was not one of these trailers.

These trailers look like drug trailers and later, after the debacle at the Blanding residence, RCSD raided these homes. (R. 300-301).

IV. THE RICHLAND COUNTY SHERIFF'S DEPARTMENT HAD THE KNOWLEDGE OF THE PATTERNS OF DRUG ACTIVITY AND THE RESOURCES TO KNOW WHERE THE DRUG USING TRAFFIC WAS HEADING IN THE BLANDINGS' NEIGHBORHOOD.

Richland County Sheriff's Department maintained a visible police presence in the Blandings' neighborhood and would park marked patrol cars across the road and to the right of the Blanding's home. (R. 204, 205, 206-207). The Blanding's' neighborhood was known as a high-drug area. (R. 205).

V. CONFIDENTIAL INFORMANT'S RELIABILITY

Before this matter was removed from the Richland County Court of Common Pleas to District Court, the Court of Common Pleas issued an order allowing Plaintiff to question the Defendant officers about the background of the Confidential Informant [CI] in this matter. The responses by Deputy Ricky Johnson, the CI's handler, were at best, self-serving and at the worst, a direct attempt to deny relevant information to Plaintiff. For instance, Johnson did not know the CI's criminal history, how many times he had been arrested, or whether he had prior convictions for crimes of moral turpitude. (R. 295-296). The CI was not familiar with the area or the local

population. (R. 296-297). The CI worked for Johnson to work off charges for his girlfriend and was also paid cash for his work. (R. 303-304, 305-310). The CI was not drug tested. (R. 307).

VI. INCIDENT AT THE BLANDING RESIDENCE

On Thursday, October 20, 2011 Brittany Blanding and her cousin left Ridge View High School, stopped by Bojangles on Clemson Road, and drove her father's Ford Expedition home to 402 Gibbs Road, Columbia, South Carolina. (R. 152-153, 217). When she drove into the driveway of her home Brittany Blanding saw a few police cars in the yard and a van in the yard. (R. 153, 217). Several police officers ran out of the front door. (R. 153, 154-155, 217).

Brittani Blanding's cousin thought that the house had been robbed and the police were responding to a robbery. (R. 153, 155). A Caucasian male police officer went over to Brittani Blanding's vehicle and asked if she lived at the residence. (R. 156). Brittani Blanding responded, "Yes, I do," and then, speaking of her cousin, said, "...she does not she came with me from school, this is my cousin." (R. 156, 217). The officer then asked Brittany Blanding and her cousin to step out of the car and told her to turn the engine off, which she did. (R. 217).

The officer asked Brittany Blanding how old she was and she told him that she was seventeen. (R. 217). The officer asked Brittani Blanding where her parents worked, if her dad had any nicknames, and who was "Peanut." (R. 157, 217). The officer told Brittani to call her parents. Brittani Blanding first called her mother and the call went directly to voicemail. (R. 161). Brittani Blanding then called her father. (R. 161, 256). The officer told Brittani Blanding to tell her father, Reginald Blanding, to come home as soon as possible because the police were at the house and they had search warrants. (R. 161, 217, 256).

Reginald Blanding began asking his daughter questions and she handed the phone to the

officer after Reginald Blanding instructed her to do so. (R. 162, 217, 256). Reginald Blanding was speaking loudly and was very upset during the phone conversation with the officer. (R. 163). The officer told Reginald Blanding that he needed to come home because they were going to search his house. (R. 256). Reginald Blanding told the officer that he was not to search his house until an adult was present and the officer said they would. (R. 256). Reginald Blanding repeated that they were not to search his home unless he or his wife were home. (R. 256). The officer then said that Brittani Blanding, who is 17, is old enough. (R. 256). Reginald Blanding then told the officer that he just could not leave his job without talking to someone and the officer stated that Brittani Blanding was old enough, they were going to conduct the search, and then he hung up the phone. (R. 256).

After the officer finished speaking with Reginald Blanding, he had an attitude and stated, "I'm going to do what I came here to do," and then handed the phone to Brittani Blanding. (R. 164). As the officer walked to the porch he stated, "[Reginald Blanding] said we're not searching his house, but if we find something, we can take his daughter in because she is an adult in this situation." (R. 164). Reginald Blanding did not make this statement to the officer during the telephone call. (R. 256). Reginald called other family members and was relieved from work so that he could go home. (R. 256).

Reginald Blanding called his mother, Marjorie Blanding, to tell her to ask his father, Roosevelt Blanding, to go over to the house because his daughter was there by herself. (R. 256).

A Caucasian lady walked over to Brittani Blanding and her cousin and escorted the two children into the house. (R. 165). As Brittani Blanding walked into the house she was appalled to see the "door busted through and wood lying across the couch." (R. 166, 218). They walked

as far as the living room and were in the house for a minute or two before they were removed to allow a drug dog to search the home. (R. 167-168, 171).

While standing on the porch "[t]he female officer pat searched [Brittani Blanding], took all the contents out of [her] pocket and shook out [her] bra while the [black] male officer searched [her] purse." (R. 169-170, 171-172, 218). While sitting on the porch, Brittany Blanding watched another officer search the Ford Expedition Plaintiff drove. (R. 173, 174, 218).

At this time, Roosevelt Blanding, Reginald Blanding's father and Brittani Blanding's grandfather, walked onto the property. (R. 174-175, 218). An officer asked Roosevelt Blanding, "Do you live here, sir," and Roosevelt Blanding stated, "No, [I] live next door but received a call from my [son]." (R. 174-175, 218). The officer then said, "We have everything under control here. It would be best to go home." (R. 175, 218). Roosevelt Blanding began to walk home and said, "I believe you have the wrong house." (R. 175, 218). The officer then said, "We have the right house." (R. 175, 218). The officer acted ugly towards Roosevelt Blanding. (R. 175-176).

After sitting on the porch for six or seven minutes, the officers let her back in the house. (R. 174, 177, 218). Upon viewing the home, the "living room, dining room, kitchen was disoriented and messy. (R. 177, 218-219). Brittani Blanding and her cousin sat at the dining room table with the female officer. (R. 177-178, 219). A male officer asked Brittani Blanding for the keys to the Durango which was parked in the driveway and she gave them to him. (R. 177, 219). The officers were going through the mail and comparing an identification of Reginald Blanding to the mail. (R. 178, 219).

The African-American officer brought the safe that was in Brittani Blanding's room and set down beside the couch. (R. 179-180, 219). He asked Brittani Blanding if she knew the

combination of the safe and if she did then it would be best to tell him or they would bust it open. (R. 180-181, 219). Brittani Blanding told him that her father knew the combination but she did not. (R. 180, 219). Brittani Blanding was given permission to call her father to get the combination. (R. 181, 219, 256).

Reginald Blanding asked to speak with the officer again so Brittani Blanding gave the phone to an officer and they spoke for a while. (R. 182, 219). Reginald Blanding asked to speak with the officer again. (R. 256). Reginald Blanding told him that he was on his way home and that he did not want them to leave until he arrived home. (R. 256). The officer told Reginald Blanding that if they were not done they would still be there but if they were done they were going to leave and a copy of the search warrant would be at the house. (R.256). Reginald Blanding said that he wanted at least one police officer to be there when he got there which would be 45 minutes. (R.256). The police officer then said they would leave if they finished. (R.256).

The officer could not figure out how to open the safe and abandoned the attempt. (R. 183, 219). The African American officer came into the kitchen and made a comment about the attic stairs being down and how he did not think they would be sturdy enough for him. (R. 183-184, 219).

At all times, Brittani Blanding was trying to be cooperative. (R. 184). Brittani's grandmother came over and other relatives and neighbors. An officer came into the house and stated that he was aggravated with all of the neighbors that were coming over and the he was going to put people in cuffs. (R. 185-186, 219-220).

The white male officer then asked Brittani Blanding questions such as: did the Blanding's

know Peanut, how do they know him, when was the last time Brittani had seen him, and did she know where he lives. (R. 187, 220).

The police officers let Brittani's Aunt May into the home. (R. 220). She is Reginald Blanding's sister and the mother of Gregory Samuels. (R. 190-191, 220). Aunt May asked Brittani Blanding if she was all right and she gave her a kiss on the forehead. (R. 192, 220). Aunt May asked the police officers who was responsible for fixing the door. (R. 193-194, 220). Once the police officers learned from Aunt May that they had the wrong house, they began wrapping up the search. (R. 196-197).

As the police officers were finishing the search, Reginald Blanding arrived home and was furious. (R. 194-195). The police officers were rude and unapologetic. (R. 194-197). An officer stated that someone came out of the back door to his house on the deck and sold an informant drugs. (R. 256). Another officer stated that someone had sold drugs in the back yard. (R. 256). When Reginald Blanding asked the officers who was going to pay for the damage to his home, they stated in a disrespectful manner, "not us." (R. 257). When he asked for their names, the officers told him that their names were on the warrant and then they left. (R. 257).

The officers searched Brittani Blanding's room. (R. 209). The storm door would not close completely, and the front door was completely off of its hinges. (R. 267). The bed cover was pulled back and the mattress was pulled to the side. (R. 267). Clothes were thrown from every drawer onto the bed. (R. 267). Everything from the top shelf of the closet was thrown on the floor and bed. (R. 267). The stairs to the attic were pulled down. (R. 267). The guest bathroom had everything dumped out from the travel bag and items thrown out from the bathroom counter. (R. 267). All of Brittani Blanding's clothes were out of the drawers and her

shoes were all over the place and the safe was taken out of her closet. (R. 209). All of her clothes had been taken from the closet and thrown on the bed. (R. 267). Cereal boxes were left open on the kitchen floor. (R. 267). Brittani Blanding had to stay at a friend's house for several nights because the front door was knocked off of the hinges. (R. 213-214). It took about a week before everything was cleaned up in the house. (R. 214).

VII. GREGORY SAMUELS A/K/A PEANUT.

Gregory Samuels is also known as "Peanut." (R. 158, 230). Gregory Samuels is a first cousin of Brittani Blanding and the nephew of Reginald and Wanda Blanding. (R. 158, 230).

Gregory Samuels was not in jail at the time of the raid on the Blanding's home. (R. 159).

Gregory Samuels was not included in family events at the Blanding home. (R. 159-160). Gregory Samuels was not welcome at the Blanding home and did not come over. (R. 188-189, 198-199). Brittani Blanding had never been over to Gregory Samuels' home. (R. 189, 203).

The Blanding's believed that he had been in and out of jail and that he was involved with drugs. (R. 189, 231-232).

Gregory Samuels sometimes lived in a trailer behind the Blandings' property. (R. 200-202, 203). The trailer was about 80 to 100 yards from the Blanding's home. (R. 239).

VIII. THE RICHLAND COUNTY SHERIFF'S DEFAMATION OF THE BLANDING FAMILY.

At the time of this incident, Chris Cowan was Commander of Public Information and he was in charge of the Public Information Office at RCSD. (R. 283). Cowan held this position for nine years. (R. 283).

After RCSD was contacted by the media about the search of the Blanding home, Chris Cowan received information about the search of the home. (R. 284-285). Cowan spoke with Frieda Wyatt after he received the email about the raid on the Blandings' home so that he could get firsthand information from the source. (R. 285-286. Frieda Wyatt was supervisor of the drug suppression team. (R. 286).

The statements by Cowan were "devastating" and some people assumed that the Blanding's were involved with drugs. (R. 210-212).

When speaking with media, Cowan stated, "[the] drugs that we purchased from that home, we purchased from a family member of that home. We purchased the drugs out of the home." (R. Video Submitted to Chambers, Ex. 4 at 2:09). Cowan also told the media that, "a drug dog went in and could tell that drugs were once in there." (R. 275). Lastly, Cowan told the media that "...agents only searched the master bedroom," which is a complete falsehood. (R. 275).

Finally, despite RCSD's claims that they bought drugs from the Blanding residence, they did not continue to surveil the residence or attempt to buy drugs from the family members in the home. (R. 300). Later, RCSD finally hit the correct house and arrested Peanut and Ronnie Blanding. (R. 300-301).

Cowan had time to prepare for his interview before making the defamatory statements. (R. 287). Even in his deposition, after having the time to review the videos of the news segments, Cowan continued to assert that RCSD did not tear the rooms apart, search the cereal boxes, and purchase drugs from the house. (R. 287). Johnson testified that he searched the master bedroom with Frieda Wyatt.

ARGUMENTS

The trial court erred in ruling that certain evidence was precluded by a District Court order where the District Court recited the factual background in its order granting summary judgment dismissing Plaintiff's constitutional claims based upon the probable cause standard. The preclusion of evidence caused the trial court to conclude that there was not a scintilla of evidence for Appellants to take to a jury and allowed the Court to issue summary judgment for Respondent under the defense of qualified privilege.

I. STANDARD OF REVIEW AND JURISDICTION

Although the Court's initial ruling was made during trial upon the Respondent's Motion in Limine on Behalf of Defendant Sheriff, it was subsequently converted to a Motion for Summary Judgment pursuant to Rule 56, SCRCP. "When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653 (2008) (Citing Rule 56(c), SCRCP; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (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. *USAA Prop. & Cas. Ins. Co. v. Clegg*, at 653 (2008) (Citing *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)).

II. RESPONDENT LOTT'S MOTION IN LIMINE AND THE TRIAL COURT'S CONVERSION OF THE MOTION TO A RULE 56 SUMMARY JUDGMENT MOTION.

At the call of the trial, Respondent filed a Motion in Limine asking the trial Court to preclude "1...Plaintiffs from challenging, contesting, or disputing in any manner whatsoever the following (14) issues of fact, with subparts:"

(a) Whether the information provided to investigators regarding drug activity in Plaintiffs' neighborhood was credible and reliable;
(b) Whether investigators were sufficiently qualified, trained, and experienced for spearheading and/or conducting a narcotics investigation;
(c) Whether the narcotics investigation conducted in Plaintiffs' neighborhood was conducted appropriately, professionally, and in a fair and competent manner;
(d) Whether the knock and talk investigation of October 17, 2011 was carried out properly and in accordance with law enforcement standards;
(e) Whether there was a sufficient basis for initiating a controlled purchase investigation in Plaintiffs' neighborhood, including the manner in which the controlled purchase was planned and accomplished;
(f) Whether the confidential informant ("informant") was credible and reliable based upon previous interactions with law enforcement, this would include but not necessarily limited to, the informant's background, criminal history, previous experience in the neighborhood, his level of credibility and reliability, and the manner in which he received compensation for assisting with the narcotics investigation;
(g) Whether the informant's reporting to investigators at the time of his debriefing was truthful and accurate;
(h) With respect to the informant, whether the following events transpired in this instance:
    i. that he had a conversation with a male on a bicycle concerning the purchase of narcotics;
    ii. that he then made a purchase on the back porch or deck of the residence at 402 Gibbs Road;
    iii. that he made a purchase from a black male named, "Peanut;"
    iv. that he produced a white rock-like substance, confirming that he purchased from "Peanut;" and
    v. that he specifically pointed out to Investigators Johnson and Cornwell location where purchase was made.
(i) Whether the investigators properly ascertained and established that 402 Gibbs Road was the incident location;
(j) Whether the information contained within the affidavit to the October 20, 2011 search warrant was truthful and correct, including but not limited to the affiant's attestations; the descriptions of premises and property to be searched; and the

reason for the affiant's belief that the property sought would be on the subject premises;

(k) Whether the October 20, 2011 search warrant was facially valid, issued pursuant to lawful authority, and contained adequate probable cause;

(l) Whether the techniques or methods investigators utilized to execute the search warrant at Plaintiffs' residence, the search of occupants and the interior portions were appropriate and reasonable;

(m) Whether the actions or inactions of investigators during the course of the search were reasonable and whether the search exceeded the scope of the search warrant; and

(n) Whether the investigators conducted themselves professionally and competently during the course of the search in addition to their personal encounters with Plaintiffs.

(R. 400.)

Respondent also asked the trial court to preclude Appellants from:

- 2...introducing into evidence, commenting on, or raising in any manner whatsoever, the method of conducting the narcotics investigation, including whether it was deemed proper, appropriate, competent, or thorough.
- 3...introducing into evidence, commenting on, or raising in any manner whatsoever, any aspect of the execution of the search warrant at their residence on October 21, 2016, including any actions or inactions of Defendant employees and alleged damages incurred by Plaintiffs as a result.
- 4...introducing into evidence, commenting on, or raising in any manner whatsoever the WIS-TV news reports and raw footage videos depicting the events immediately following the execution of the search warrant on multiple grounds.
- 7. Precluding Plaintiffs and their counsel from commenting on, or raising in any manner whatsoever the presupposition or premise that Plaintiffs would be treated differently if they lived in a different neighborhood, or alternatively, residents in a different socio-economic neighborhood would have had more favorable treatment by law enforcement.

(R. 405-406).

Respondent argued that the Appellants were collaterally estopped and judicially estopped from presenting facts contrary to the issues listed above. (R. 401-405).

Appellants argued that,

> [W]hile there may have been a determination that probable cause existed to take some of these actions, specifically that's based on hearsay, et cetera, that the sheriff's department or deputies had reason to believe that criminal activity occurred. That is different from proof that the activity, in fact, occurred. The probable cause standard being different than proof of the truth and accuracy of those allegations.
>
> (R. 500, 522-523).

Appellants also argued that the burden of proof differed between District Court and state court for both summary judgment and that the burden of proof differed between negligence and claims under 42 U.S.C. § 1983. (R. 522, 525). Appellants asked the Court to look at the summary judgment record for both the trial court and in district court. (R. 439-440, 539-540) Response to Defendants Motion in Limine.

The next day, the trial court ruled that Appellants were precluded from introducing evidence related to Parts 1, 2, 3, 4, 6, and 7. (R. 561-563).

Upon Appellants' seeking clarification of the trial courts order, it soon dawned on the trial court that Appellants were essentially precluded from introducing evidence that Lt. Cowan's statement, "The drugs that we purchase were out of that home, we purchased from a family member of that home," was defamatory. (R. Video Submitted to Chambers, Ex. 4 at 2:09, ; 569-573).

For instance, the trial court noted that, "And I am not making a finding of fact, and don't believe that any other judge in this case has made a finding of fact that those statements are true, that Peanut did, in fact, sell drugs at this location off of their porch." (R. 572-573). The trial court also recognized that the facts in the academic exercise of a probable cause determination was not necessarily an exercise in seeking the truth:

> Now I do read in Judge Childs' order and I believe it's repeated in Judge Cooper's order that the confidential informant was reliable and trustworthy or some variation of that. I do

> not read that to mean that -- that the informant was per se honest for lack of better phrasing. That was analyzed in light of the consideration as to whether the investigators had a right to rely on that information in obtaining a search warrant and executing the search warrant, et cetera; that the consideration was not whether the confidential informant was telling the truth and is an honest and trustworthy reliable person per se in all things in life and so because he said it then it must be true, yada, yada. I mean, they have -- you know, the sheriff's department perhaps -- well, definitely had a right to rely on the information given by that confidential informant in obtaining and executing the search warrant and doing their investigation. That is what was actually and necessarily litigated in those earlier proceedings, not that -- yeah, not that the CI was per se reliable and trustworthy.
>
> (R. 577).

After arguments, the trial court converted the Motion in Limine into a motion for summary judgment and dismissed the case on a Form 4 with a notation that a formal order would follow. (R. 32).

III. THE TRIAL COURT'S SUMMARY JUDGMENT ORDER.

In the order granting summary judgment on Appellants' defamation cause of action, the trial court states that, "if the trial were to proceed, Plaintiff's would not be able to present any evidence to the jury of the only triable issue of fact, specifically, whether Cowan acted with actual malice in the relevant times in Plaintiff's Amended Complaint." (R. 40). This is because the trial court's preclusion rulings gutted the Appellant's ability to show that the Plaintiffs were factually innocent of Lieutenant Cowan's claims, "The drugs that we purchase were out of that home, we purchased from a family member of that home." (R. Video Submitted to Chambers, Ex. 4 at 2:09, ; 569-573).

IV. THE TRIAL COURT FAILED TO UNDERSTAND THAT WHEN THE DISTRICT COURT ANALYZED THE PROBABLE CAUSE ISSUES IN APPELLANTS' FEDERAL CLAIMS, IT IS ALLOWED TO UTILIZE INADMISSABLE EVIDENCE TO SHOW WHAT WAS OBJECTIVELY REASONABLE AT THE TIME.

Searches and seizures conducted in violation of the Fourth and Fourteenth Amendments of the United States Constitution are actionable under the Civil Rights Act. *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961) (overruled on other grounds by *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). A search conducted pursuant to a warrant generally may not be challenged unless the lack of probable cause was so apparent that the officer should have known it was absent. *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986); *U.S. v. Leon*, 464 U.S. 889, 104 S.Ct. 230, 78 L.Ed.2d 224 (1983).

The qualified immunity "objective reasonableness" defense applies even to Fourth Amendment challenges to arrests, searches, and uses of force where the constitutional standard itself is objective reasonableness. In *Malley v. Briggs*, the Court held that police officers who executed an invalid arrest warrant may nevertheless assert the defense of qualified immunity. *Malley v. Briggs*, at 343-346. The Court recognized two standards of reasonableness—one under the Fourth Amendment and one under qualified immunity—and that conduct unreasonable under the Fourth Amendment could still be objectively reasonable for the purpose of qualified immunity. *Malley v. Briggs*, at 344-345. Under that good-faith exception, even if officers obtained evidence by committing an unreasonable search or seizure in violation of the Fourth Amendment, the evidence could nevertheless be introduced in the prosecutor's case-in-chief if the officers acted in "objective" good-faith reliance on a search warrant. The "objective goodfaith" standard asks whether a "reasonably well-trained officer" with a "reasonable

knowledge of what the law prohibits" would have known that the challenged action violated the Fourth Amendment. *Malley v. Briggs*, at 344 (Citing *United States v. Leon*, 468 U.S. 897 (1984)).

The United States Supreme Court held that, "[t]he statements of fact contained in the affidavit are based upon affiant's personal knowledge of what he saw; it sets forth evidentiary facts which, in our opinion, establish probable cause." *Dumbra v. United States*, 268 U.S. 435, 439, 441, 45 S.Ct. 546, 69 L.Ed. 1032 (1925). The Court further explained, "[i]n determining what is probable cause... [w]e are concerned only with the question whether the affiant had reasonable grounds at the time of his affidavit...for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant." *Id.*, at 441. Probable cause may rest upon evidence which is not legally competent in a criminal trial. *United States v. Ventresca*, 380 U.S. 102, 107, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965) (citing *Draper v. United States*, 358 U.S. 307, 311, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959)).

When reviewing an officer's assertion of qualified immunity from a civil damages claim pursuant to 42 U.S.C. § 1983, "when a neutral magistrate issues a warrant based upon the affidavit submitted by the officer,...the pivotal question...centers around what information should be considered in making the determination of objectively reasonable belief for qualified immunity purposes. *Hancock v. Brown*, 2017 U.S. Dist. LEXIS 122479, *16, (D.S.C. July 12, 2017).

When ruling on a motion for summary judgment for a constitutional claim, a District Court may quite reasonably, as it did in this matter, entertain inadmissible or untrue facts to evaluate what a reasonable police officer did or did not know at the time he or she applied to a magistrate for a search warrant. This information includes hearsay. *Smith v. City of New York*, 2016 U.S. Dist. LEXIS, *10, 2016 WL 5793410 (S.D.N.Y. September 30, 2016) (The statements of the CI contained in the police reports are not inadmissible hearsay where, as here, they are not offered for the truth of the matter asserted but for purposes of establishing whether the arresting officers had information giving them probable cause. *Breeden v. City of New York*, No. 09-CV-4995 (ARR) (JMA), 2014 U.S. Dist. LEXIS 4165, 2014 WL 173249, at *5 (E.D.N.Y. 2014); see also *Cooper v. City of New Rochelle*, 925 F. Supp. 2d 588, 605-606 (S.D.N.Y. 2013) ("to the extent that the police report includes statements made by the confidential informant, such statements are admissible since [d]efendants do not offer them for their truth but rather as evidence that the statements were made and provided [d]efendants with reasonable suspicion to stop [defendant's] vehicle." *Williams v. City of N.Y.*, No. 10-CV-2676 (JG)(LB), 2012 U.S. Dist. LEXIS 19207, 2012 WL 511533, at *3 n. 2 (E.D.N.Y. Feb. 15, 2012) (witness statements recorded in police reports are not inadmissible hearsay because they are not offered for the truth of the matter asserted, but for purposes of establishing probable cause); *Al-Mohammedi v. The City of Buffalo*, No. 13-CV-1020 (RJA) (MJR), 2016 U.S. Dist. LEXIS 42730, 2016 WL 1748264, at *3 (W.D.N.Y. March 29, 2016)(statements of witnesses contained in police reports are not inadmissible hearsay when they are not offered for the truth of the matter asserted but for the purpose of establishing probable cause). A statement is admissible non-hearsay when it is offered as evidence of the effect of a statement on the listener, the knowledge motivating his

actions, or his state of mind at the relevant point in time. See *United States v. Puzzo*, 928 F.2d 1356, 1365 (2d Cir.1991). See also, *Velardi v. Walsh*, 40 F.3d 569, 573 (2d Cir. 1994)("A section 1983 plaintiff challenging a warrant on this basis must make the same showing that is required at a suppression hearing under *Franks v. Delaware*").

Counsel for Appellants had a duty to concede claims, if after a thorough investigation through the discovery process, they are no longer meritorious. See Rule 3.1 and 3.3, RPC, Rule 407, SCACR. Similarly, Appellants rightfully conceded certain evidence that would normally be inadmissible for the purpose of conducting the probable cause analysis and objective reasonable test for the constitutional claims.

While such facts were detailed in the District Court's order granting summary judgment on the constitutional claims, it does not mean that the delineation of such facts were in fact true – it is a list of facts as they were known to the police officers at the time they applied for the search warrant. The facts were created for the academic exercise of determining what was in a particular police officer's head at a particular time and it is unjust that those facts should become the law of the case. Essentially, Respondent's motion in limine was a perversion of justice and an end-run on the truth, gussied up in the complex doctrines of collateral estoppel and judicial estoppel.

V. THE TRIAL COURT FAILED TO UNDERSTAND THAT THE DISTRICT COURT UTILIZES A DIFFERENT SUMMARY JUDGMENT STANDARD THAN STATE COURT.

The South Carolina Supreme Court has recognized that "...where the federal standard applies or where a heightened burden of proof is required, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*,

381 S.C. 326, 330, 673 S.E.2d 801 (2009). See also, R*oss Dress for Less v. Lauth Constr. Group*, 2012 U.S. Dist. LEXIS 90937, 2012 WL 2572042, at fn. 17 (D.S.C. July 2, 2012) (In its supplemental brief, Plaintiff misstates the standard for summary judgment: "Applying South Carolina law, if Ross can present even a mere scintilla of evidence that the Defendants' owed it a duty, breached that duty, and that Ross suffered damages as a result of the breach, Defendants' motions for summary judgment should be denied." Dkt. No. 204 at 5 (quoting *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801, 802-03 (S.C. 2009)). In fact, the very case cited by Defendant states that a mere scintilla of evidence is not enough to overcome a summary judgment challenge in federal court. *Hancock*, 381 S.C. 326, 673 S.E.2d 801, 802 ("The rule followed in the federal court system provides that 'a mere scintilla of evidence is not sufficient to withstand the challenge.'") (quoting *Rogers v. Norfolk Southern Corp.*, 356 S.C. 85, 588 S.E.2d 87, 90 (2003)) (internal quotation omitted)

As summary judgment was adjudicated in the District Court, a genuine dispute is not created by a mere "scintilla" of favorable evidence, or evidence that is only "colorable" or insufficiently probative. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

VI. THE APPLICATION OF ISSUE PRECLUSION IS NOT SOUND WHEN THE STANDARDS OF PROOF ARE DIFFERENT AND WHEN THE LEGAL ANALYSIS IS AN ACADEMIC EXERCISE THAT INCLUDES FICTION.

As Appellants have detailed above, in Part IV, the probable cause analysis in constitutional claims can include fiction, like in the case at bar. As the United States Supreme Court has held on numerous occasions, police officers are not liable for bad guesses in gray

areas; they are liable for transgressing bright lines. *Anderson v. Creighton*, 483 U.S. 635, 639-40 (1987); *Gooden v. Howard County*, 954 F.2d 960, 968 (4th Cir. 1992).

Issue preclusion is, "A right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in *a subsequent suit* between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified." *Southern P. R. Co. v. United States*, 168 U.S. 1, 18 S. Ct. 18, 42 L. Ed. 355 (1897) (emphasis added). See also *Smart v. Wilson*, at *12, 2011 U.S. Dist. LEXIS 117387, 2011 WL 4808203 (D.S.C. October 11, 2011); *Robinson v. SC Dep't of Pub. Safety, Highway Patrol*, 2010 U.S. Dist. LEXIS 142611 (D.S.C. December 28, 2010); *Tillie v. Glens Falls Ins. Co.*, 208 F. Supp. 921 (D.S.C. September 27, 1962).

Although this matter has been litigated in two different courts, it is still the first action. It is not a subsequent suit and issue preclusion should not have been applied. The courts changed through removal and remand, but the same amended complaint survived the entire time. See Notice of Removal, February 4, 2013 and Amended Order and Opinion, August 17, 2017.

Sections 27, 28, and 29 of the Restatement (Second) of Judgments were adopted by the South Carolina Supreme Court in *S.C. Property & Casualty Ins. Guar. Ass'n v. Wal-Mart Stores*, 304 S.C. 210, 213-214, 403 S.E.2d 625 (1991); *State v. Bacote*, 331 S.C. 328, 331-332, 503 S.E.2d 161 (1998).

The applicable parts of Restatement (Second) of Judgments, § 28 are:

> Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent

action between the parties is not precluded in the following circumstances:

(2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or

(3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or

(4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or

(5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

Restatement (Second) of Judgments, § 28

Appellants have shown that the probable cause analysis of objective reasonableness is substantially unrelated to the adjudication of a defamation claim and the defense of qualified privilege. A defamation claim does not involve the use of imaginary facts that might have been in a police officer's head. To make imaginary facts preclusive reeks of injustice.

In Restatement of Judgments, § 27, the comments speak of balancing the dimensions of issue preclusion:

> The problem involves a balancing of important interests: on the one hand, a desire not to deprive a litigant of an adequate day in court; on the other hand, a desire to prevent repetitious litigation of what is essentially the same dispute. When there is a lack of total identity between the particular matter presented in the second action and that presented in the first, there are several factors that should be considered in deciding whether for purposes of the rule of this Section the "issue" in the two proceedings is the same, for example: Is there a substantial overlap between the evidence or argument to be advanced

> in the second proceeding and that advanced in the first? Does the new evidence or argument involve application of the same rule of law as that involved in the prior proceeding? Could pretrial preparation and discovery relating to the matter presented in the first action reasonably be expected to have embraced the matter sought to be presented in the second? How closely related are the claims involved in the two proceedings?
>
> Restatement of Judgments, § 27, cmt. c.

Appellants also assert that if such facts were indeed preclusive, the District Court and the trial court would not have respectively remanded and denied summary judgment on the defamation claims. Appellants assert that the previous summary judgment orders show that the other courts' intent was not to dismiss the defamation claims. Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998).

The trial court should have required the Respondent to produce the entire judgment role of the District Court case in order to review and understand the context in which the Respondents were asking for issue preclusion. Appellants raised this issue in their Response to Defendants Motion in Limine. "Those who rely on a judgment for its issue-preclusive force (or for any other consequence consistent with an earlier adjudication's legal efficacy) are duty-bound to produce -- as proof of its terms, effect and validity -- the entire judgment roll to the text of the note for the case which culminated in the decision invoked as a bar to relitigation." *Salazar v. City of Oklahoma City*, 1999 OK 20, 976.P.2d 1056, 1061 (Okla. 1999) (Moving party has burden of producing judgment roll to allow trial court to determine what claims were adjudicated and what issues were actually decided). See also, "It is abundantly clear that [Plaintiff's] state-law tort for [Defendant's] negligence that culminated in his wrongful detention must be allowed to survive the preclusion-anchored defense pressed by [Defendant]. That claim does not invoke indifference

required of a constitutional violation. It rests on want of ordinary care actionable under Oklahoma's common law of false imprisonment. Lastly, Salazar's state-law claim met with federal-court dismissal without reaching the merits." *Salazar v. City of Oklahoma City*, at 1063.

This is important when the majority of the findings of fact are hearsay allegations from Johnson's depositions, which runs "counter to the well-established principle that courts may not take judicial notice of hearsay allegations. An appellate court's description of facts is merely the hearsay assertions of the justices who delivered the opinion. Hearsay statements within the opinion are inadmissible unless they fall within an exception to the hearsay rule." *Kilroy v. State of California*, 119 Cal. App. 4th 140, 146 (Ct. App. Cal 3rd Appl. Dist. 2004). See also, *People v. Munoz*, 129 Cal. App. 4th 421, 430 (Ct. App. Cal 1st Appl. Dist. 2005) (While it is proper, when relevant, to take judicial notice of the prior finding, it is improper to take notice of the truth of that finding. (See *Kilroy v. State*, 119 Cal. App. 4th 140, 145–148 (2004); *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort*, 91 Cal. App. 4th 875, 882, 885 (2001); *Sosinsky v. Grant*, 6 Cal. App. 4th 1548, 1565, 1568–1569 (1992).

VII. DEFAMATION AND ITS DEFENSE OF QUALIFIED PRIVILEGE IS A JURY QUESTION WHEN THE ERROR OF PRECLUSION IS REMOVED.

In order to recover for defamation, a plaintiff must allege that some message, "expressed either by writing or printing, or by signs, pictures, effigies or the like had the following characteristics:

(1) it had a defamatory meaning;
(2) it was published with actual or implied malice;
(3) it was false;
(4) it was published by the defendant;
(5) it concerned plaintiff; and
(6) it resulted in legally presumed damages or in special damages to plaintiff.

F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts*, 461 (2d ed. 1997) (citing *Smith v. Bradstreet*, 63 S.C. 525, 41 S.E. 763 (1902).

The defense of qualified privilege is:

> A communication made in good faith on any subject matter in which the person has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation. The essential elements of a conditionally privileged communication may accordingly be enumerated as good faith, an interest to be upheld, a statement limited in scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits.

Conwell v. Spur Oil Co. of Western South Carolina, 240 S.C. 170, 178, 125 S.E.2d 270, 245-75 (1962).

A qualified privilege exists only when the publisher does "not wander beyond the scope of the occasion." *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 447 S.E.2d 194 (1994). The protection of qualified privilege may be lost if its scope is exceeded in the manner of its exercise even though the defendant believes in the truth of the charge and acts without malice. *Rowell v. Johnson*, 170 S.C. 205, 170 S.E. 151 (1933); *Turner v. Montgomery Ward & Co.*, 165 S.C. 253, 163 S.E. 796 (1932). Thus, privilege does not protect defamation that is not reasonably necessary; and the defendant must be careful to go "no further than his interests or duties require" and not publish to persons other than those to whom the privilege applies. *Fulton v. Atlantic Coast Line R. R.*, 220 S.C. 287, 297, 67 S.E.2d 425, 429 (1951); *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341 S.E.2d 622 (1986).

> When a person exceeds his privilege and the communication goes beyond what the occasion demands that he should publish, he will not be protected. And the fact that the duty, a common interest, or a confidential relation existed to a limited degree, is not a defense, even though he acted in good faith.

Fulton v. Atlantic Coast Line R. R., at 297.

It is generally for the jury to determine "whether such publications go too far beyond what the occasion required and was unnecessarily defamatory." *Fulton v. Atlantic Coast Line R. R.*, at 297.

Appellants assert that in this matter, it is for a jury to decide whether Cowan's statement that "[t]he drugs that we purchase were out of that home, we purchased from a family member of that home," was limited in scope and purpose. The trial court justified that the news media had a corresponding interest "in knowing about drug activity in residential neighborhoods in its own community" and that Cowan's remarks were strictly limited to the scope of the drug purpose itself. When the fictional narrative is stripped from the facts adjudicated for the probable cause objective reasonableness test, then (1) there were no drugs sold in the home by a family member, (2) the Richland County Sheriff's Department invaded the wrong home, and (3) a jury can certainly find an abundance of evidence that the statement against the Blandings was defamatory and Cowan exceeded his privilege.

There were no arrests made, no drugs were found, the search warrant showed that the front door was on the wrong street, and the family had a clean record. Although Cowan's job was to speak with the media, he had no duty or obligation to speak with the media about this particular incident and to defame the Appellants. He should have said, "no comment", or asserted his privileged to not speak. Cowan exceeded the scope of what was in the search warrant.

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VIII. THERE IS NO QUALIFIED PRIVILEGE DUTY FOR A PUBLIC AFFAIRS OFFICER TO SPEAK WITH THE PRESS.

The bulk of the South Carolina qualified privilege decisional law addresses employees and managers communicating defamatory information within the organization they work. *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001) (Statements made by employees and managers within an organization); *Harris v. Tietex Int'l, Ltd.*, 417 S.C. 533, 790 S.E.2d 411 (Ct.App. 2016) (Employer's internal memos); *McBride v. Sch. Dist. Greenville County*, Unpublished Opinion No. 2013-UP-430 (Ct. App. November 30, 2013); *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341 S.E.2d 622 (1986) (Company posted a memo to the employees at the workplace requesting that they stop treating with a physician that the company's health insurer carrier suspected of making false claims); *Fulton v. Atlantic Coast Line R.R. Co.*, 220 S.C. 287, 67 S.E.2d 425 (1951) (Statements at an internal company investigative hearing was privileged, therefore, no slander; letters to other folks about reasons for terminations exceeded privlige); *Bell v. Bank of Abbeville*, 211 S.C. 167, 44 S.E.2d 328 (1947) (Discussions of cashier's irregularities made in good faith in the pursuit of the business of the employer by and to persons who had a right to hear and consider such statements).

There are no cases that hold that a public affairs officer or public relations officer has a duty to speak with the press. Should the Court hold that a public relations officer or a public affairs officer receive qualified privilege for their statements to the press with no consequences if they exceed the privilege, then a company or governmental entity could publish defamatory statements without any repercussions and the law of defamation would be changed for the worse. The trial court erred in not allowing a jury to determine if RCSD exceeded it privilege in its statement to the press.

CONCLUSION AND RELIEF REQUESTED

Appellants ask the Court to reverse the trial court's decisions and remand the matter for trial. Appellants ask the Court to hold that the trial court erred in finding that there was issue preclusion from the federal court order as (1) this was the same case, not a subsequent action, (2) the probable cause objective reasonableness test is an academic exercise that includes facts that were not true or that are inadmissible, and (3) that unfairness and injustice resulted. Appellants further ask the Court to hold that the trial court erred in granting summary judgment to the Respondent based on qualified privilege as there was no duty to speak with the press and the facts were based in large part upon fictional evidence.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellants certifies that the Final Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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