THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

The Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2015-000613

Opinion No. 5669

Filed July 24, 2019

Jeffrey Kennedy.....Respondent,

v.

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

RESPONDENT'S RETURN TO PETITION FOR REHEARING

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INTRODUCTION

This Return is filed pursuant to the Court's request. Respectfully, the Petition for Rehearing should be denied. The Court's unanimous opinion was properly grounded in the law of defamation and in the record before the trial court. The Appellants have identified no errors, or points overlooked or misapplied by the Court, that warrant rehearing or reversal of its thorough and well-reasoned opinion. For the reasons set forth in Respondent's prior briefs and this Return, the Petition should be denied.

STATEMENT OF FACTS

This case was tried before a jury on the sole cause of action for defamation. On October 3, 2014, the jury returned a verdict in favor of Respondent, Mr. Kennedy, and specifically found, by way of a special interrogatory, that Chuck Earles and Eric Barnes defamed Mr. Kennedy and acted with actual malice. The recitation of the undisputed facts of the case, and the voluminous record that resulted from the week-long trial, has been reviewed twice by this Court and once by the South Carolina Supreme Court. As such, Respondent does not reiterate the facts *in toto*, but will instead address each of the Appellants' arguments in turn.

ARGUMENT

I. The Court of Appeals Properly Found That The Trial Court Did Not Err in Denying Appellants' Motions for Directed Verdict and JNOV.

Evidence of Fault

Appellants assert that that this Court did not properly analyze the "fault" component of the law of defamation in South Carolina. This is incorrect, as a plain reading of the opinion reflects the Court's exhaustive explanation as to why Mr. Kennedy met each of the requirements necessary to prove the tort of defamation. The Court of Appeals correctly noted that while Appellants

claimed they did not print out the email, Mr. Kennedy and other witnesses testified they saw and read the e-mail in unsecured District vehicles and offices. The credibility of the witnesses, and the belief or disbelief of their testimony, is solely the province of the jury.

There was substantial evidence in the record from which the jury could find that the email being left out for public consumption and on view for all to see was the fault of the Appellants. Appellants fail to recognize that the jury could have disbelieved the Appellants' testimony where they denied printing the email out, as was its right since credibility issues are for the jury. *See, e.g., Cook v. Regions Bank*, 2016-UP-387 (per curiam) (Ct. App. July 27, 2016) (upholding denial of motions for directed verdict and JNOV in workplace defamation case because a reasonable jury could have believed the plaintiff's version of events, even if contradicted by the defense.)[1] *See also Travelers Property Casualty Co. v. Senn Freight Lines, Inc.*, 2014-MO-022 (per curiam) (S.C. S. Ct.) (July 2, 2014) (where credibility of the witnesses was central to the plaintiff's argument that there was sufficient evidence, if believed, to support the verdict, the trial court's denial of JNOV motion was proper.)[2]

Appellants denied printing out the e-mail or leaving it out. R. p. 364, l. 21 – p. 365, l. 1; R. p. 519, l. 1-5. Despite acknowledging that the security division was a "rumor mill" and had a "gossip problem", Appellants did nothing to ensure the confidentiality of the email besides marking it as such, despite acknowledging that the contents of the e-mail would harm Mr. Kennedy if it got out. R. pp. 359 - 360; R. p. 423, l. 25 - p. 426, l. 8. Upon learning that the "confidential" e-mail had been printed out and left out for all to see, neither Barnes nor Earles followed up with

[1] Counsel is aware that citation to unpublished opinions is disfavored under the Appellate Court Rules; however, counsel respectfully believes that this opinion could aid in the Court's consideration of this matter.
[2] Id.

their supervisory staff to find out who had left the memo out (if they themselves, in fact, had not) or why the confidentiality directive was ignored. R. p. 311, l. 10- p. 312, l. 4; R. p. 426, l. 9 – p. 428, l. 2. The Appellants did not call as witnesses at trial any of the supervisors that were listed as recipients of the e-mail.[3] *See Record* (Trial Transcript). Mr. Kennedy testified that he heard that Appellants said he was a thief. R. p. 168, l. 5-23.

"The fact that testimony is not contradicted directly does not render it undisputed. There remains the inherent probability of the testimony and the credibility of the witness or the interest of the witness in the result of the litigation. If there is anything tending to create distrust in his or her truthfulness, the question must be left to the jury." *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991). A jury is "simply not required to believe [uncontradicted] evidence." *Steele v. Dillard*, 327 S.C. 340, 486 S.E.2d 278 (Ct. App. 1997) (sustaining verdict for plaintiff). "Credibility determinations regarding testimony are a matter for the finder of fact, who has the opportunity to observe the witnesses, and those determinations are entitled to great deference on appeal." *Okatie River v. Southeastern Site Prep*, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003) (affirming award in favor of plaintiff where there was reason for disbelief of undisputed evidence which purported to establish "the truth"); *See also Graham v. Whitaker,* 282 S.C. 393, 321 S.E.2d 40 (1984) (affirming verdict and noting that the Court is "not at liberty to pass upon the veracity of the witnesses and determine this case according to what we think is the weight of the evidence.")

The evidence was that Appellants, either directly or through their conduct and insinuations, let the security staff know – specifically Messrs. John Reid and Barry Mitchell - that they believed Mr. Kennedy was the thief, by taking away his keys, withdrawing the promotion, and assigning

[3] Presumably the recipients, all members of the Appellants' supervisory staff, would have denied printing out and distributing the e-mail.

him to desk duty. It was already known among the staff that the athletic director, Mr. Hunter, had reported the money missing.[4]

There was evidence that, even after finding out the e-mail had been printed out and left out, Appellants never asked the recipients if they printed it out, nor if they left it out in the office or in the vehicles. The jury could have reasonably concluded that Appellants did not inquire because they themselves were the ones who printed it out. This is a logical inference, because one does not ask others if they posted it or left it in vehicles if you yourself did so. In short, the jury was free to disbelieve the Appellants. "Even where the evidence is uncontradicted, the jury may believe all, some, or none of the testimony, and where the credibility of the witness has been questioned, the matter is properly left for the jury to decide." *Ross v. Paddy,* 340 S.C. 428, 532 S.E.2d 612 (Ct. App. 2000) (upholding denial of directed verdict motion) (*citing Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165 (1952) (upholding denial of motion for directed verdict, even though appellant contended testimony was uncontradicted, because "if there is **anything** tending to create distrust in [a witness's] truthfulness, the question must be left to the jury") (emphasis added)).

It was entirely reasonable for the jury to find that the Appellants were not credible; for instance, Eric Barnes testified at trial that that there had been no thefts reported at Spring Valley since the Hunter theft in March 2014. R. p. 361, l. 1-7. The jury could have found his testimony absurd, given that Spring Valley's Assistant Principal, Jim Childers, estimated that on average he sees 100+ thefts a year at the school. R. p. 746, l. 4. – p. 747, l. 4. Likewise, the jury could have found Mr. Earles not credible, given that he did not recall seeing the baseball team on the video

[4] See Record at. p. 226, l. 11 – p. 227, l. 7.; R. pp. 248, l. 18 – p. 249, l. 13; R. p. 271, l. 5-18 (Testimony of Richland Two employees Barry Mitchell, John Reid, and Anthony Permenter).

footage, nor would he admit that it would be highly unlikely that Mr. Kennedy would be robbing someone while simultaneously talking on his cell phone. R. p. 559, l. 24 – p. 560, l. 18; R. p. 545, l. 24 - p. 546, l. 2.

Because credibility determinations are entitled to great deference on appeal, the Court of Appeals correctly affirmed the trial court's denial of Appellants' motions for directed verdict and JNOV, as there was some evidence of defamation under South Carolina law sufficient to support a verdict. Under South Carolina law, when an employer or supervisor conveys their belief that an employee is guilty of a crime to others, despite having actual knowledge otherwise, the denial of a directed verdict motion as to a defamation claim is proper. *See, e.g., Constant v. Spartanburg Steel,* 316 S.C. 86, 447 S.E.2d 194 (1994).

Common Law Actual Malice and The Tort Claims Act

The Court did not overlook and/or fail to examine whether there was any evidence of actual malice sufficient to support a verdict against Appellants in their individual capacities under the Tort Claims Act. The Court correctly noted that "where the occasion gives rise to a qualified privilege, there is a *prima facie* presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice **or** that the scope of the privilege has been exceeded." *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (S.C. 1999) (emphasis added). Because there was evidence to support a finding that Appellants exceeded the scope of their privilege, the Court properly found that there was sufficient evidence for the jury to find that the Appellants acted with actual malice within the meaning of the South Carolina Tort Claims Act. *See Swinton Creek, supra* (finding error for trial court to grant motion for directed verdict on defamation claim because it was for the jury to decide whether the privilege was exceeded and further, there was evidence in the record suggesting reckless disregard which could constitute

actual malice). In fact, the Appellants specifically agreed to a special interrogatory on the verdict form to address this issue. R. p. 1057, l. 4 – p. 1059, l.4; R. p. 1060, l. 19 – p. 1065, l. 14; See also R. pp. 3 - 4 (Verdict Form).

Section 15-78-80(b) of the Tort Claims Act provides that "nothing in the chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2011).

In *Pridgen*, the defendants were supervisors who were tasked with investigating alleged infractions at the prison where the plaintiff also worked. The Court of Appeals held that the denial of defendants' motions for directed verdict and JNOV as to immunity under the SCTCA was proper. The Court held that because the plaintiff alleged personal motives and bias on the part of the defendants, "there was at least circumstantial evidence that the defendants acted outside the scope of their employment and with the intent to harm the plaintiff . . . [and] [t]he jury could infer from . . . the nature of their actions that they intended to harm [the plaintiff]." 705 S.E.2d at 64.

"Common law actual malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference toward the plaintiff's rights." *Murray v. Holnam*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001) "Malice may be proved by direct or circumstantial evidence . . . Whether malice is the incentive for a publication is ordinarily for the jury to decide. Proof that statements were published in an improper and unjustified manner is sufficient evidence to submit the issue of actual malice to a jury." Id. at 750-751.

For the reasons previously cited, the Court of Appeals correctly found that in light of the Supreme Court's finding that there was evidence from which the jury could find that the privilege had been abused or exceeded, the jury could certainly have found that the Appellants acted with "actual malice" when the memo was left out for all to see and they clearly communicated that they considered Kennedy to be a thief. The jury could have concluded, based on the evidence, that Earles and/or Barnes printed out the memo and left it out and that they lied on the stand when they denied doing so. In conclusion, the Court did not overlook or misapprehend the law of defamation in South Carolina, including the issue of actual malice, and properly affirmed the trial court's denial of Appellants' motions for directed verdict and JNOV based upon the record on appeal; the arguments contained in the briefing of this matter; and the opinion of our Supreme Court.

II. The Opinion Correctly Decides The Issue of Damages

An appellate court must view the facts in the light most favorable to the plaintiff in evaluating a challenge to a verdict's amount. *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 136 S.E.2d 286 (1964). The Court, in its comprehensive review of the damages award throughout nine (9) pages of its opinion, did not overlook and/or misapprehend the law of damages in South Carolina; the evidence in the record; the standard of review for motions for JNOV; motions for new trial absolute; and motions for new trial *nisi remittitur* . The damages awards are not excessive or capricious, much less grossly excessive, given that under South Carolina law, "[a] person's reputation is invaluable." *Miller v. City of W. Columbia*, 322 S.C. 224, 471 S.E.2d 683 (1996) (upholding award of $250,000 actual damages and $500,000 in punitive damages in defamation case). "A verdict which may be supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained, is not excessive." *Young v. Warr*, 252 S.C. 179, 187, 165 S.E.2d 797, 801 (1969).

The evidence in the record was that Jeffrey Kennedy's promotion was withdrawn; his income was reduced; and his reputation both inside and outside the District diminished after the email was published and he was considered a thief and a "worthless" security guard. Contrary to the Appellants' contention that Mr. Kennedy only suffered a "minor indignity" as a result of their conduct, the Court correctly notes that there was evidence from which a jury could find recklessness on the part of the Appellants, since clear and convincing evidence existed at trial to find they acted willfully, wantonly, or with reckless disregard for Mr. Kennedy's rights. *See, e.g., Cody P. v. Bank of America*, 395 S.C. 611, 720 S.E.2d 473 (Ct. App. 2011) (denial of bank's motion for JNOV on punitive damages proper when the evidence, viewed in the light most favorable to the plaintiff, showed that a person of ordinary reason and prudence would have known that he or she was acting in contravention to the bank's policies and procedures and, further, had acted recklessly when he or she opened bank accounts carelessly).

The Appellants contend that there was "simply no evidence in the case that Barnes or Earles acted with any conscious failure to exercise due care" and that "Kennedy submitted no direct evidence that Barnes or Earles intentionally or consciously communicated any information regarding his June 2011 employment status beyond the supervisory group to which the email was originally addressed, with he exception of a soon-to-be supervisory whom Kennedy relieved on his shift." Petition at p. 10. Appellants again ignore the record on appeal, which contains evidence, viewed in the light most favorable to Mr. Kennedy, showing that Appellants knew there was a rumor and gossip problem in the security division, but chose to disseminate false and harmful information about Kennedy in writing and otherwise, and also failed to ensure that it was kept confidential among supervisors or not printed out (or in fact printed it out themselves). This was in stark contrast to the "gold standard" exemplified by Assistant Principal Childers's treatment of

a custodian who also had keys to the AD office, and in direct contravention to Richland Two's "best practices", which seek to keep potentially damaging employee information confidential. R. p. 848, l. 16 – p. 851, l. 24. Given that the Appellants clearly believed Kennedy was a thief, and were frustrated that he was not fired and charged criminally by the Sheriff's Department, there was sufficient evidence for the jury to consider awarding punitive damages. Furthermore, the emotional testimony of Mr. Kennedy himself, which was apparently believed by the jury, was certainly sufficient to support an award of punitive damages.

III. The Court Correctly Affirms the Evidentiary Ruling of the Trial Judge

The Court properly determined that the trial court did not abuse its discretion when it excluded an unproven allegation of theft years after the fact, properly noting longstanding South Carolina law which provides that even relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury" under Rule 403, SCRE.

On March 25, 2014 – over 3 years after the alleged theft at the AD's office – Mr. Kennedy was arrested and charged with a misdemeanor petty larceny charge relating to his employment by Allied Barton as a security guard at a SCANA plant. At the time of the trial, the charges were pending.[5] The charges alleged that Mr. Kennedy stole a pair of safety glasses (valued at $5.00) and $10.00 in cash from a room at a SCANA location. Kennedy filed a motion *in limine* seeking to exclude evidence of the alleged SCANA theft and the testimony of Bill Simpson, arguing that any mention of the pending and unproven charges would result in extreme prejudice and, further,

[5] On September 23, 2015, Respondent filed a motion to enlarge the record on appeal, pursuant to Rule 212, SCACR, to include the Richland County Summary Court record reflecting the jury's April 8, 2015, not guilty verdict on the petty larceny charges. The motion was denied by the Court pursuant to Rules 209(b) and 210(c), SCACR.

were irrelevant as they concerned future events –years down the road – that were not in existence at the time this defamation action arose. Kennedy's counsel further argued that Appellants were trying to prove what they were unable to prove (or even charge) three years prior at Spring Valley High School, and that these were mere accusations. See R. pp. 37-45; See R. p. 109, l. 12 – p. 127, l. 9.

The Court correctly notes that there was no abuse of discretion in the trial court's ruling that the SCANA evidence would be unfairly prejudicial because "[e]vidence of similar acts has the potential to be exceedingly prejudicial" and such evidence "must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."

Appellants contend that the SCANA charges were evidence of a "common scheme or plan" and that this Court misapprehends the law or overlooked its argument when it affirmed the trial court. Again, the Appellants ignore the law of South Carolina in asserting this argument. "Evidence of similar acts has the potential to be exceedingly prejudicial." *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010). "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *Kennedy v. Griffin*, 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2003). *See also USA v. Queen*, 132 F.3d 991, 996 (4th Cir. 1997) ("noting the tendency to condemn not because the accused is believed guilty of the present charge but because he has escaped unpunished from other offenses".)

Under *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923), the Supreme Court considered the exclusion of evidence which was from 10 days to 7 weeks removed from the crime charged. The Court asked, "what is there in the alleged passing of forged checks at widely separated points . . . prior to the commission of the crime charged that tends, in a legal sense, to identify the defendant

as the man who uttered the forged paper....? True, such evidence strongly tends to induce the jury to believe that, merely because the defendant was guilty of the former crimes, he was also guilty of the latter, but that is the precise inference the general rule was wisely designed to exclude . . . There is no connection of time and place . . ." 118 S.E. at 808 (holding evidence was improperly allowed). Similarly, there was no connection as to time and place between the SCANA incident and the Spring Valley incident three years prior.

Furthermore, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." *State v. Billy Wayne Cope*, 405 S.C. 317, 748 S.E.2d 194 (2013) (citing Rule 404(b), SCRE). "However, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Id. If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within [this] exception in Rule 404(b)." Id. In *Cope*, the Supreme Court held that there was no abuse of discretion in the trial judge's exclusion of evidence of other crimes under Rule 404(b) where the other crimes occurred subsequent to the murder at issue and there were "many distinctions" as well, although there were also some similarities.[6]

Appellants contend that the Court erred in affirming the trial court's exclusion of the SCANA evidence in light of Rule 405, SCRE. Rule 405, SCRE, allows that on cross-examination of the character witness as to reputation, "the court may allow an inquiry into **relevant** specific instances of the person's conduct." (emphasis added). Accordingly, before inquiry can be made,

[6] Of note, the other crime in Cope occurred within 6 weeks of the underlying offense.

the specific instances of conduct must still be found to be relevant (and not unfairly prejudicial) under Rules 401 and 404, SCRE.

For the reasons previously cited herein, the Court correctly affirmed the trial court's ruling that the pending SCANA charges, while perhaps relevant, were unfairly prejudicial. Rule 405 does not exist in a vacuum, and the Court properly found no abuse of discretion by the trial court in its exclusion of the evidence. Appellants can point to no South Carolina case law that this Court overlooked or misapprehended which provides that the admission of other acts or instances of conduct, under either Rule 404 or Rule 405, is not subject to an evaluation of relevancy and prejudice. Appellants cannot circumvent the plain language of Rules 403 and 404, SCRE, in arguing for the primacy of Rule 405. Appellants cite to various out of state cases in support of their position, along with several pre-rule cases; however, none of these cases can be considered to have precedential value in South Carolina.

IV. The Punitive Damages Award is Consistent With Due Process

Considering the factors in both *Gamble* and *Mitchell*, the evidence supports the trial court's post-trial review of the punitive damages award and the Court of Appeals properly affirmed the trial court's denial as to Appellants' motion for JNOV as to punitive damages. This Court did not err in its decision, as alleged on Page 17 of the Petition for Rehearing, by focusing on the defamation cause of action; rather, the Court properly considered the entire record when it applied the *Mitchell v. Fortis* factors.

Mr. Kennedy's own testimony, which was apparently believed by the jury, could be described as heartbreaking and certainly sufficient to support an award of punitive damages. Mr. Kennedy testified that because of the smear on his reputation he suffered stress and humiliation

and loss of income; that this stress and humiliation adversely affected his marriage; and that he was essentially shunned at church. Furthermore, he testified that he was the subject of stares and gossip. This testimony and supporting exhibits were entered without objection from the defense.

The Petition for Rehearing expresses displeasure at the opinion's description of the evidence sufficient to support an award of punitive damages; however, the description of an "incomplete and cursory investigation", and the Appellants' knowledge of the department's propensity for gossip and the harmful nature of the e-mail itself, are faithful to the record and relevant to the jury's punitive verdict. The Court of Appeals correctly noted that while Appellants continue to argue that there was no evidence of economic harm caused to Kennedy, the record itself reflected reduced overtime and pay, along with a damaged reputation and loss of the already-announced promotion, as sufficient to support the constitutionality of the punitive damages award. The Appellants now seek to place blame on the District's human resources manager, Roosevelt Garrick, as the cause of any alleged damages; this argument is nonsensical, given that the decision to brand Mr. Kennedy a thief originated with Mr. Earles and Mr. Barnes and their own testimony at trial was that they were very frustrated when the District failed to fire Mr. Kennedy. The jury heard the following at trial: the Appellants focused their investigation solely on Mr. Kennedy to the exclusion of all other suspects from day one, and, when law enforcement declined to press charges and HR refused to fire him, chose to go ahead and let everyone know that they considered Kennedy guilty regardless. They failed to safeguard confidential information and they failed to control the very "rumor mill" that they acknowledged existed at Richland Two.

As to Mr. Kennedy's financial vulnerability, he testified that the District job came with state benefits, including a pension; the Appellants' assertion that Mr. Kennedy's ability to secure "comparable employment at Allied Barton or GeoCare is not supported by the record, as it was

undisputed that neither company was a state entity with comparable benefits in any way whatsoever. R. _____

Furthermore, as to emotional harm, the Appellants assert that Mr. Kennedy "offered no evidence of emotional harm requiring medical or psychiatric treatment." However, Mr. Kennedy testified as to the significant distress he experienced after the defamatory e-mail, and the "no keys" directive, was conveyed to rank and file employees by both the words and conduct of the Appellants. The Court properly applied the *Mitchell v. Fortis* factors in reviewing the record and upholding the decision of the trial court. The Court correctly noted that Appellants maintained the belief that Mr. Kennedy was a thief despite no verified factual support or regard for Mr. Kennedy's reputation. As to its finding that the jury could have inferred intentional malice, trickery, or deceit, the Court correctly noted that the jury was free to consider the testimony of the Appellants when finding their actions malicious and reprehensible.

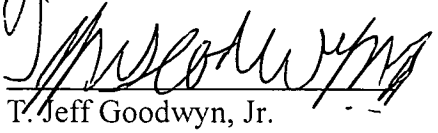
In *Lynch v. Toys R Us*, 375 S.C. 604, 654 S.E.2d 541 (Ct. App. 2007), the Court of Appeals upheld the trial court's denial of Toys R Us's motion for JNOV or *nisi remittitur* based on the jury's award of $50,000 in actual damages and $250,000 in punitive damages. The Court of Appeals noted that the plaintiff was arrested without justification and in full view of customers, and the combination led to humiliation, sleeplessness, and emotional pain, which constituted actual damages. Further, the punitive damages award was upheld "as a warning and example to deter the wrongdoer and others from committing like offenses in the future." 654 S.E.2d at 552. In the instant case, the Court correctly reasons that the jury may have wanted the punitive damages award to send a message that the Appellants needed to be much more careful in the future when handling sensitive information related to their employees.

Similarly, in *Miller v. City of West Columbia*, the Court of Appeals held that the trial court properly denied the defendants' motion for a new trial and to strike the punitive damages award where the evidence showed that the city administrator carelessly investigated a dispatcher's claims of sexual harassment against the plaintiff, a longtime city police officer, and furthermore made a statement, not based on evidence and in the presence of others, that the plaintiff had, in fact, harassed the dispatcher. Based upon the evidence, the Court held that the jury award in the amount of $250,000 actual damages and $500,000 punitive damages was "appropriate and necessary" under *Gamble*.

CONCLUSION

The Court's opinion affirming the trial court's orders and rulings are correct. For the foregoing reasons, and in addition to those arguments and citations contained in his Brief, the Respondent respectfully submit that the Petition for Rehearing should be denied. The Court recited all relevant facts, detailed the applicable law, and undertook an in-depth application of the facts to the law.

Respectfully submitted:



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THE STATE OF SOUTH CAROLINA
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Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

Opinion No. 5669

Filed July 24, 2019

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

PROOF OF SERVICE

I certify that I have served the **Respondent's Return to Petition for Rehearing** on Thomas K. Barlow, Esquire and Kathryn Long Mahoney, Esquire, Attorneys for the Appellants, at the address listed below by depositing a copy of same in the United States Mail, postage prepaid, on September 18, 2019.

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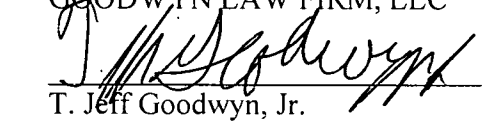

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September 18, 2019

RECEIVED
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SC Court of Appeals

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

RE: ***Jeffrey Kennedy v. Richland County School District Two, Eric Barnes and Chuck Earles***
Appellate Case No.: 2015-000613 (Opinion No. 5669, filed July 23, 2019)
Our File No.: 3000-0106

Dear Sir or Madame:

Enclosed for filing please find an original and seven (7) copies of Respondent's Return to Petition for Rehearing along with a Proof of Service in regards to the above referenced matter. Please file the original and return a filed copy with the Courier.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

T. Jeff Goodwyn, Jr.

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