

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

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DEC 18 2017

Maite D. Murphy, Circuit Court Judge
S.C. SUPREME COURT

Orangeburg County C/A# 2012-CP-38-00672

Appellate Case No. 2016-002080

Meredith HuffmanRespondent

vs.

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

REPLY BRIEF OF PETITIONER SUNSHINE RECYCLING, LLC

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ARGUMENT

Petitioner is conscious of the Court's preference for brevity in reply briefs, and Petitioner rests primarily on the arguments set forth in its Initial Brief and its other various filings during the appeal of this matter. However, Petitioner is compelled to briefly address certain arguments and/or statements in Respondent's Brief.

First, Respondent and the Court of Appeals fault Sunshine for Rich not thoroughly interrogating his employee (who was presumably available to law enforcement to interview), for the employee apparently not telling Rich that a black male in a white Ford pickup truck dropped off metal immediately after Huffman dropped off her metal, for Rich never viewing the video, and for the difficulty Palmetto Security Cameras had in copying the video. Respectfully, Respondent ignores the abundant, objective record evidence that exists, and asks this Court to allow no evidence to prove a negative in order to withstand summary judgment. This is not the summary judgment standard and the actual, objective evidence in the record supports only one reasonable inference – that Sunshine cooperated with a police investigation and did not institute, procure, cause or demand the arrest or prosecution of Huffman.

Secondly, Respondent's Brief is replete with conclusions, unsupported by the record evidence, that Sunshine knowingly provided false information and/or acted with reckless disregard. And despite Respondent's cursory attempt to distinguish Brice v. Nkaru, 220 F.3d 233 (4th Cir. 2000) from the case at bar, *Brice* is instructive and persuasive. Petitioner, like the Fourth Circuit, "is aware of no authority supporting the novel proposition that a witness, by honestly providing information to a law enforcement

official, may be held responsible for the official's execution of his independent duty to investigate.” Id. at 238. Merely providing information to the police and leaving the decision to bring charges to the sole discretion of the police cannot constitute the initiation of criminal proceedings for purposes of a malicious prosecution claim. See 54 C.J.S. Malicious Prosecution § 17 (stating a “civilian complainant, by merely seeking police assistance or furnishing information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for malicious prosecution”). Thus, *Brice* makes clear that as a matter of law, malicious prosecution cannot lie in this instance against Sunshine as a witness.

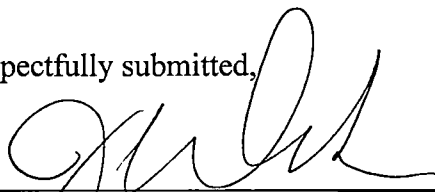
Moreover, the *Brice* court goes further and even addresses Respondent’s unsupported conclusions that Sunshine acted knowingly and/or recklessly, and held that the defendant’s failure to recant his identification when confronted with evidence that exonerated the plaintiff, coupled with his inability to recall details of the events, did not raise an inference, let alone a reasonable one, that the identification was knowingly false. Id. at 240. Thus, the Court held, in conjunction with sound public policy, that an agent of the victim’s honest, if mistaken, identification was insufficient to constitute intentional institution or procurement of the plaintiff’s prosecution. Id.

CONCLUSION

For the reasons primarily set forth in its Initial Brief and stated herein, and based upon the actual law of South Carolina, in conjunction with public policy, and the actual record evidence in the case, Petitioner respectfully requests that the Court of Appeals' decision be reversed and the grant of summary judgment in favor of Sunshine be reinstated, as there is no evidence, viewed in the light most favorable to Huffman, to support a reasonable inference of liability on the part of Sunshine.

[Signature Page to Follow]

Respectfully submitted,



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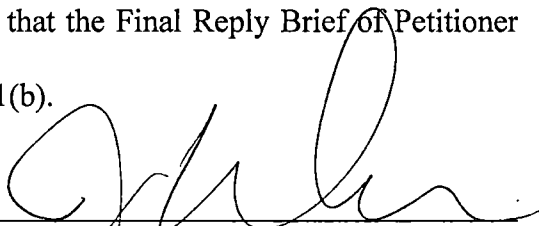
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CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Reply Brief of Petitioner
Sunshine Recycling, LLC complies with Rule 211(b).



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PROOF OF SERVICE

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

DOCUMENT(S) SERVED

Reply Brief of Petitioner Sunshine Recycling, LLC

Certificate of Counsel

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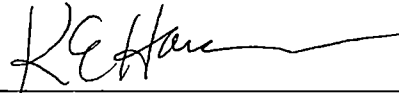
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