No. _____

In The
Supreme Court of the United States

GANNETT COMPANY, INC., GANNETT SATELLITE INFORMATION NETWORK INC., MULTIMEDIA HOLDINGS CORPORATION d/b/a KARE 11-TV and d/b/a ST. CLOUD TIMES,

Petitioners,

v.

RYAN LARSON,

Respondent.

On Petition For A Writ Of Certiorari To The Minnesota Supreme Court

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

STEVEN J. WELLS
Counsel of Record
TIMOTHY J. DROSKE
NICHOLAS J. BULLARD
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402
Telephone: (612) 340-2600
Email: wells.steve@dorsey.com
droske.tim@dorsey.com
bullard.nick@dorsey.com

Counsel for Petitioners Gannett Company, Inc., Gannett Satellite Information Network Inc., Multimedia Holdings Corporation d/b/a KARE 11-TV and d/b/a St. Cloud Times

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

STATE OF MINNESOTA

IN THE SUPREME COURT

A17-1068

Court of Appeals

Ryan Larson,

Appellant,

vs.

Gannett Company, Inc., et al.,

Respondents.

Chutich, J.
Concurring in part and dissenting in part, Anderson, J., Gildea, C.J.

Filed: February 26, 2020
Office of Appellate Courts

Stephen C. Fiebiger, Stephen C. Fiebiger Law Office, Chtd., Burnsville, Minnesota, for appellant.

Steven J. Wells, Timothy J. Droske, Nicholas J. Bullard, Dorsey & Whitney LLP, Minneapolis, Minnesota, for respondents.

Faegre Drinker Biddle & Reath LLP, Minneapolis, Minnesota, for amici curiae Star Tribune Media Company LLC, Fox/UTV Holdings, LLC, The E.W. Scripps Company, the Associated Press, Digital First Media, Gray Television Group, Inc., Meredith Corporation, the Minnesota Newspaper Association, The Media Institute, The National Association of Broadcasters, and The Reporters Committee for Freedom of the Press.

Randy M. Lebedoff, Minneapolis, Minnesota, for amicus curiae Star Tribune Media Company LLC.

Bruce D. Brown, Katie Townsend, Caitlin Vogus, Washington, D.C., for amicus curiae The Reporters Committee for Freedom of the Press.

SYLLABUS

1. The fair and accurate reporting privilege protects the reporting of information about a matter of public concern that is disseminated by law enforcement officers at an official press conference or in an official press release. Here, the district court erred in failing to recognize the existence of this privilege.

2. The fair and accurate reporting privilege may be defeated if statements in a news report were not a fair and accurate account of an official law enforcement press conference or press release. Here, although two of the statements in the news reports were fair and accurate as a matter of law, a new trial is required on five other statements because neither the jury instructions nor the special verdict form adequately advised the jury about the proper inquiry for determining whether the privilege was defeated, and the error was prejudicial.

3. Certain statements falling outside the scope of the fair and accurate reporting privilege are not actionable as a matter of law because they are non-actionable opinion, true, or not capable of defamatory meaning.

Affirmed in part, reversed in part, and remanded.

App. 3

OPINION

CHUTICH, Justice.

In this case we consider whether the fair and accurate reporting privilege protects news reports about statements on a matter of public concern made by law enforcement officers at an official press conference and in an official press release. Because we conclude that the privilege does apply, we must also consider whether the jury instructions adequately advised the jury on the proper focus of its inquiry in determining whether the privilege was defeated—that is, whether the statements in the news reports were a fair and accurate account of the press conference or press release. This matter arises from the 2012 shooting death of a Cold Spring police officer and the arrest that same night of appellant Ryan Larson in connection with the murder. The next day, representatives from three law enforcement agencies held a press conference to announce Larson's arrest and to discuss the ongoing investigation; that same day, the Minnesota Department of Public Safety issued a corresponding press release.

Larson was released from jail without being charged with a crime and then later cleared as a suspect. In other words, law enforcement officers had arrested Larson for a murder that he did not commit. Larson sued state and local law enforcement officers for various civil rights violations.[1] He also sued

---

[1] Larson's claims against employees of the Minnesota Bureau of Criminal Apprehension have been settled. By order dated November 13, 2019, the federal district court dismissed with

respondents Multimedia Holdings Corporation d/b/a KARE 11-TV and the St. Cloud Times in state court for defamation based on their news coverage about his arrest. He claimed that 11 statements in the news reports about the murder investigation were false and harmed his reputation.

A jury found for respondents, but the district court set the jury verdict aside and ordered a new trial. The court of appeals reversed the district court's post-trial order and ordered that the judgment for respondents be reinstated. *Larson v. Gannett Co.*, 915 N.W.2d 485, 488 (Minn. App. 2018).

We granted Larson's petition for review and respondents' request for conditional cross-review. We conclude that, concerning the 11 alleged defamatory statements in the news reports, (1) the fair and accurate reporting privilege applies to the 7 statements that reported information about a matter of public concern disseminated by the law enforcement officers at the press conference and in the press release; (2) the jury instructions and the special verdict form did not adequately set forth the relevant factors that the jury should consider in determining whether the privilege was defeated for lack of fairness and substantial accuracy, an error that was prejudicial as to 5 of the statements, but not as to 2 of the statements that are protected by the privilege as a matter of law; and (3)

---

prejudice Larson's remaining claims against Stearns County, the Stearns County Attorney, and local law enforcement officers. *Larson v. Sanner*, Civ. Nos. 17-63, 18-2957 (PAM/LIB), 2019 WL 5966322, at *3 (D. Minn. Nov. 13, 2019).

the remaining 4 statements that are not covered by the privilege are not actionable as a matter of law. Therefore, we affirm the decision of the court of appeals in part, reverse that decision in part, and remand to the district court for a new trial consistent with this opinion.

FACTS

On November 29, 2012, around 11:00 p.m., Cold Spring Police Officer Tom Decker was shot twice outside a bar in Cold Spring. Officer Decker was responding to a request from Larson's parents to check on Larson, who lived above the bar. About an hour after the shooting, the police entered Larson's apartment while he was sleeping and arrested him. Larson was brought to the Stearns County jail in St. Cloud and booked on suspicion of second-degree murder. The Stearns County website's publicly available jail log listed Larson's name, age, "charge" of "MURDER 2," and photograph.

Official Press Conference and Minnesota Department of Public Safety Press Release

At 9 a.m. the next morning, a short press conference was convened by three law enforcement agencies. The Chief of the Cold Spring Police Department, the Sheriff of Stearns County, and the Deputy Superintendent of the Minnesota Bureau of Criminal Apprehension ("Bureau") appeared, made statements, and

answered questions. The press conference was televised live.

The Stearns County Sheriff began by briefly describing the circumstances of the shooting, including the welfare call by Larson's parents. The Bureau Deputy Superintendent spoke next. He described the Bureau's investigation, including that "[a] SERT team from the Stearns County Sheriff's Office was eventually able to take into custody the subject of the welfare check." He noted that the investigation was "active and ongoing," and that "[w]e'll continue to follow up to determine exactly what happened in this incident." Before turning the conference over to other speakers, the Deputy Superintendent stated, "And as we noted, um, Ryan Larson was taken into custody and was booked into the Stearns County jail in connection with this incident."

The Chief next spoke about Officer Decker's background, family, and work on the police force. The law enforcement officers then answered questions from members of the media. The media's inquiries focused immediately on the arrested suspect, Larson. The first question asked was whether Officer Decker knew Larson. Other questions included where Larson was when he shot Officer Decker, what kind of weapon Larson used, and whether, in light of the welfare call, the police knew more about Larson's state of mind. The officials refrained from going into detail on the investigation and declined to answer some questions, noting that the investigation was in its early stages. When asked if there was "any reason to believe that

there might be some other individual involved," the Bureau's Deputy Superintendent responded that "we don't have any information to believe that at this time." At the end of the press conference, he also stated "from our preliminary investigation, . . . it's apparent to us that the officer was ambushed at the scene."

On the day of the press conference, the Minnesota Department of Public Safety ("Department") issued a press release entitled "Cold Spring Police Officer Killed in the Line of Duty." The press release was posted on the Department's public website. The release stated that "within an hour" of launching a search for the suspect, "investigators took Ryan Michael Larson, 34, of Cold Spring into custody. Larson was booked into the Stearns County Jail on murder charges early this morning."

Officer Decker's death and the press conference were covered by the media throughout Minnesota as "breaking news." The defamation claims here concern 11 statements[2] made by KARE 11 or the St. Cloud Times concerning the investigation, including the law enforcement press conference and Larson's release from Stearns County Jail.

Coverage by KARE 11

KARE 11 broadcast the story on its evening newscasts on November 30, 2012, and in an online article

---

[2] For case of reference, the 11 alleged defamatory statements in Larson's complaint are set forth below in bold text.

that same day. Its 6:00 p.m. newscast featured a "packaged" report by a reporter on location in Cold Spring. The news anchor introduced the segment: "Condolences are pouring in tonight for the family of the Cold Spring Police Officer who died in the line of duty, Tom Decker. The 31 year-old was shot and killed last night while conducting a welfare check on a suicidal man. **Police say that man—identified as 34 year-old Ryan Larson—ambushed Officer Decker and shot him twice—killing him**." The newscast then cut to the reporter, who introduced an interview with the victim's mother: **"[She] holds no ill-will against the man accused of killing her son**." The officer's mother is recorded saying, "**His mind must have really been messed up to do something like that. I know Tom would have forgave him**." When the reporter finished, the news anchor ended the story by stating, "**Ryan Larson, the man accused of killing Officer Decker, could be charged as early as Monday**."

The 10:00 p.m. newscast followed much the same format, but with a different reporter in Cold Spring. The news anchor introduced the segment: "The body of Cold Spring Police Officer Tom Decker is being guarded around the clock until his funeral. A preliminary autopsy shows that Officer Decker died of multiple gunshot wounds. **Investigators say 34-year-old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody**." The report included a clip of a local resident stating that Officer Decker was "one of the good guys." The reporter then said, "**He was**

the good guy last night going to check on someone who needed help. That someone was 34 year-old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom."

After showing more clips from the interview with Officer Decker's mother, the newscast cut back to the anchor, who said, "Charges could be filed as early as Monday against Ryan Larson, the man . . . who is accused of killing Officer Decker." Larson's mugshot, retrieved from the jail log, appeared on the screen next to his name and the words "Officer Killed" and "Suspect." Meanwhile, the anchor stated, "**He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second-year machine tool student at St. Cloud Tech. Larson is being held in Stearns County Jail**."

At the close of the story, a screen shot of an article published on kare11.com was displayed. Viewers were directed to the article, which bore the headline "Suspect jailed in fatal shooting of Cold Spring Police Officer." The article noted that Larson was held "on suspicion of second degree murder in the alleged ambush of a Cold Spring police officer." It also stated, "**Investigators believe he fired two shots into Cold Spring police officer Tom Decker, causing his death**."

Coverage by the St. Cloud Times

The following day, December 1, 2012, the St. Cloud Times covered Officer Decker's death in numerous front-page articles. The largest headline read: "Area mourns death of Cold Spring officer." A smaller headline in a separate article read, "**Man faces murder charge**," with the subheading, "Larson called 'normal person.' " The article reported that a "Cold Spring man has been arrested in connection with the shooting of a police officer Thursday night. Ryan Michael Larson, 34, is in Stearns County Jail and faces possible charges of second-degree murder. **Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker**."

Larson was released from jail on December 4, 2012. A press release issued by the Department of Public Safety stated that "at this time there is not sufficient documented evidence to continue to hold Ryan Larson" and requested "[a]nyone with information regarding this crime" to contact the authorities. Earlier that day, Larson had called the St. Cloud Times to declare his innocence and to let people know that the real killer remained in the community. Both the St. Cloud Times and KARE 11 published online articles about his statements that day, and the St. Cloud Times ran a print story on December 5 as well.

The St. Cloud Times article was titled, "County lets Cold Spring suspect go," with the subtitle "Prosecutors did not have enough evidence to charge." The article covered reactions by the community to Larson's

release, including that of the twin sister of Officer Decker's ex-wife. She expressed unease about the developments, stating that the culprit "could be somebody in the crowd." The report then stated: "**[She] said she came to the jail Tuesday because she had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail**. '**This isn't over,' she said**." The article ended with investigators urging anyone with information about the shooting to contact law enforcement.

The police officially cleared Larson as a suspect in August 2013. In January 2013, a person of interest in the investigation committed suicide after police officers questioned him. Law enforcement investigators connected the murder weapon back to the person of interest. The St. Cloud Times covered these developments in subsequent news articles.

Procedural History

Larson sued respondents for defamation, claiming that the following 11 statements made in the television newscasts, the online news article, and the news articles printed in the St. Cloud Times harmed his reputation:[3]

---

[3] For ease of reference, we adopt the court of appeals' numbering of these statements. As the court of appeals aptly noted, statements 1 through 5 attributed information to what police or investigators said or believed, statements 6 through 8 refer to the accusation against Larson, and statements 9 through 11 convey other information about Larson. Only the first 8 statements were considered by the jury because the district court found, as a

1. Police say that man—identified as 34-year-old Ryan Larson—ambushed officer Decker and shot him twice—killing him.

2. Investigators say 34-year-old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.

3. He [Officer Decker] was the good guy last night going to check on someone who needed help. That someone was 34-year-old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.

4. Investigators believe he fired two shots into Cold Spring Police Officer Tom Decker, causing his death.

5. Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.

6. [The officer's mother] holds no ill-will against the man accused of killing her son.

7. Ryan Larson, the man accused of killing Officer Decker, could be charged as early as Monday.

8. Man faces murder charge.

---

matter of law, that the final 3 statements could not support a defamation claim.

9. His mind must have really been messed up to do something like that. I know Tom would have forgave him.

10. He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail.

11. [She] said she came to the jail Tuesday because she had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. "This isn't over," she said.

The procedural history of the litigation is complex, but the portions relevant to our decision are summarized here. This appeal arises from the parties' motions that followed a jury trial held in November 2016. At the close of evidence at the trial, the district court concluded that statements 9 through 11 were not "capable of . . . defamatory meaning" as a matter of law and, therefore, those statements were not submitted to the jury. The district court also denied Larson's request for an instruction on "falsity by implication." As to the jury instructions that were given, the district court closely followed the model jury instructions governing defamation claims. *See* 4 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Civil*, CIVJIGS 50.10–.60 (6th ed. 2014). Notably, Larson did not seek an instruction on republication.

For statements 1 through 8, the 25-page special verdict form required the jury to make findings on defamation, falsity, and negligence for each statement, in addition to separate questions on damages. The jury found that the 8 statements were defamatory but that Larson failed to prove that any of the statements were false. Consequently, the jury did not make any findings on negligence or damages.

Larson then moved for judgment as a matter of law or, alternatively, for a new trial. The district court granted judgment as a matter of law in part. It rejected respondents' argument that the statements were protected by the fair and accurate reporting privilege. Instead, the court agreed with Larson that the jury should have been allowed to consider his claims based on a defamation-by-implication theory. Concluding that "the implication of each statement was that Mr. Larson killed Officer Decker," the court held that the 8 statements submitted to the jury were defamatory in nature and false as a matter of law, entitling Larson to a new trial on the issues of negligence and damages. Reversing course, the district court also revived statements 9 through 11, concluding that they could support a viable defamation-by-implication theory. Therefore, the court ordered a new trial on all 11 statements.

Respondents appealed. The court of appeals reversed the order for a new trial, concluding that statements 1 through 8 are protected by the fair and accurate reporting privilege. *Larson v. Gannett Co.*, 915 N.W.2d 485, 492–97 (Minn. App. 2018). Although the

court of appeals determined that the accuracy of the news reports was a fact question for the jury, the court of appeals held that question was resolved by the jury's decision that the statements were not false. *Id.* at 496, 499. Regarding statements 9 through 11, the court of appeals held that any error in dismissing them was harmless under the common law incremental-harm doctrine. *Id.* at 500. Accordingly, the court of appeals ordered the district court to enter judgment in respondents' favor. *Id.* This appeal followed.

ANALYSIS

Absent a privilege foreclosing relief, recovery for defamation requires a plaintiff to prove four elements:

> (1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

McKee v. Laurion, 825 N.W.2d 725, 729–30 (Minn. 2013) (citations omitted) (internal quotation marks omitted).

I.

Even if every element of a defamation claim is established, a speaker is not liable if an absolute or qualified privilege protects the defamatory statement and

the qualified privilege is not abused. *Bol v. Cole*, 561 N.W.2d 143, 148–50 (Minn. 1997). An absolute privilege affords the speaker the highest protection—it protects potentially defamatory statements regardless of the speaker's motive or state of mind.[4] *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 328 (Minn. 2000). A qualified privilege extends to a broader range of circumstances and, to be privileged, the statements must be made in good faith, on a proper occasion, with a proper motive, and upon reasonable or probable cause.[5] *Bol*, 561 N.W.2d at 149–50 (applying a qualified privilege to statements made by mental health providers to protect a child from abuse). These privileges exist because "statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be

---

[4] We have applied an absolute privilege to statements made by participants in judicial proceedings, *Matthis v. Kennedy*, 243 Minn. 219, 67 N.W.2d 413, 417 (1954); statements made by a high-level agency official in the performance of official duties, *Johnson v. Dirkswager*, 315 N.W.2d 215, 223 (Minn. 1982); and statements made by a state trooper in a written arrest report, *Carradine v. State*, 511 N.W.2d 733, 736–37 (Minn. 1994).

[5] *See*, *e.g.*, *Britton v. Koep*, 470 N.W.2d 518, 520 (Minn. 1991) (noting that "Minnesota was in the forefront for protection of public debate" by recognizing a qualified privilege for "[f]air comment on the conduct of public officials"); *Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876, 890 (Minn. 1986) (recognizing a qualified privilege for "an employer's communication to an employee of the reason for discharge"); *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980) (extending a qualified privilege to an employer's statements about a past employee's qualifications and work record).

defamatory." *Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876, 889 (Minn. 1986).

The privilege at issue here—the fair and accurate reporting privilege—shields a speaker from liability under the common law rule of republication. Under the republication doctrine, a speaker may be liable for repeating the defamatory statements of another. *See Church of Scientology of Minn. v. Minn. State Med. Ass'n Found.*, 264 N.W.2d 152, 156 (Minn. 1978) (noting the common law republication rule); 1 Robert D. Sack, *Sack on Defamation* § 7:3.5[B][1] (5th ed. 2017) (noting that the fair and accurate reporting privilege is an exception to the republication rule).

The fair and accurate reporting privilege is similar to an absolute privilege. In *Moreno*, we held that, like an absolute privilege, the fair and accurate reporting privilege cannot be defeated by common law malice—that is, proof of ill will or improper motive in the publication of the statements. 610 N.W.2d at 329, 333. Unlike an absolute privilege, however, the fair and accurate reporting privilege "may be lost by a showing that the report is not a fair and accurate representation of the proceedings or meetings." *Id.* at 331.

We review a district court's order to grant a new trial for an abuse of discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). But a grant of a new trial "based on an error of law" is reviewed de novo. *Id.* Whether the fair and accurate reporting privilege applies here is a question of law that we review de novo. *See Minke v. City of*

Minneapolis, 845 N.W.2d 179, 182 (Minn. 2014); *Moreno*, 610 N.W.2d at 328.

Larson challenges the court of appeals' conclusion that the fair and accurate reporting privilege applies to the news reports about the information communicated by the law enforcement officers at the press conference and in the news release. He and respondents dispute whether our decision in *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321 (Minn. 2000), supports extending the fair and accurate reporting privilege to official law enforcement news conferences and official press releases, an issue of first impression in Minnesota. For the reasons stated below, we conclude that the principles recognized in *Moreno* and the values underlying the First Amendment warrant applying the fair and accurate reporting privilege to the circumstances presented here.

Moreno extended the fair and accurate reporting privilege to "the accurate and complete report or a fair abridgement of events that are part of the regular business of a city council meeting." 610 N.W.2d at 334. Before *Moreno*, the privilege had been recognized to protect reports of judicial proceedings, *Nixon v. Dispatch Printing Co.*, 101 Minn. 309, 112 N.W. 258, 258–59 (1907), but *Moreno* was the first case to apply the privilege to reports about legislative proceedings, 610 N.W.2d at 332.

In *Moreno*, during the public comment portion of a city council meeting, a citizen asked the council to "stop Officer Moreno from dealing drugs out of his Police

car." 610 N.W.2d at 323. The Crookston newspaper reported the accusation in an article, as well as the police chief's response stating that the department "would be remiss" not to follow up on the accusation, but denying rumors that an officer had been arrested. *Id.* at 324. The paper also relayed details from its own investigation, including references to the citizen, which we concluded "could be interpreted as commenting on his 'veracity or integrity.' " *Id.* at 324, 334. The police officer sued the newspaper for defamation, claiming the entire article to be defamatory. *Id.* at 325. Because the record did "not permit us to determine as a matter of law whether the material in the Times' article that reported events other than those of the city council meeting conveyed a defamatory impression," we remanded the case to the district court for further determination of this issue. *Id.* at 334.

In considering whether the privilege applied to the newspaper article, we noted that, as a matter of policy, the privilege exists because "the public interest is served by the fair and accurate dissemination of information concerning the events of public proceedings." *Id.* at 332. In particular, we found the "articulation of the common law on the fair and accurate reporting privilege" in section 611 of the Restatement (Second) of Torts to be "persuasive." *Id.* Section 611 provides, "The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the

occurrence reported." Restatement (Second) of Torts § 611 (Am. Law Inst. 1975).

In *Moreno*, we further explained that the fair and accurate reporting privilege is based on two principles. "First, because the meeting was public, a fair and accurate report would simply relay information to the reader that she would have seen or heard herself were she present at the meeting."[6] 610 N.W.2d at 331 (citing W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 115 (5th ed. 1984)). "The second principle is the 'obvious public interest in having public affairs made known to all.'" *Id.* (quoting *Prosser and Keeton on Torts, supra*, § 115). The public's interest in receiving information provided by the government about important matters, and in knowing what public officials are doing, is a weighty one. *See Sack on Defamation, supra*, § 7.3.5[B][2].

Moreno further noted that the Legislature, in the context of criminal defamation, enacted a privilege for "a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings." Minn. Stat. § 609.765, subd. 3(3) (2018), *cited in Moreno*, 610 N.W.2d at 327 n.3. This statutory reference to "other public or official proceedings" shows legislative support for applying the civil version of the reporting privilege beyond the previously recognized

---

[6] This "agency" rationale recognizes that when a person accurately reports information conveyed in an official press conference, she essentially stands in for the public at large. *See generally Sack on Defamation, supra*, § 7:3.5[B][2] (describing agency rationale).

judicial and legislative contexts to the specific law enforcement context present in this case. *See Moreno*, 610 N.W.2d at 333.

The principles articulated in *Moreno* convince us to extend the privilege's protections to the media reporting at issue here. Accordingly, we hold that the fair and accurate reporting privilege protects news reports that accurately and fairly summarize statements about a matter of public concern made by law enforcement officers during an official press conference and in an official news release. As in *Moreno*, we take an incremental approach confined to the "legal questions presented by the facts of this case and made within the context of our own common law." 610 N.W.2d at 332. And following *Moreno*, we find the policy objectives of the Restatement to be persuasive—that the public interest is served by the fair and accurate dissemination of information concerning the events of public or official actions or proceedings—even though we do not adopt the Restatement in its entirety. *See Moreno*, 610 N.W.2d at 332.[7]

Analyzing these objectives here, we first conclude that the press conference and press release were public. The event was televised and the press release was posted online. A representative from the Bureau of Criminal Apprehension testified at trial that the very

[7] Contrary to the dissent's fears, this rule of law is not a "wholesale adoption" of section 611 or an "unreasonably broad" rule. The dissent's characterization of our decision mistakes our articulation of the *rationale* for the fair and accurate reporting privilege for the *rule* of law that we announce.

"purpose of the news conference was to provide information to the public and to the media to provide to the public." Doubtless, the corresponding press release was issued for the same purpose. Applying the privilege here fits neatly with the privilege's "agency principle": "because the meeting was public, a fair and accurate report would simply relay information to the reader that she would have seen or heard herself were she present at the meeting." *Moreno*, 610 N.W.2d at 331; *see also* Restatement (Second) of Torts § 611 cmt. i.

Larson contests this conclusion, arguing that the press conference was not "public" because only the media were invited and the public was not given "advance notice" that the meeting would occur. This view of what proceedings are "public" is far too narrow. The clear purpose of the press conference was to convey information to the community, and the community was able to view the press conference live on television or through the subsequent media coverage. In every practical sense, the press conference was "open to the public." Restatement (Second) of Torts § 611.

Larson nonetheless argues that, even if public, extending the privilege to media "summaries" of a press conference does not align with the privilege's agency principle. *See Moreno*, 610 N.W.2d at 331. *Moreno* squarely forecloses this argument because we recognized there that when a proceeding is protected by the privilege, the protection extends to any "fair abridgement of events that are part of the regular business of that proceeding. *Id.* at 334. Larson's argument is also contradicted by the criminal defamation privilege,

which expressly protects "fair summar[ies]" of any public or official proceeding. Minn. Stat. § 609.765, subd. 3(3). Allowing the press some leeway in its depiction and reporting of public events is also supported by the principles of the First Amendment and sound public policy. As the Supreme Court has stated, "in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring him in convenient form the facts of those operations." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491 (1975).

To be sure, the media's reporting of an event may be an imperfect proxy for first-hand experience. But the privilege ensures that the media's distillation of an event is not too imprecise; a plaintiff can still defeat the privilege's protection by demonstrating that the report was not an "accurate and complete report or a fair abridgement" of the proceeding. *Moreno*, 610 N.W.2d at 334.

Second, the press conference and press release involved a "matter of public concern." *Id.* at 331 (quoting Restatement (Second) of Torts § 611). Speech on matters of public concern "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 875 (Minn. 2019) (quoting *Snyder v. Phelps*, 562 U.S. 443, 452 (2011)).

Here, the police statements involved the sudden slaying of a community police officer, which Larson and

the dissent agree is a matter of public concern. The citizens of Cold Spring and surrounding communities had a great need to be informed about matters affecting their safety and their ability to go about their daily activities without fear. And under some circumstances, such as when a suspected criminal remains at large, it is important for the public to be so informed and for the government to be able to caution the public and solicit pertinent information.

The media's reports about the conduct of the law enforcement agencies in investigating a matter of public concern promote key values of transparency and accountability. These news reports not only facilitate communication between state officials and the public that they serve, but they also allow the public to assess the quality of the state and local officials' response to a public safety emergency. *See Johnson v. Dirkswager*, 315 N.W.2d 215, 220 (Minn. 1982) (according an absolute privilege to a cabinet-level official, reasoning that "the purpose of the privilege is not so much to protect public officials but to promote the public good, *i.e.*, to keep the public informed of the public's business"). The privilege's "second principle"—the "'obvious public interest in having public affairs made known to all'"—is certainly met here. *Moreno*, 610 N.W.2d at 331 (quoting *Prosser and Keeton on Torts, supra*, § 115).

Although the dissent rightly agrees that "the murder of a police officer and the expenditure of public funds to investigate that crime are a matter of public concern," the dissent believes that the identity of the person who is the focus of the investigation "cannot be

said to be of sufficient public concern" for the privilege to apply. The dissent opines instead that the police should simply inform the public "that a suspect is in custody or that they have no reason to believe that anyone else is in danger." Notably, however, the fair and accurate reporting privilege focuses on the *reporting* of what the police say—it does *not* control the *substance* of what the police say at an official press conference or in an official press release. *Moreno* specifically instructs that "the report must be either an accurate and complete report of events at the proceeding or a fair abridgment thereof." 610 N.W.2d at 331–32.

The dissent's limitation would force the press to make quick, ad hoc determinations about which public law enforcement statements to omit from live broadcasts, rebroadcasts, and reporting because they are not "of sufficient public concern" for the privilege to apply, while at the same time making sure that an abridged summary of what occurred at the press conference is "fair." And when the state does announce a criminal investigation, the dissent would place the onus of liability for a potentially false accusation not just on the original speaker—here, the state by way of its law enforcement officers—but on the media.[8]

---

[8] The dissent attempts to lessen the damage that its rule would inflict on the media by noting that the media would have protection from liability under the negligence or actual-malice standards of care. These protections, however, are cold comfort against the heavy costs of litigation. Such costs, we have recognized, risk rendering the media "ineffective as guardians of the public weal by deterring investigation of controversial subjects or

We see little sense in that rule. A rule that places defamation liability on a party that has no control over the original message cannot deter the conduct that defamation law seeks to prevent.[9]

Third, reports about the press conference and press release are covered by the privilege's application to "an official action or proceeding." *Moreno*, 610 N.W.2d at 331. (quoting Restatement (Second) of Torts § 611). The press conference was organized by the leaders of law enforcement agencies, in the context of their official duties, to inform the public of the investigation. Although not every statement made by a law enforcement officer to the press is an official action, the statements made here during a planned, formal press conference, to convey information about an ongoing criminal investigation, were official actions that were part of an official proceeding and subject to the privilege. *See* Restatement (Second) of Torts § 611 cmt. d; *see also Jones v. Taibbi*, 400 Mass. 786, 512 N.E.2d 260, 267 (1987) (noting that defendants may be privileged to report allegations if they "were made public as part of an official statement by the [Los Angeles Police Department]"); *Wright v. Grove Sun Newspaper Co.*, 873 P.2d 983, 985, 988 (Okla. 1994) (concluding that a press

---

even official misconduct." *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 491 n.19 (Minn. 1985).

[9] The dissent notes in a footnote the various laws and procedures governing the behavior of law enforcement agencies. We agree that these provisions are important safeguards. The presence of these protections substantially decreases the odds that a law enforcement officer in an official press conference will purposely or carelessly defame someone.

conference held by a district attorney to distribute information about a drug investigation was "official because [it] concern[s] the investigative function of the office"). These statements are in stark contrast to informal interviews or private conversations with arresting officers or investigators, which are neither official actions or proceedings nor open to the public.[10]

Larson proposes that for an action or proceeding to be "official" it must be "recurring" and "essential to democracy." He also asserts that "official" proceedings must provide an opportunity for "both sides to be heard" and result in an "official record."

These criteria are unsupported by precedent, and Larson fails to explain how they serve the interests advanced by the fair and accurate reporting privilege. In *Moreno*, for example, the citizen's accusations against the officer were prime examples of ad hoc or impromptu public statements, and the officer certainly had no immediate opportunity to rebut the citizen's

---

[10] For example, our decision in *Carradine v. State* concerned statements that a state trooper made in an arrest report and in response to informal press inquiries related to the arrest report. 511 N.W.2d 733, 736 (Minn. 1994). In determining when an absolute privilege applied, we distinguished between those statements made by an officer in "the performance of his function as an officer" and those statements that were "not at all essential to the officer's performance of his duties as an officer." *Id.* at 737. Moreover, *Carradine* suggests that the law enforcement officers here are at least protected by a qualified privilege. *Id.* at 737 n.3. Absent the fair and accurate reporting privilege, however, the media *reporting* their statements would have *less* protection from liability than the original speaker. Our decision avoids this inconsistent result.

accusations. 610 N.W.2d at 324. And even assuming that the privilege requires the proceeding to be "essential to democracy," a government-sponsored press conference and press release concerning the exercise of police power undoubtedly qualifies. *See Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 587 (1976) (Brennan, J., concurring) ("Commentary and reporting on the criminal justice system is at the core of First Amendment values, for the operation and integrity of that system is of crucial import to citizens concerned with the administration of government.").

For these reasons, we conclude that the statements made here during a planned, formal, press conference, to convey information about an ongoing criminal investigation of public interest, were official actions that were part of an official proceeding and the reports from that proceeding are subject to the privilege.

The dissent claims that our holding conflicts with *Nixon*. But, as *Moreno* recognized, *Nixon* provides little guidance because "we did not discuss the nature and scope of the privilege" in that case "nor did we discuss its applications to other public proceedings." *Moreno*, 610 N.W.2d at 331. And *Nixon* is distinguishable factually. There, the source of the defamation was a private party, who made defamatory statements about another private party in a legal complaint filed in district court, which were then reported by a newspaper. 112 N.W. at 258. Here, the source of the defamatory statements was not a private party, but government officials who held a press conference to inform the public about an

ongoing criminal investigation. Unlike *Nixon*, the news reports here "serve the administration of justice" and were a "legitimate object of public interest" because the statements were made by law enforcement officials in the performance of their duties. *Id.*

Equally important, as we recognized in *Moreno, Nixon* was "decided nearly 60 years before the Supreme Court articulated the First Amendment implications of defamation sanctions" in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). *Moreno*, 610 N.W.2d at 330. And *Nixon* was also decided well before the Minnesota Rules of Civil Procedure—and its procedural safeguards against frivolous complaints—were enacted.[11]

Larson further maintains, as the district court found in its post-trial order granting a new trial, that the privilege must be limited to reporting upon the fact of arrest "until criminal charges are filed, and judicial control over the case is exercised." He and the dissent

---

[11] The Rules of Civil Procedure deter a party from filing complaints to defame another party. *See* Minn. R. Civ. P. 11.02 (prohibiting a party or its attorney from presenting a pleading "for any improper purpose" or that lacks evidentiary support); Minn. R. Civ. P. 11.03 (allowing a court to impose sanctions for violating Rule 11.02); *see also Sack on Defamation, supra*, § 7:3.5 (noting that under the "modern" rule "[t]he damage resulting from use of the filing of a complaint or petition to disseminate a libel, it is argued, is better addressed by aggressive pursuit of sanctions against attorneys and parties who make allegations in bad faith or without support than permitting redress against a republisher").

assert support for this limitation in comment (h) to section 611 of the Restatement, which states:

> An arrest by an officer is an official action, and a report of the fact of the arrest or of the charge of crime made by the officer in making or returning the arrest is therefore within the conditional privilege covered by this Section. On the other hand statements made by the police or by the complainant or other witnesses or by the prosecuting attorney as to the facts of the case or the evidence expected to be given are not yet part of the judicial proceeding or of the arrest itself and are not privileged under this Section.

Restatement (Second) of Torts § 611 cmt. h.

Reliance on comment (h) is misplaced. To be sure, we cited comment (h) in *Moreno*, but we did so in a section of the opinion that described how the entirety of section 611 of the Restatement (Second) of Torts functions. 610 N.W.2d at 332. We noted that the broad principles in section 611 are narrowed in application, and cited comment (h) in explaining that the fair and accurate reporting privilege can be *defeated* when the reporter makes "additional comments, *not part of the meeting*, that would convey a defamatory impression or 'impute corrupt motives to anyone, [or] . . . indict expressly or by innuendo the veracity or integrity of any

of the parties.'" *Id.* at 332 (emphasis added) (quoting Restatement (Second) of Torts § 611 cmt. f).[12]

More importantly, the assertion by Larson and the dissent that comment (h) means that the privilege is limited to the fact of arrest or criminal charge is flatly contradicted by *Moreno*, which involved reporting on allegations of criminal activity before any arrest occurred. There, we held that the fair and accurate reporting privilege applied to a newspaper article about a citizen's accusation of specific criminal activity by a police officer even though the officer had not been arrested and no judicial proceeding was underway. *Id.* at 334. The news report was privileged because it relayed public comments made at a city council meeting. *Id.* The thrust of *Moreno* is that, if a proceeding is covered by the privilege because it is an official proceeding open to the public, the *application* of the privilege does not depend upon the content of what was said. Here, rather than a city council meeting, the official proceeding was a law enforcement press conference.

---

[12] *Moreno* did not adopt section 611 or any of the comments specifically. 610 N.W.2d at 332. To the extent that comment (h) is persuasive, we agree with the court of appeals' observation that it is best understood "to mean that the privilege does not apply to unofficial police comments that are not a part of an official meeting or statement by law enforcement." *Larson*, 915 N.W.2d at 495. This view harmonizes, in the law enforcement context, comment (h) with comment (i), entitled "[P]ublic meetings." According to comment (i), the privilege "extends to a report of any meeting, assembly or gathering that is open to the general public and is held for the purpose of discussing or otherwise dealing with matters of public concern." Restatement (Second) of Torts § 611 cmt. i. The press conference here falls squarely within this description.

Finally, we are unpersuaded by the argument that extending the privilege to reporting of official law enforcement press conferences and press releases "will have a substantial likelihood of materially prejudicing a jury trial in a pending criminal matter." Minn. R. Prof. Conduct 3.6; *see also* Minn. R. Prof. Conduct 3.8 (requiring prosecutors to refrain from "making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6"). Although we know that tension may exist in some cases between protecting freedom of the press and preserving an unbiased jury pool, we cannot conclude that extending ethical rules for lawyers to non-lawyer public officials is appropriate, given the public interest in "the fair and accurate dissemination of information concerning the events of public proceedings." *Moreno*, 610 N.W.2d at 332.

Further, procedural mechanisms, such as a change of venue or voir dire, already exist to protect a defendant's rights. *See* Minn. R. Crim. P. 24.03, subd. 1 (change of venue); Minn. R. Crim. P. 26.02, subd. 4 (voir dire examination); *see also Stuart*, 427 U.S. at 563–64 (acknowledging voir dire as a method to preserve the defendant's right to a fair trial even when intense press coverage is present); *Sheppard v. Maxwell*, 384 U.S. 333, 350, 353 (1966) (implicitly recognizing that a change of venue may protect a defendant's right to a fair trial and noting that "where there was no threat or menace to the integrity of the trial, we have consistently required that the press have a free hand, even though we sometimes deplored its sensationalism"

(citations omitted) (internal quotation marks omitted)). And the passage of time alleviates the effect of potentially prejudicial comments about a criminal case made by a government official. *See State v. Parker*, 901 N.W.2d 917, 921–22, 926–27 (Minn. 2017) (concluding that comments made by a county attorney at a press conference more than a year before trial did not affect the defendant's substantial rights because the jurors were not aware of the statements).

Decisions from other jurisdictions provide further support for our decision to extend the fair and accurate reporting privilege to reports of law enforcement press conferences and press releases. According to one judicial tally in 2010, 47 states recognize the fair and accurate reporting privilege in some form or another. *Salzano v. N.J. Media Grp., Inc.*, 201 N.J. 500, 993 A.2d 778, 787 n.2 (2010) (listing state statutes and decisions recognizing the fair and accurate reporting privilege). We are far from an outlier in recognizing that the fair and accurate reporting privilege extends to press conferences held by law enforcement officers.[13]

---

[13] *See Kilgore v. Younger*, 640 P.2d 793, 796–97 (1982) (holding that the privilege protects reports based on a press conference held by the attorney general in a legally convened public meeting); *Jones*, 512 N.E.2d at 266–67 (concluding that the fair and accurate reporting privilege protects news reports of murder allegations, later proven to be false, made by the Los Angeles Police Chief at a press conference); *Thomas v. Tel. Publ'g Co.*, 155 N.H. 314, 929 A.2d 993, 1010 (2007) (stating that "[t]he privilege also protects reports that meet the accuracy requirements . . . and are based upon press conferences, interviews with a police chief, or other types of official 'conversations' " (citation omitted)); *Wright*,

We acknowledge that balancing the public's right to know with a defamed person's interest in protecting his reputation is a "difficult and sensitive task." *Johnson*, 315 N.W.2d at 221. Personal reputation is " 'highly worthy of protection,' " but "at the same time, courts cannot offer recourse for injury to reputation at the cost of chilling speech on matters of public concern." *Maethner*, 929 N.W.2d at 875 (quoting *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 491 (Minn. 1985)).

For the policy reasons set forth in *Moreno*, and based upon the values underlying the First Amendment, we conclude that the balance here weighs in favor of applying the fair and accurate reporting privilege to news reports of information disseminated by law enforcement officers about a matter of public concern at an official press conference or in an official press release. Accordingly, the district court erred when it determined, during trial and in its post-trial order, that the fair and accurate reporting privilege does not apply to the statements at issue in this case.

---

873 P.2d at 989–90 (concluding that a press conference held by a district attorney was an official public occasion subject to the privilege); *see also Lee v. TMZ Prods. Inc.*, 710 Fed. Appx. 551, 558–59 (3d Cir. 2017) (applying New Jersey's version of the privilege to news reports based on a press conference and news release of the New York Attorney General).

II.

Having concluded that the fair and accurate reporting privilege applies here, we next consider Larson's argument that the privilege has been abused or "defeated." *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 333 (Minn. 2000). Once a defendant has demonstrated the existence of a qualified privilege, "the burden shifts to plaintiff to prove that the privilege has been abused, which is generally a question for the jury." *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980).

As we explained in *Moreno*, the privilege "is defeated by a showing that the report is not a fair and accurate report" of the public proceeding. 610 N.W.2d at 333. A report is fair and accurate if the report "simply relay[s] information to the reader that she would have seen or heard herself were she present" at the proceeding. *Id.* at 331. The report "cannot be edited in such a manner as to misrepresent the proceeding and become misleading." *Id.* at 332 (citing Restatement (Second) of Torts § 611 cmt. f).

Because the district court incorrectly determined that the fair and accurate reporting privilege did not apply to the news reports here, the district court did not instruct the jury on the factors to consider in deciding whether the privilege had been defeated. Instead, the district court instructed the jury on general principles of defamation, including the element of falsity. The district court used the definition of "false" from the model jury instructions:

> A statement or communication is false if it is not substantially accurate. Substantial accuracy does not require every word to be true. A statement or communication is substantially accurate if its substance or gist is true.

4 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Civil*, CIVJIG 50.25 (6th ed. 2014). But the district court also included language about context in this instruction: "In determining whether a statement was false, the words must be construed as a whole without taking any word or phrase out of context. The meaning of the statement must be construed in the context of the article or broadcast as a whole."

Larson contends that even if the fair and accurate reporting privilege applies here, the privilege was "lost." He argues that the jury instructions did not accurately convey the concepts of fairness and substantial accuracy. He further argues that the jury never had a chance to decide whether the statements in the news reports "produced the same effect on the mind of the recipient which the precise truth would have produced." Respondents, by contrast, contend that the statements in the news reports were "fair and accurate as a matter of law." According to respondents, there is "no need to turn to the jury verdict" because the news reports conveyed the "gist" or "sting" of the message conveyed at the press conference and by the press release. Alternatively, respondents urge us to rely upon the jury's verdict that the statements were not false to conclude that the fair and accurate reporting privilege was not defeated for lack of substantial accuracy.

"The district court has broad discretion in determining jury instructions, and we will not reverse where jury instructions 'overall fairly and correctly state the applicable law.'" *Stewart v. Koenig*, 783 N.W.2d 164, 166 (Minn. 2010) (quoting *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002)). A new trial is required, however, if an erroneous instruction "destroys the substantial correctness of the charge as a whole, causes a miscarriage of justice, or results in substantial prejudice." *Domagala v. Rolland*, 805 N.W.2d 14, 31 (Minn. 2011). A jury instruction is prejudicial if the instruction is misleading on a crucial element in a case and "would have changed the outcome of the case." *Id.* If we cannot determine the effect of an erroneous jury instruction, "we will give the complainant the benefit of the doubt and grant a new trial." *Id.*

The court of appeals determined that the district court erred by failing to use the fair and accurate reporting privilege "as the starting point from which to analyze the falsity instructions." *Larson*, 915 N.W.2d at 498. Nonetheless, the court of appeals concluded that "the district court's falsity instruction did not destroy the 'substantial correctness of the charge as a whole.'" *Id.* at 499 (quoting *Domagala*, 805 N.W.2d at 31). The court of appeals ultimately credited the jury's finding that the statements were not false as resolving the issue of whether the privilege was defeated. *Id.* at 499. The court of appeals therefore concluded that the district court erred in granting Larson a new trial. *Id.* at 500.

We agree with respondents that, as a matter of law, statements 7 and 8 were fair and accurate reports of the press conference and press release and, therefore, the privilege applies. But for the reasons that follow, we conclude that a new trial is required to determine whether the fair and accurate reporting privilege was defeated for statements 1 through 5.

The question of whether a qualified privilege was defeated generally is a jury question. *Lewis*, 389 N.W.2d at 890 (citing Restatement (Second) of Torts § 619 (Am. Law Inst. 1975)). When more than one conclusion can be drawn from undisputed facts, the question of substantial accuracy and fairness should go to the jury. *See Utecht v. Shopko Dep't Store*, 324 N.W.2d 652, 654 (Minn. 1982). But the question of whether a qualified privilege was defeated need not be submitted to the jury if "the facts are such that only one conclusion can be reasonably drawn." Restatement (Second) of Torts § 619 cmt. b; *cf. McKee*, 825 N.W.2d at 730–31 (concluding that no genuine issue of material fact existed as to the falsity of various statements in a defamation case that did not involve a privilege and deciding substantial accuracy as a matter of law).

The district court instructed the jury here only on substantial accuracy, using the model jury instruction on the falsity element of a defamation claim. But the focus in determining whether the fair and accurate reporting privilege was defeated is not on "the truth or falsity of the content of the defamatory statement," but on "the accuracy with which the statement is *reported*." *Moreno*, 610 N.W.2d at 331 (emphasis added); *see also*

KBMT Operating Co. v. Toledo, 492 S.W.3d 710, 714 (Tex. 2016) ("When the privilege applies, the gist of an allegedly defamatory newscast must be compared to a truthful report of the official proceedings, not to the actual facts."). This distinction matters because when the privilege applies, the re-publisher is not liable if the statement is reported accurately and fairly, even if the underlying statement is false.[14] As noted above, the

---

[14] This distinction is why falsity-by-implication cases do not fit comfortably in the context of the fair and accurate reporting privilege inquiry. The falsity-by-implication doctrine instructs that even if a statement is true on its face, a defamation action may be maintained if the implication of the statement is untrue. *Lewis*, 389 N.W.2d at 889 (holding that a truth defense must "go to the underlying implication of the statement, at least where the statement is more than a simple allegation"). *Lewis* illustrates the principle well. The case involved employees claiming defamation under a compelled self-publication theory because they were forced to tell prospective employers that they had been fired for gross insubordination. *Id.* at 886. The employees asserted that the employer's determination of gross insubordination was a false pretext for justifying their termination and that they had, in fact, not been grossly insubordinate. *See id.* at 888. We held that the employees' defamation claims could proceed because the jury found that being forced to repeat to prospective employers a literally true statement—"I was fired for gross insubordination"—implied a false fact that the employee had actually been grossly insubordinate. *Id.* at 889. In other words, the employees' defamation claims survived because the underlying fact implied by the statement—that the employees were grossly insubordinate—was untrue.

The whole point of the qualified fair and accurate reporting privilege, however, is that in limited circumstances a report about another person's statement is not subject to defamation liability—even if the facts underlying the statement are *not* true. The distinction is made clear if we assume momentarily that the qualified fair and accurate reporting privilege applied to a newspaper

fair and accurate reporting privilege is an *exception* to the common law republication rule, which provides that a speaker who knows or should know that a statement is false and defamatory but repeats it nonetheless is equally as liable for the defamation as the original speaker. *See Church of Scientology of Minn. v. Minn. State Med. Ass'n Found.*, 264 N.W.2d 152, 156 (Minn. 1978).

---

report that the employer in *Lewis* stated that the employees had been fired for gross insubordination. (In reality, of course, the privilege would not apply because the report about the *Lewis* employees is not a report on a public proceeding.) Under the fair and accurate reporting privilege, the newspaper report would be protected from defamation liability even if the employees proved that they did not commit gross insubordination: the opposite of the result in *Lewis*. *Id.* Stated another way, if the falsity-by-implication principle were transferred whole-cloth into the fair and accurate reporting privilege inquiry, that principle would effectively swallow the privilege in every case by requiring the defendant to prove that any reported statement made by others in the proceeding was substantially accurate.

This conclusion does not mean, however, that the *implications* of a report about another's statement are irrelevant to our analysis under the fair and accurate reporting privilege. As discussed elsewhere in the opinion, if a report implies a meaning that is different from the meaning conveyed by the reported-upon statement, the qualified fair and accurate reporting privilege would not protect the report. For example, if the news reports here omitted or added crucial facts in a manner that conveyed an erroneous impression of the information conveyed at the press conference to the listener or reader, the privilege may be defeated. *See Moreno*, 610 N.W.2d at 333 (stating that fair and accurate reporting privilege can be defeated if the report contains "additional contextual material . . . that conveys a defamatory impression").

The court of appeals concluded that the district court's falsity instruction sufficiently instructed the jury "on the substantial accuracy of the news report." *Larson*, 915 N.W.2d at 499. The court therefore found that the district court erred in ordering a new trial. *Id.* at 498–500.

We disagree that the jury instructions were sufficient. We conclude that the district court's instruction on falsity was an incomplete instruction regarding the factors that a jury should consider in determining whether the fair and accurate reporting privilege was defeated. To be sure, the district court did instruct the jury on the "substantial accuracy" standard that applies in deciding the falsity element in a general defamation case not involving a privilege. And the substantial accuracy standard is relevant to the jury's inquiry in determining whether the fair and accurate reporting privilege was defeated. A report may be substantially accurate even if the report is not "exact in every immaterial detail." Restatement (Second) of Torts § 611 cmt. f. In other words, we may overlook only minor inaccuracies in the report for the privilege to be preserved; the report must "convey[] to the persons who read it a substantially correct account of the proceedings." *Id.*

Moreover, to be protected by the privilege, "[n]ot only must the report be accurate, but it must be fair." *Id.* A news report may not be fair if the report omits or misplaces law enforcement statements or adds contextual material in a way that changes the meaning of the statements. *See Moreno*, 610 N.W.2d at 333. Our

recognition of the privilege rests in part on the principle that a fair and accurate report of statements made by law enforcement officers "simply relay[s] information" that individuals would have heard or read themselves if they had actually attended the press conference or read the press release. *Id.* at 331.

In other words, a news report is fair and accurate if the report has "the same effect on the mind" of the listener or reader as that which attending the press conference or reading the press release would have had.[15] *McKee*, 825 N.W.2d at 730; *see Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991) (holding that a "statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced'" (quoting R. Sack, *Libel, Slander, and Related Problems* 138 (1980))). That is, the substance of the *meaning* of the report must be the same—must communicate the same notion—as the underlying

[15] This same principle applies in defamation actions that do not involve the assertion of a privilege. In *McKee*, we articulated a test for falsity that incorporated this principle—that "[a] statement is substantially true if it would have the same effect on the mind of the reader or listener as that which the pleaded truth would have produced." 825 N.W.2d at 730 (citing *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991)). Because the jury may not be familiar with the meaning of the term "gist," instructing a jury on falsity may involve including a clarifying instruction that the statement is substantially true if it would have the same effect on the mind of the reader or listener as that which the original statement would have produced.

statement. *McKee*, 825 N.W.2d at 730; Restatement (Second) of Torts § 611 cmt. f.

Therefore, for a news report to be protected by the fair and accurate reporting privilege, the media cannot edit or present the law enforcement statements in a way that makes the report misleading. *Moreno*, 610 N.W.2d at 332. Specifically, the privilege can be defeated if the report is not "a fair abridgment" of events at the proceeding, *id.* at 331, or the report contains "additional contextual material . . . that conveys a defamatory impression or comments on the veracity or integrity of any party," *id.* at 333. This inquiry—an essential component of determining if the fair and accurate reporting privilege protects a report—was not included in the jury instructions and special verdict form used here.

Because the district court concluded that the fair and accurate reporting privilege did not apply here, the district court did not instruct the jury on the factors to consider in determining whether the statements were fair and accurate, and the special verdict form did not ask the jury to decide whether the privilege had been defeated by reporting that was not fair and accurate. We conclude that the jury instructions were incomplete and potentially misleading and therefore did not "fairly and correctly state the applicable law." *Hilligoss*, 649 N.W.2d at 147; *see also Domagala*, 805 N.W.2d at 31.

The district court should have instructed the jury to consider whether the news reports were fair and

accurate accounts of the law enforcement statements. The crucial inquiry for the jury is whether the statements in the news reports communicated to the viewer or reader the same meaning that someone who actually attended the press conference or read the press release would have taken away from the press conference or press release.[16] Especially in a case involving the fair and accurate reporting privilege, this key question, modified to fit the circumstances here, best encapsulates the issue for the jury: Did the reported statements produce the same effect on the mind of the listener or the reader as the oral and written statements of the law enforcement officers at the press conference or in the press release? If the court had framed the issue this way, the jury would have clearly understood that its charge was to determine the fairness and accuracy of the reported statements and not whether the underlying substance of those statements—that Larson killed Officer Decker—was true or false. The district court's instructions did not make this distinction clear and therefore were misleading as

[16] Respondents, in fact, recommended to the district court that the jury instructions and the proposed special verdict form include this key concept. One proposed instruction stated, "A report is considered substantially accurate, and a fair report if its gist or sting is true, *meaning that it produces the same effect on the mind of the recipient*[ ] *which the truth would have produced.*" (Emphasis added.) Similarly, respondents proposed that the special verdict form list every statement and then ask, as the first question, "Did the statement produce the same effect on the mind of the recipients as the written and/or oral statements of law enforcement?"

to a crucial inquiry in this case. *See Domagala*, 805 N.W.2d at 31.

Because the district court did not adequately instruct the jury on the fairness and accuracy inquiry, we conclude that the error was potentially prejudicial to Larson and that he is entitled to a new trial so that a jury can determine whether the privilege was defeated concerning statements 1 through 5:

1. Police say that man—identified as 34-year-old Ryan Larson—ambushed officer Decker and shot him twice—killing him.

2. Investigators say 34-year-old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.

3. He [Officer Decker] was the good guy last night going to check on someone who needed help. That someone was 34-year-old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.

4. Investigators believe he fired two shots into Cold Spring Police Officer Tom Decker, causing his death.

5. Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.

Larson's arguments on appeal go to the question of whether the privilege was defeated. For example, he argues that the news reports omitted certain facts and did not appropriately convey that the investigation

was in its very early stages, as law enforcement officers stated at the press conference and in the press release. The district court agreed that, if the privilege did apply here, the news reports "created the impression of finality to the investigation and certainty to the idea that Mr. Larson had killed Officer Decker," which was "not present" in the press conference or press release. According to the district court, the news reports did not give the impression that the investigation was in a preliminary stage and that the investigation was ongoing; rather, the effect of each of the statements was that "police had their man" and "[t]he investigation was over." In sum, the district court determined that each of the "statements produced a harsher effect or sting on the mind of the recipients than the precise truth would have produced."

But this is a question for the jury to decide. If the jury had been adequately instructed on the fairness and accuracy inquiry, the jury could have reasonably concluded that the privilege was defeated because the statements in the news reports did not convey the same meaning as the statements at the press conference and in the press release. Because the erroneous jury instructions possibly prejudiced Larson, he is entitled to a new trial[17] on statements 1 through 5. *See*

[17] The dissent would usurp the role of the jury and hold that the privilege was defeated because these statements were "false as a matter of law." We have long held that "the truth or falsity of a statement is inherently within the province of the jury." *Lewis*, 389 N.W.2d at 889. Even if there is "no disputed material fact about the content of the press conference, the broadcast, or the newspaper article," as the dissent states, we cannot decide

George v. Estate of Baker, 724 N.W.2d 1, 10 (Minn. 2006) (explaining that a jury instruction is prejudicial if the erroneous instruction could have influenced the jury's analysis).

We conclude, however, that only one conclusion can be drawn regarding statements 7 and 8: they were fair and accurate as a matter of law. These statements are:

> 7. Ryan Larson, the man accused of killing Officer Decker, could be charged as early as Monday.
>
> 8. Man faces murder charge.

Larson asserts that these statements were not accurate because the effect of each statement "would produce on the mind of the recipient" that he "had been formally charged with murder." We disagree.

The use of the term "accused" in statement 7—"Ryan Larson, the man accused of killing Officer Decker, could be charged as early as Monday"—which was part of a KARE 11 newscast, cannot reasonably be interpreted in the technical, legal sense as meaning

---

falsity as a matter of law if a jury can draw different conclusions from undisputed facts. *See McKee*, 825 N.W.2d at 730 ("As a general rule, the truth or falsity of a statement is a question for the jury."). "Only where the facts are undisputed and reasonable minds can draw but one conclusion from them does the question for determination become one of law for the court." *Conover v. N. States Power Co.*, 313 N.W.2d 397, 401 (Minn. 1981). Regarding statements 1 through 5, a new trial is required because a jury might reasonably draw different conclusions regarding the substantial accuracy and fairness of any one of the statements.

that Larson had already been charged with murder. The statement itself includes the phrase "*could be charged* as early as Monday," which clearly communicated that Larson had not yet been formally charged. (Emphasis added.) Given the context of his announced arrest, we conclude, as a matter of law, that this statement is protected by the fair and accurate reporting privilege.[18]

Similarly, concerning statement 8—the headline in the St. Cloud Times "Man faces murder charge"—the use of the word "faces" simply conveyed to the reader that Larson had the prospect of being charged in the future. *See Webster's Collegiate Dictionary* 414–15 (10th ed. 1998) (defining "face" as "to have as a prospect"). Moreover, taking into account the context, the article accompanying the headline clearly stated that Larson was in the Stearns County Jail and "face[d] *possible* charges of second-degree murder." (Emphasis added.) Accordingly, we conclude, as a matter of law,

---

[18] We note that some courts have held as a matter of law that the distinction between "arrested" and "charged" is immaterial when applying the privilege. *See Williams v. WCAU-TV*, 555 F. Supp. 198, 203–04 (E.D. Pa. 1983) (concluding that a statement made during a broadcast that the plaintiff "will be charged for bank robbery," even though he was never charged, was substantially accurate because the plaintiff was arrested); *Jones*, 512 N.E.2d at 266 (concluding that "the report of the plaintiff's arrest did not become substantially inaccurate merely because the report incorrectly stated that the plaintiff had been charged with murder" because "[a]lthough the plaintiff was not actually charged, the impact of that statement did not create a substantially greater defamatory sting than an accurate report that the plaintiff had only been booked on suspicion of murder").

that this statement is also protected by the fair and accurate reporting privilege.

Therefore, we affirm the court of appeals' decision regarding statements 7 and 8, but reverse and remand for a new trial on whether the fair and accurate reporting privilege has been defeated regarding statements 1 through 5.

III.

Finally, we consider whether a new trial is required concerning statement 6 and statements 9 through 11, which were not reports of the law enforcement statements made at the press conference or in the press release and, therefore, are not subject to the privilege. The district court initially dismissed statements 9 through 11 from the case as not actionable. Later, the district court reversed course and ordered a new trial on these statements, concluding that it was error to dismiss the statements because a reasonable jury could understand the statements as implying that Larson killed Officer Decker.

We review a district court's order for a new trial for an abuse of discretion. *Halla Nursery, Inc.*, 454 N.W.2d at 910. But when an order for a new trial is based on a question of law, we review the district court's decision de novo. *Stoebe v. Merastar Ins. Co.*, 554 N.W.2d 733, 735 (Minn. 1996).

Here we consider the following statements:

> 6. [The officer's mother] holds no ill-will against the man accused of killing her son.[19]
>
> 9. His mind must have really been messed up to do something like that. I know Tom would have forgave him.
>
> 10. He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail.
>
> 11. [She] said she came to the jail Tuesday because she had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. "This isn't over," she said.

We must decide whether these statements can support a defamation claim as a matter of law.

Larson claims that each of these statements implied that he killed Officer Decker. At common law, if a "'defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a

---

[19] The court of appeals treated statement 6 as one of the statements protected by the fair and accurate reporting privilege. *See Larson*, 915 N.W.2d at 500. But this statement was not part of the report of statements made at the law enforcement press conference or in the press release; rather, the statement related to an interview with Officer Decker's mother. The privilege does not apply to this statement.

defamatory implication by omitting facts, he may be held responsible for the defamatory implication, *unless it qualifies as an opinion*, even though the particular facts are correct.'" *Diesen v. Hessburg*, 455 N.W.2d 446, 450 (Minn. 1990) (emphasis added) (quoting *Prosser and Keeton on Torts, supra*, § 116 (5th ed. Supp. 1988)). "Whether defamatory meaning is conveyed depends upon how an ordinary person understands the language used in the light of surrounding circumstances" and "the words must be construed as a whole without taking any word or phrase out of context." *McKee*, 825 N.W.2d at 731 (citations omitted) (internal quotation marks omitted).

First, we consider statement 6—the statement that Officer Decker's mother "holds no ill-will against the man accused of killing her son." This statement was made during a KARE 11 broadcast as part of the description of the reporter's interview with Officer Decker's mother. After the report on the interview, the segment cut back to the KARE 11 anchor, who then stated that "Ryan Larson, the man accused of killing Officer Decker, could be charged as early as Monday." The anchor's statement is statement 7, which we discussed above in connection with the fair and accurate reporting privilege. As we concluded regarding statement 7, the word "accused" in statement 6, when considered in the context of the news report, does not connote a formal legal charge of murder, as Larson contends; in fact, the report makes clear that Larson had not yet been charged with a crime. Further, the statement that the officer's mother "holds no ill-will" is not

capable of a defamatory meaning. Therefore, we conclude that the defamation claim concerning statement 6 fails as a matter of law.

Next, we consider statements 9 and 11, and conclude that these statements are non-actionable opinion. The First Amendment protects opinion from defamation liability. *Diesen*, 455 N.W.2d at 450 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339–40 (1974)). In assessing whether a statement is an opinion, we consider its "specificity and verifiability, as well as [its] literary and public context." *Id.* at 450. A statement that is merely "rhetorical hyperbole," moreover, is considered non-actionable. *McKee*, 825 N.W.2d at 733 (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19–20 (1990)).

Statement 9 was made by Officer Decker's mother to a reporter and then broadcast on KARE 11. In response to the reporter's questions, Officer Decker's mother said of the suspect, "His mind must have really been messed up to do something like that. I know Tom would have forgave him." This statement speculates about the suspect's state of mind and further opines about how her dead son would have charitably forgiven his alleged killer. In the context of the entire newscast, no ordinary listener would understand statement 9 to be an assertion of fact, or to imply an assertion of fact, about Larson.

Statement 11 appeared in the St. Cloud Times and was made by the twin sister of Officer Decker's ex-wife, who had been asked for a reaction to the possibility

that Larson would be released from jail. Larson's claim is based on the article's statement that "[She] said she came to the jail Tuesday because she had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. 'This isn't over,' she said." The full context of the article makes clear, however, that these statements were not about Larson's guilt, but the speaker's own worries. Immediately preceding the quoted passage, the article states: " '(The culprit) could be somebody in the crowd,' [she] said." She said "her sister fears for the safety of her children because there are so many unknowns about what happened or what led to the shooting." Properly considered in its context, we fail to see how statement 11 can be reasonably understood as anything other than opinion or "rhetorical hyperbole." *See McKee*, 825 N.W.2d at 733.

Finally, turning to statement 10, the statement was made by the KARE 11 anchor and conveyed information about Larson's background, including his criminal history: "[He] does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in Stearns County Jail." The information about Larson's criminal history is a matter of public record, entitled to First Amendment protection. *See Cox*, 420 U.S. at 496; *see also Carradine v. State*, 511 N.W.2d 733, 737 (Minn. 1994) (noting that an arrest report "is a matter of public record available to the press"). His status as student was a true statement. In addition to being public and true, statement 10 does not "juxtapose[ ] a series of facts so as to imply

a defamatory connection between them." *Diesen*, 455 N.W.2d at 450. Because no implication of defamation arises from statement 10, Larson's defamation-by-implication claim fails.[20]

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals in part, reverse in part, and remand to the district court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

CONCURRENCE & DISSENT

ANDERSON, Justice (concurring in part, dissenting in part).

This case requires us to balance the tension between "free and open public discourse and an individual's right to compensation for harm to reputation."

---

[20] Given these conclusions, we need not consider the court of appeals' conclusion that Larson is barred from recovery on these statements under the incremental-harm doctrine. *Larson*, 915 N.W.2d at 500. It is also unnecessary to consider respondents' arguments regarding the evidence of negligence and damages. The jury did not answer these questions on the special verdict form, the district court concluded that a new trial on these issues was necessary though for reasons different from those explained here, and the court of appeals did not reach these issues. *Id.* Because a new trial must be held to determine whether the privilege was defeated, that trial will also, if necessary, encompass issues of negligence and damages.

Moreno v. Crookston Times Printing Co., 610 N.W.2d 321, 329 (Minn. 2000). Although we have "long sought to protect and enhance free and open discussion of public issues," we have also recognized that "personal reputation has been cherished as important and highly worthy of protection." *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 490–91 (Minn. 1985). We have struck a balance between these two interests through a complex array of privileges and shifting requirements for the elements of a prima facie defamation case. *Id.* at 480. Because the court tips that balance too far here in favor of the press, effectively immunizing the press from liability for falsely accusing a private citizen of murder, I respectfully dissent.[1]

The facts of this case are not disputed. In 2012, Cold Spring police officer Tom Decker was shot to death. Police arrested appellant Ryan Larson in connection with Officer Decker's death. But Larson was never charged with any crime and police later learned that the real killer was somebody else.

Even though their investigation was in its early stages, police held a press conference and issued a press release the day after the shooting, announcing that they had arrested Larson. Respondents, through KARE 11 and the St. Cloud Times newspaper, covered the press conference. KARE 11's 6 p.m. newscast

---

[1] I agree with the court's conclusion that, because statements 9–11 fall outside the scope of the privilege at issue here, they are not actionable as a matter of law. Thus, I join in the court's decision in that part of section III of the opinion that addresses statements 9–11.

stated, among other challenged statements, "Police say that . . . Ryan Larson . . . ambushed Officer Decker and shot him twice—killing him."

Larson sued respondents for defamation, identifying 11 different statements that he contended were defamatory. In five of these statements, respondents reported that police said or believed that Larson had killed Officer Decker.

Larson requested that the district court instruct the jury on defamation by implication as follows: "A statement or communication is also false if the implication of the statement is false." 4 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction, Guides, Civil*, CIVJIG 50.25 (6th ed. 2014) (hereinafter CIVJIG 50.25). The district court denied this request.

The jury determined that the statements at issue were defamatory but not false. The district court, however, granted Larson's posttrial motion and held that the statements were false as a matter of law because the implication of the statements—that Larson killed Officer Decker—was false. The court also rejected respondents' argument that the fair and accurate reporting privilege immunized them from Larson's defamation claim. Thus, the district court determined that a new trial was required, to address the issues of negligence and damages. The court of appeals reversed, holding that the fair and accurate reporting privilege applied to 8 of the 11 statements cited by Larson in his complaint, and thus the district court erred

by granting a new trial. We granted Larson's petition for review.[2]

I.

I turn first to the question of the fair and accurate reporting privilege. We have discussed this privilege in only two-cases, applying it in one case, *Moreno*, 610 N.W.2d at 334, and declining to apply it in the other, *Nixon v. Dispatch Printing Co.*, 112 N.W. 258, 259 (1907). In both cases, we declined to apply the privilege broadly because to do so would undermine "[t]he constitutional guaranty to the citizen of a certain remedy for all wrongs." *See Nixon*, 112 N.W. at 258; *see also Moreno*, 610 N.W.2d at 331 (noting that a "narrow application" of the privilege balances its broad protection). The court ignores that caution today in favor of an expansive and limitless rule of privilege. At its outset, the fair and accurate reporting privilege was a narrow common law privilege designed to protect fair reporting on adversarial judicial proceedings; it had no application to reporting on law enforcement press conferences. Even if the privilege is to be expanded beyond the well-reasoned limits recognized at common law, as this court did in *Moreno*, a further expansion to encompass the circumstances here misunderstands our precedent. But even relying on the court's dubious expansion of the privilege, I would hold that the

[2] We also granted respondents' cross-petition on the question of whether their news reports were fair and accurate.

statements made were not "fair and accurate" as a matter of law.

A.

I begin with the observation that the Minnesota Constitution *specifically* promises the residents of Minnesota the right to a remedy in our courts for damage to character. Minn. Const. art. 1, § 8 ("Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character. . . ."). That constitutionally mandated remedy for the wrong of libel or slander did not appear out of thin air. The common law, developed over hundreds of years, has long recognized a remedy for damage to reputation from defamation. *See* Van Vechten Veeder, *The History and Theory of the Law of Defamation*, 3 Colum. L. Rev. 546, 547–61 (1903) (reviewing how early laws, including Roman, Christian, Germanic, and English law, protected a person's reputation); 1 William Blackstone, *Commentaries on the Law of England in Four Books* *134 (1753) ("The security of his reputation or good name from the arts of detraction and slander, are rights to which every man is entitled, by reason and natural justice; since without these it is impossible to have the perfect enjoyment of any other advantage or right."). Significant litigation vindicating an individual's right to protect reputation emerged as early as the seventeenth century. *See* Van Vechten Veeder, *supra*, at 559 (referencing several seventeenth-century cases); *see also Allen v. Pioneer Press Co.*, 41 N.W. 936, 938 (1889) (acknowledging that

the right at common law to protect one's reputation included the ability to bring an action to seek "damages to his standing and reputation"); *King v. Lake* (1670) 145 Eng. Rep. 552, 552–53 (providing an example of seventeenth-century common law refinement of defamation law by distinguishing between libel and slander). While a fair and accurate reporting privilege developed in common law, the courts were mixed regarding whether the privilege extended beyond adversarial judicial proceedings to ex parte judicial hearings; what was clear was that some kind of judicial proceeding was required.[3] In accord with the common

---

[3] At common law, the fair and accurate reporting privilege was a limited privilege recognized only when reporting on judicial proceedings because these official proceedings provided inherent protections to others. A nineteenth-century Rhode Island case explained the rationale for this limited privilege:

> If a man has not the right to go around to tell of charges made by one against another, much less should a newspaper have the right to spread it broadcast and in enduring form. . . . When the charges come up for adjudication, however, although their publication may be as harmful and distressing to the person accused as if they had been published before their consideration by a court, a different rule applies. Individual feelings are no longer considered, for the reason, as stated by Judge Holmes: "It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself, with his own eyes, as to the mode in which a public duty is performed."

Metcalf v. Times Publ'g Co., 40 A. 864, 865–66 (1898) (tracing the history of the fair and accurate reporting privilege from early

law, we held in *Nixon* that publishing the contents of a complaint was not an adversarial judicial proceeding and the publication was not protected by the fair and accurate reporting privilege. 112 N.W. at 258–59.

The right of a person "to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty." *Rosenblatt v. Baer*, 383 U.S. 75, 92 (1966) (Stewart, J., concurring). Importantly, "[t]he protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments." *Id.* By extending the privilege, the court has deprived Larson of his historic right to seek justice from those who, in his view, have damaged his reputation.

B.

I acknowledge that we have already exceeded the bounds of common law when in *Moreno* we extended this privilege to legislative proceedings. 610 N.W.2d at 332–33 (extending the fair and accurate reporting privilege from judicial proceedings to include legislative proceedings based on "policy considerations"). It is not necessary to address the wisdom of that extension here in order to recognize that further expansion of the

---

English precedent through its adoption into United States jurisprudence).

privilege is neither consistent with the history of defamation law nor wise under our existing jurisprudence.

The court grounds its application of the privilege in the Restatement (Second) of Torts, which describes this privilege as one protecting the fair and accurate "report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern." Restatement (Second) of Torts § 611 (Am. Law. Inst. 1977). But we have never fully adopted section 611 and a wholesale adoption of this Restatement section is inconsistent with our cautious approach to privileges in general and to this privilege in particular. *See Zutz v. Nelson*, 788 N.W.2d 58, 62 (Minn. 2010) (noting that an "[a]bsolute privilege is not lightly granted and applies only in limited circumstances"); *see also Moreno*, 610 N.W.2d at 332 (declining to adopt section 611 in full).

Other than referencing section 611, the court does not clearly articulate why the privilege applies here. The court states multiple times that the press conference was "official" and that the agency's press release was "official," apparently because "officials" conducted the press conference and wrote the press release. Under that logic, the media has immunity to report on any press conference held by any government employee and the scope of the fair and accurate reporting privilege is effectively limitless. Because of the court's broad rule, any government official or employee will be able to call a press conference or disseminate a press release that defames private individuals and the press, with impunity, will be able to widely circulate that

defamation. Such expansive immunity is flatly inconsistent with section 611 of the Restatement and with our own precedent.[4]

Section 611 itself is inconsistent with the court's expansive application of the privilege. Comment (h) to section 611 makes clear that "statements made by the police . . . as to the facts of the case or the evidence expected to be given are not yet part of the judicial proceeding or of the arrest itself and are not privileged under this Section." Restatement (Second) of Torts § 611 cmt. h. Consistent with the comment to section 611, the privilege should not apply here.[5]

---

[4] The court's rule will be difficult to implement. The rule requires courts to make ad hoc determinations on whether something is an "official action." Without any standards to anchor these decisions, courts must first decide what is, or is not, an "official duty" of a government employee. From there, courts must decide whether the government employee's speech was "official" speech undertaken to fulfill that duty. And in light of the court's decision today, it is hard to imagine what speech will not be deemed "official" if all a government employee must do is call a press conference or publish a press release. This rule is unreasonably broad and has the potential to swallow all of the carefully crafted privileges and defenses that currently exist in the law of defamation. Moreover, with the rise of the Internet, which defendants are "media" and therefore qualify for this reporting privilege will be difficult to determine with any certainty. *See Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 876 (Minn. 2019) (acknowledging a defendant's argument, although finding it nondispositive, that "determining who qualifies as a member of the media has become untenable with the rise of the internet and the decline of print and broadcast media").

[5] The court states that to the extent we cited comment (h) favorably in *Moreno*, our reference has little utility in determining when the fair and accurate reporting privilege applies because

The court's expansive new rule is also inconsistent with our precedent. The court, relying on *Moreno*, concludes that the privilege applies because the press conference was a meeting open to the public that deals with matters of public concern. But state law required the city council meeting at issue in *Moreno* to be open to the public. *See* Minn. Stat. § 13D.01, subd. 1(b)(4)–(5) (2018) (requiring that meetings of governing bodies of cities and towns be open to the public). There is no

---

we were using it to explain only how that privilege can be defeated. This distinction misapprehends our discussion in *Moreno.* Although we explained ways in which the fair and accurate reporting privilege can be defeated, we specifically discussed the problem that arises when reporters include "additional contextual material, not part of the proceeding" in their reports. *Moreno*, 610 N.W.2d at 333. Because this material is not covered by the privilege, the use of this additional material can defeat an otherwise privileged report. *Id.* As an example of such additional material *not covered by the privilege*, we included statements by the police about the facts of a case that are not yet part of a judicial proceeding. *Id.* To be additional contextual material, a statement first must be outside the privilege. Thus, this discussion was as much a comment on the inapplicability of the fair and accurate reporting privilege to police statements like the ones at issue in this case as it was about ways in which the privilege can be defeated.

The court also contends that *Moreno* contradicts the limits of comment (h) because, in that case, a citizen's accusation that a specific person had committed criminal activity was privileged even though judicial proceedings were not underway. But the fair and accurate reporting privilege is not concerned with the identity of the first speaker. Instead, it applies to *reports* from public proceedings. Accordingly, the citizen's statements in *Moreno* were protected because they were made as "part of the regular business of a city council meeting." *Id.* But the law enforcement statements *about* the citizen's statements were outside the privilege because law enforcement's statements were not made as part of a privileged proceeding. *Id.* at 334.

statute that requires police to hold press conferences or issue press releases.

Moreover, that a government employee chooses to make something public cannot be the basis for extending a near-absolute immunity to media who report on that publication.[6] In *Moreno*, for example, the fact that the police chief spoke to the media and that the media

---

[6] The court bases its extension of the privilege on its concern for a situation where the media has less protection from liability than the government official on whom the media is reporting. I am not at all troubled by this result and do not find it inconsistent as the court does. The court's reliance on *Carradine v. State* and *Johnson v. Dirkswager* misunderstands our reasoning for extending absolute immunity to certain actions of public officials. As we concluded in *Carradine*:

> [T]he purpose of extending absolute immunity to an officer performing a certain governmental function is not primarily to protect the officer personally from civil liability (although that is the effect of absolute immunity). Rather, the rationale is that unless the officer in question is absolutely immune from suit, the officer will timorously, instead of fearlessly, perform the function in question and, as a result, government—that is, the public—will be the ultimate loser.

511 N.W.2d 733, 735 (Minn. 1994).

Absolute privilege and the fair and accurate reporting privilege serve different purposes, and there is nothing inconsistent about extending one and not the other. Further, the court's rule does not even resolve the purported inconsistency. Our decision in *Johnson*, that a high-level state official "has an absolute privilege, in the performance of his official duties, to communicate defamatory material" does not also support the court's broad application of the privilege. *Johnson v. Dirkswager*, 315 N.W.2d 215, 223 (Minn. 1982). In *Johnson*, a privilege applied because state law required that the reasons for the employer's termination decision be made public. *Id.* There is no such statutory mandate in this case.

reported on the police chief's statements did not entitle the media to the privilege for reporting on the chief's statements. We limited the privilege only to the "report on the events of the city council meeting." *See* 610 N.W.2d at 334. *Moreno*, therefore, does not support the court's rule.

The court's broad application of the privilege also conflicts with *Nixon*. In *Nixon*, the question was whether the fair and accurate reporting privilege applied to immunize reporting by the media on accusations made in a complaint that was filed in court. 112 N.W. at 258. Obviously, the complaint was public because it had been filed in court. *Id.* (noting that "by virtue of . . . statute the clerk must exhibit the [complaint] in his office for the inspection of any person"). But we held that the unilateral decision of a plaintiff to file a complaint did not clothe the media with immunity to publish the allegations. *Id.* at 258–59. Rather, we held that, for the privilege to apply, there needed to be a "judicial proceeding," and before there would be a "judicial proceeding," there needed to be a matter "under the control of the judge, where both sides may be heard. *Id.* at 259. A fair report of such a proceeding would include the claims of all parties as made in court." *Id.* at 258–59. Under the circumstance in *Nixon*—where the complaint had "never been presented to the court for its action"—the privilege did not apply. *Id.* Consistent with *Nixon*, the unilateral decision of law enforcement to hold a press conference and issue a press release does not provide immunity to the media to publish

defamatory statements made at that press conference or in that press release.[7]

The court concludes, however, that the privilege applies here because the subject discussed at the press conference involved a matter of public concern. And the court repeatedly invokes the values of the First Amendment and principles of government accountability to support its conclusion that the media has immunity here. These values and principles have little to do with the facts here. Importantly, the media here did not report about government misconduct or defame a government employee. This case is about a private citizen who was falsely accused by certain media representatives of shooting and killing a police officer. But the court does not explain just exactly how the First Amendment is served by extending immunity to the press for making false accusations.[8]

---

[7] Unable to square its rule with *Nixon*, the court casts *Nixon* aside as an old case, then casts *Moreno* aside because "*Moreno* recognized [that] *Nixon* provides little guidance." In fact, *Moreno* relied on the analysis in *Nixon* to conclude that the privilege should apply. *Moreno*, 610 N.W.2d at 332 ("The same policy considerations found in *Nixon* support extending that privilege to fair and accurate reports of legislative proceedings as well, including city council meetings.").

[8] One of the cases the court cites, *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), shows that the court's reliance on First Amendment principles is misplaced. There, the media published the name of a rape victim, which the media was able to obtain because the victim's name was in a court filing in a pending and public criminal case. *Id.* at 471–73. Here, by contrast, there was no pending criminal case because no criminal charges were ever filed.

Certainly, the murder of a police officer and the expenditure of public funds to investigate that crime are a matter of public concern. But the identity of the person who is the focus of the police investigation cannot be said to be of sufficient public concern to warrant the application of the immunity the media seeks here. *See Rouch v. Enquirer & News of Battle Creek, Mich.*, 357 N.W.2d 794, 801 (1984) ("[T]here is an important distinction between matters which truly promote the public interest and matters which are merely interesting to the public."), *aff'd*, 427 Mich. 157, 398 N.W.2d 245 (1986), *superseded by statute as recognized in Northland Wheels Roller Skating Ctr., Inc. v. Detroit Free Press, Inc.*, 539 N.W.2d 774, 779 (1995). The court does not and could not demonstrate otherwise because any public interest is satisfied when law enforcement informs the public that a suspect is in custody or that there is no reason to believe that anyone else is in danger. Law enforcement routinely issues such statements without revealing the identity of the suspect or the details of the crime.

Further, there is no public policy, compelling or otherwise, that requires us to extend the privilege this far. In fact, privileging the dissemination of this kind of defamation is antithetical to the constitutional guarantees of a fair trial. *See* U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 6. Law enforcement press conferences and news releases of this sort have substantial potential "to prejudice those whom the law still presumes to be innocent and to poison the sources of justice." *Lancour v. Herald & Globe Ass'n*, 17 A.2d 253, 259

(Vt. 1941). This cost outweighs the public's appetite for information about the commission and investigation of crime before judicial proceedings have been initiated. *Cf. McAllister v. Detroit Free Press Co.*, 43 N.W. 431, 437 (1889) ("It is indignity enough for an honest man to be arrested and put in prison for an offense of which he is innocent, . . . without being further subjected to the wrong and outrage of a false publication of the circumstance of such arrest and imprisonment, looking towards his guilt, without remedy.").[9]

This is not to say that reports of law enforcement press conferences and press releases can never be privileged. As the court posits, there might be a situation where "a suspected criminal remains at large" and a press conference is held "to caution the public and solicit pertinent information." A qualified privilege likely extends to such a press conference. *See Bol v. Cole*, 561 N.W.2d 143, 150 (Minn. 1997) (extending a qualified privilege to an accusation of child abuse published in an effort to prevent further harm). Further, the commission and investigation of a crime is a matter of public concern. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975) ("The commission of crime, prosecutions

---

[9] The court admits that tension *may exist* in some cases between protecting freedom of the press and preserving an unbiased jury pool. Here, the record shows that at least 95,000 households likely viewed the 6 p.m. broadcast and at least 125,000 households likely viewed the 10 p.m. broadcast that accused Larson of killing a police officer and, of course, the only daily newspaper in St. Cloud also accused him of murdering a police officer. It can be safely said that the court's understated observation about "tension" is accurate, to say the least.

resulting from it, and judicial proceedings arising from the prosecutions, however, are without question events of legitimate concern to the public. . . ."); *Jacobson v. Rochester Commc'ns Corp.*, 410 N.W.2d 830, 832, 836 n.7 (Minn. 1987) (noting that news reports about a criminal trial and the out-of-court activities of the accused were matters of public concern). Thus, if the press republish police statements about the commission and investigation of a crime, defamed citizens will need to prove that the press was negligent to make a prima facie case, *Jadwin*, 367 N.W.2d at 491, and must prove actual malice to recover presumed or punitive damages, *see Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 878–79 (Minn. 2019).

The court dismisses these protections out of concern for the media having to bear the costs of litigation and the possibility that such costs could deter the media from investigating "controversial subjects or even official misconduct." Of course in this case, the media was not deterred from its reporting even though we had not yet extended the privilege the court recognizes today and the court is resolutely silent on the financial burden on Larson associated with his attempts to restore his shattered reputation. Moreover, completely absent from the court's evaluation is any consideration of the reputational interests of the private citizen who was harmed here.

As we recognized in *Jadwin*, the very case the court cites, private citizens are "deserving of recovery" and they "ordinarily have little to no media access to rebut alleged libelous charges." 367 N.W.2d at 491. And

because a private citizen's "sole means to vindicate his or her reputation may be [a] judicial determination that the injurious statement is in fact false," we declined to adopt a fault standard that would "go too far in extinguishing the only protection a private individual may invoke." *Id.* I would follow this same path here. Given the other protections that our law already provides to the media, the reduced public interest, and the important reputational interests at stake, I would not extend the fair and accurate reporting privilege to law enforcement press conferences and press releases.[10]

---

[10] The court concludes that extending the privilege to law enforcement press conferences and press releases will allow the public to hold the government accountable and oversee the performance of public officials and institutions. This is unpersuasive. Although media reports may facilitate communication between state officials and the public, while also allowing the public to assess the quality of state officials' responses to a public safety emergency, these interests are satisfied by reporting that a suspect is in custody. To do more, to identify that suspect before he faces criminal charges, is entirely unnecessary to the articulated goals. Moreover, it is hard to imagine how the restrained statements such as those made at the press conference here will allow the public to monitor any wrongdoing by the police or a lack of integrity in the criminal justice system.

Other laws aimed at transparency and accountability of law enforcement—and the criminal justice system as a whole—are better tools to achieve this goal. *See*, *e.g.*, Minn. Stat. §§ 13.82 (defining categories of law enforcement data as private, confidential, or open to the public, and describing procedures to make this data available if applicable), 299C.18 (mandating that the Bureau of Criminal Apprehension submit a biennial report to the Governor and the Legislature detailing the operations of the bureau), 626.8459(a) (mandating that the Peace Officer Standards and Training Board conduct reviews on all state and local law enforcement agencies to ensure compliance with statutes and rules, and

II.

I would not apply the privilege here. Rather, I would reach the same conclusion that the district court reached; that is, that statements one through eight are false as a matter of law. The dispositive question is whether the reports about the November 30 law enforcement press conference made during KARE 11's evening news broadcasts and published the next day in the St. Cloud Times communicated to the viewer or reader the same meaning that someone who actually attended the press conference would have taken away from the press conference. After comparing the undisputed statements made at the press conference and the undisputed reports by respondents, I conclude that the answer to that question as a matter of law is "No." Thus, I would remand to the district court for the sole purpose of determining the negligence of respondents and the damages that respondents must pay to

---

that the board report detailed information about those reviews to the Legislature) (2018); Minn. R. Pub. Access to Recs. of Jud. Branch 2 (setting out rules for public access to records of the judicial branch, with the presumption that the records of all courts are "open to any member of the public for inspection or copying" unless an exception in the rules applies or a court orders otherwise); Minneapolis, Minn. Police Department Pol'y & Proc. Manual § 4-223 (2018) (regulating and requiring the use of body cameras in certain situations).

Finally, I disagree with the court's assertion that it makes "no sense" not to immunize the media because the media was not responsible for the "original message." Why this should matter, the court does not explain. In any case, not only was the media in control of the dissemination of the message that Larson shot and killed a police officer, as I explain later, those statements also were not the "original message."

compensate Larson, as the district court properly required under its posttrial order.[11]

A.

When analyzing defamation claims, we must carefully balance two competing values: (1) "the right to speak freely about issues of concern" and (2) an individual's right to protect his or her reputation, which "reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty." *Maethner*, 929 N.W.2d at 891 (Thissen, J., dissenting) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974)). This same balancing of interests is critical whether the alleged defamer is an individual passing rumors on the street corner or a large media company communicating with many viewers or readers. Indeed, our concern about damage to reputation should be heightened when the alleged defamer can reach tens of thousands of viewers.[12]

---

[11] The same analysis would lead me to conclude that even if the privilege applied, it would not protect the media here because their reporting was not fair and accurate.

[12] It is notable that most news outlets in the Twin Cities follow the commendable rule that the names of persons alleged to have committed crimes are not released until the person is actually charged with the crime. For reasons about which one can only speculate, respondents chose not to follow that general practice when reporting on the murder of Officer Decker. Certainly, a primary public purpose of the law enforcement press conference—to reassure the local community that the police were actively and diligently investigating the crime and that a potential shooter had

In *McKee v. Laurion*, we adopted the following test for whether a statement about what someone else said or wrote is false:

> If the statement is true in substance, minor inaccuracies of expression or detail are immaterial. Minor inaccuracies do not amount to falsity so long as the substance, the gist, the sting, of the libelous charge is justified. A statement is substantially true if it would have the same effect on the mind of the reader or listener as that which the pleaded truth would have produced.

825 N.W.2d 725, 730 (Minn. 2013) (citations omitted) (internal quotation marks omitted).

Two key principles emerge from this test. First, we may overlook only "minor" inaccuracies. *Id.* (citing Restatement (Second) of Torts § 581A cmt. f (Am. Law. Inst. 1977) ("*Slight* inaccuracies of expression are immaterial provided that the defamatory charge is true in substance." (emphasis added))). Second, when comparing an allegedly defamatory statement with a statement that differs from the actual statement made by the speaker, the focus is not on the difference in the words of the statements themselves, but on the meaning communicated by those words. *Id.* at 730–31. The substance of the *meaning* of the alleged defamatory statement must be the same—must communicate the same notion—as the actual statement. *Id.* at 730; *see*

---

been apprehended—did not require respondents to report Larson's name.

Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 517 (1991) (stating that falsity is judged by whether changes in a statement "result[ ] in a material change in the meaning conveyed by the statement").

In *McKee*, a doctor sued for defamation when a patient's son posted statements about the doctor on the Internet. 825 N.W.2d at 728. Our analysis of those statements illustrates that the critical inquiry is whether the meaning communicated by the alleged defamatory statement and the actual statement is the same.

First, the son claimed that the doctor had told the patient and his family that the doctor had "spen[t] time finding out if you transferred or died." *Id.* at 730. The doctor testified that he had made a joke that he was glad to find the patient in a regular hospital bed because "you only go one of two ways when you leave the intensive care unit; you either have improved to the point where you're someplace like this [a regular bed] or you leave because you died." *Id.* We concluded that, because both statements "communicate the notion that patients in the intensive care unit who have suffered a hemorrhagic stroke leave the intensive care unit either because they have been transferred to a regular room or they have died," the substance communicated by the alleged statement and the actual statement was the same. *Id.* at 730–31.

Second, the son alleged that the doctor told the family that "44% of hemorrhagic strokes die within 30 days. I guess this is the better option." *Id.* at 729. The

doctor acknowledged that, although he told the family that some ICU patients die, he denied referencing the specific percentage. *Id.* at 731. We held that the mention of the percentage was irrelevant because the point of the communication—its "gist or sting"—was mentioning to a worried family that hemorrhagic stroke patients die. *Id.* at 730. In that context, both the alleged statement with the percentage and the actual statement communicated the same meaning. *Id.* Accordingly, we concluded that the statement as alleged was not false.

Third, the son alleged that the doctor said it "doesn't matter" that the patient's gown did not cover his backside. *Id.* at 731. The doctor claimed that he told the patient that the gown "looks like it's okay." *Id.* Because "[c]ommenting that the gown 'looks like it's okay' is another way of communicating that 'it didn't matter' that the gown was not tied in the back," we held that "any inaccuracy of expression does not change the meaning of what [the doctor] admits to having said." *Id.* Consequently, we determined that the statement was not actionable. *Id.*

This focus—measuring falsity based on the *meaning* communicated by the statement—is also illustrated by *Lewis v. Equitable Life Assurance Society of the U.S.*, 389 N.W.2d 876 (Minn. 1986). In *Lewis*, terminated employees sued an employer who had fired them for "gross insubordination." *Id.* at 880. The former employees alleged that they were forced to republish to prospective employers that they had been fired for "gross insubordination" even though (the former

employees contended) they had not been grossly insubordinate. *Id.* at 882. The employer argued that the district court erred by holding the employer liable for defamation because the statement that the former employees made—that they had been fired for gross insubordination—was true. *Id.* at 886. We disagreed and held that the falsity of a statement must be judged based on the "underlying implication of the statement"—in other words, the meaning communicated by the statement. *Id.* at 889. Accordingly, the former employees were not barred from recovering defamation damages if the underlying statements—that the former employees actually engaged in gross insubordination—were false. *Id.* at 888–89; *see generally* Minn. Dist. Judges Ass'n, CIVJIG 50.25.

The test that we have applied in *McKee* and *Lewis* accords with the United States Supreme Court's decision in *Masson*, 501 U.S. at 516–17. There, and as relevant here, the Supreme Court expressly rejected a looser "rational interpretation" theory of similarity between an alleged statement and an actual statement. *Id.* at 518–20. Under this theory, an "altered quotation is protected [from defamation liability] so long as it is a 'rational interpretation' of an actual statement." *Id.* at 518. The Supreme Court explained that this "interpretive license" is necessary when an author relies "upon ambiguous sources." *Id.* at 519. But when the author of a statement seeks to convey what a speaker said through quotations, the author cannot take interpretative license—offer a "rational interpretation"—of what the author thought the speaker really meant. *Id.*

at 519–20. "Were we to assess quotations under a rational interpretation standard, we would give journalists the freedom to place statements in their subjects' mouths without fear of liability." *Id.* at 520. And that, the Supreme Court reasoned, would be bad for journalism and for the values that the First Amendment seeks to protect:

> By eliminating any method of distinguishing between the statements of the subject and the interpretation of the author, we would diminish to a great degree the trustworthiness of the printed word and eliminate the real meaning of quotations. Not only [the subjects of defamatory statements,] but the press doubtless would suffer under such a rule. Newsworthy figures might become more wary of journalists, knowing that any comment could be transmuted and attributed to the subject, so long as some bounds of rational interpretation were not exceeded.

Id.

In summary, a report of what someone else said is true, for defamation purposes, when (laying the report and the statement side by side) the report contains only minor or slight differences from, and, more critically, communicates the same meaning as, the statement itself.[13]

---

[13] The current jury instruction, as prepared by the Minnesota District Judges Association, CIVJIG 50.25, provides: "A statement or communication is false if it is not substantially accurate. Substantial accuracy does not require every word to be

B.

With these principles in mind, I turn now to the actual statements made at the press conference and in the press release, then compare those statements to the defamatory statements broadcast and published by respondents.

The Press Conference

On November 30, law enforcement officers from the Stearns County Sheriff's Office, the Minnesota Bureau of Criminal Apprehension (BCA), and the Cold Spring Police Department held a press conference about the shooting. The Sheriff started with a description of the incident. He noted that Officer Decker was responding to a call that Larson was potentially suicidal. He stated: "[W]hen officers pulled up, Officer Decker left his squad car, and a very short time later was confronted by an armed individual, shot twice, and died." The Sheriff did not identify Larson as the "armed individual."

A deputy superintendent from the BCA spoke next. He noted that the Sheriff's Office took the subject of the welfare check (Larson) into custody. He stated: "After that occurred, he was interviewed by Stearns County deputies, and *some of that investigation is still*

---

true. A statement or communication is substantially accurate if its substance or gist is true." I am not sure that the words "substance" and "gist" provide much clarity to jurors, and thus I agree with the court that a clarifying instruction, perhaps drawing from *McKee*, may be useful to jurors.

ongoing." (Emphasis added.) The BCA representative further stated:

- "Members of the BCA crime scene have processed the crime scene, and that's still in process right now, gathering evidence related to this investigation."
- "We have agents and deputies from the Stearns County Sheriff's Office, along with other police personnel in the area, conducting follow-up investigation and interviews . . . around the entire state of Minnesota at this time."
- "[T]his is an active and ongoing investigation. We'll continue to follow up to determine exactly what happened in this incident. And, as we noted, . . . Ryan Larson was taken into custody and booked into the Stearns County jail in connection with this incident."[14]

After the Cold Spring Police Chief spoke about Officer Decker, the three law enforcement officers took questions from reporters. In response to questions about investigators "walking out near the river," the BCA representative emphasized "that's part of the active and ongoing investigation. All I'll say is that it's an active crime scene and that we're . . . looking for and

[14] The Minnesota Department of Public Safety issued a news release on November 30 as well. The news release stated: "We're still in the very early stages of this ongoing and active investigation" and reported that, earlier in the morning of November 30, Larson had been taken into custody and booked into Stearns County Jail on murder charges.

gathering evidence related to this crime right now." Significantly, when asked if there was any reason to believe that there might be other individuals involved, the BCA representative reinforced that "we don't have any information to believe that at this time, but it's in early stages of the investigation. We continue to follow up on all leads."

In response to questions about a weapon and where Larson was when he shot at Officer Decker, the BCA representative refused to confirm any details or even that Larson was the shooter, stating each time that he could not "discuss" or "comment" on an active investigation: "[A]gain, that's part of an active crime scene, and we just, we can't discuss the details of the active crime scene at this time." When asked about the reports that Larson was suicidal, the Sterns County Sheriff stated, "Again, it's far too early in the investigation to make a comment in reference to that."

Finally, reporters asked the law enforcement officers whether Officer Decker had a partner with him when he arrived on the scene. The BCA representative responded that Officer Decker "was with a partner when he was shot. And, you know, what I can say about this from our preliminary investigation . . . it's apparent to us that the officer was ambushed at the scene." After another two questions, the Sterns County Sherriff ended the press conference, observing that "it wouldn't be prudent for us to comment any further on this."

In summary, the law enforcement officers stated no fewer than 13 times over the course of a short press conference that the investigation was active and ongoing, preliminary and in its early stages, and in process. Not once during the press conference did any law enforcement officer state that Larson ambushed, shot, or killed Officer Decker. Not once during the press conference did any law enforcement officer state that Larson had been charged in the murder of Officer Decker. Not once during the press conference did any law enforcement officer accuse Larson of killing Officer Decker.

KARE 11 Television News Coverage

KARE 11 began its 6 p.m. broadcast as follows:

> Condolences are pouring in tonight for the family of the Cold Spring Police Officer who died in the line of duty, Tom Decker. The 31-year-old was shot and killed last night while conducting a welfare check on a suicidal man. Police say that man—identified as 34-year-old Ryan Larson—ambushed Officer Decker and shot him twice—killing him.

Later in the broadcast, the KARE 11 news anchor once again described Larson as "the man accused of killing Officer Decker."

KARE 11 again began its 10 p.m. broadcast with the story of Officer Decker's murder:

> The body of Cold Spring Police Officer Tom Decker is being guarded around the clock until his funeral. A preliminary autopsy shows

> Officer Decker died of multiple gunshot wounds. Investigators say 34-year-old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.

The broadcast then switched to a reporter at the scene. After showing part of the interview with Officer Decker's mother, the reporter said that Officer Decker "was the good guy last night, going to check on someone who needed help. That someone was 34-year-old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom." The broadcast then returned to the mother, who speculated that Larson's mind was messed up. A bit later, the broadcast returned to the station and the anchor stated, "Charges could be filed as early as Monday against Ryan Larson, the man accused of killing Officer Decker," and followed with a description of Larson's criminal history and status as a machine tool student at St. Cloud Technical & Community College.[21]

St. Cloud Times Reporting

On December 1, the St. Cloud Times understandably devoted significant coverage to the killing of Officer Decker, as well as to the investigation. In one story titled "Man faces murder charge," the paper reported that "Ryan Michael Larson, 34, is in Stearns

[21] KARE 11 also posted a story on its website. The story states that a man was being "held on suspicion of second degree murder in the alleged ambush of a Cold Spring police officer" and that "[i]nvestigators believe he fired two shots into Cold Spring police officer Tom Decker, causing his death."

County Jail and faces possible murder charges of second-degree murder. Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker."

C.

I agree with the court that the same test applies when analyzing whether a statement is "fair and accurate" for purposes of the qualified fair and accurate reporting privilege or whether a statement is false for purposes of the proving the essential elements of a defamation claim. In both cases we compare what was reported to have been said with what was actually said. But in a typical defamation case, we compare the defendant's report on what a plaintiff allegedly said and what the plaintiff actually said, while the statements compared in a qualified fair and accurate reporting privilege case are the reports about a statement made *about* the plaintiff by a third party and what the third party actually said. *Compare McKee*, 825 N.W.2d at 730–31 (comparing statement of alleged defamer with actual statement of plaintiff), *with Moreno*, 610 N.W.2d at 331 (stating that focus is on the accuracy with which the statement of a third party is reported). This difference matters because the qualified fair and accurate reporting privilege may protect the reporter from liability even if the underlying third-party statements about the plaintiff are false. The underlying inquiry in both cases—whether the second, reported statement communicated the same meaning as the

actual statement (whether made by the plaintiff or by a third party about the plaintiff)—is the same.

In this case, then, our inquiry is whether respondents' reports about the law enforcement press conference communicated the same meaning that someone who actually attended the press conference would have taken away from the press conference.

A person attending the press conference would have fairly concluded that law enforcement was in the midst of an active, ongoing, and early-stages investigation. The person would have learned that Larson had been arrested as a suspect in the murder that was under investigation. But nothing about what law enforcement said at the press conference supports the takeaway that law enforcement had determined that Larson ambushed, shot, and killed Officer Decker or that law enforcement was accusing the as-yet uncharged Larson of doing so. Certainly law enforcement never said anything close to those things. Indeed, when asked about the possibility of another shooter, law enforcement expressly cautioned that "we don't have any information to believe that at this time, but it's in early stages of the investigation. We continue to follow up on all leads."

The same person watching KARE 11 that night would have reached a much different conclusion. The viewer would have come away with the clear impression that law enforcement accused Larson of the shooting. The viewer was told that law enforcement stated that Larson "ambushed Officer Decker and shot him

twice—killing him" and that Larson "opened fire on Officer Tom Decker for no reason anyone can fathom." Similarly, a person reading in the December 1 St. Cloud Times that "[p]olice say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker" would have come to the same impression: that law enforcement stated that Larson was the shooter.

We have decided questions of falsity as a matter of law where the content of an alleged defamatory statement and an actual statement is undisputed. *See McKee*, 825 N.W.2d at 730–31. There is no disputed material fact about the content of the press conference, the broadcasts, or the newspaper article. The statements made by law enforcement at the November 30 press conference objectively communicated a much different meaning and narrative than the story told to viewers of KARE 11's November 30 news broadcast and the readers of the December 1 St. Cloud Times. Therefore, I conclude that KARE 11's statements made during the 6 p.m. and 10 p.m. broadcasts on November 30 and the statement in the St. Cloud Times article published the next day did not communicate the same meaning as the press conference as a matter of law.

A free and robust press that is motivated to inform and educate the public about important public matters is undoubtedly critical to our democracy, and a broad cushion around the press is necessary to accomplish that end. But we also expect the press to act responsibly in how it conducts its work. That did not happen here. Accordingly, I would hold that, even if a qualified

fair and accurate reporting privilege applies to the November 30 press conference, respondents are not entitled to the protection of the privilege because their reports were not "fair and accurate." For the same reasons, I would hold that the reports by respondents were false as a matter of law because they did not communicate the same meaning that law enforcement conveyed at the press conference.

Accordingly, I would remand to the district court for the sole purpose of assessing whether the media companies were negligent in their reporting and, if so, the damages that Larson suffered as a result of respondents' defamatory statements.

GILDEA, Chief Justice (concurring in part, dissenting in part).

I join in the concurrence and dissent of Justice Anderson.

STATE OF MINNESOTA

IN SUPREME COURT

A17-1068

Ryan Larson,

Appellant,

vs.

Gannett Company, Inc., et al.,

Respondents.

ORDER

Based upon all of the files, records, and proceedings, herein,

IT IS HEREBY ORDERED that the petition of respondents Gannett Company, Inc., et al., for rehearing or in the alternative for a remand to the court of appeals, be, and the same is, denied.

Dated: March 30, 2020

BY THE COURT

/s/ Margaret H. Chutich
Margaret H. Chutich
Associate Justice

STATE OF MINNESOTA	**SUPREME COURT JUDGMENT**
Ryan Larson, Appellant, vs. Gannett Company, Inc., et al., Respondents	Appellate Court # A 17-1068 Trial Court # 27-CV-15-9371

Pursuant to a decision of the Minnesota Supreme Court duly made and entered, it is determined and adjudged that the decision of the Hennepin County District Court, Civil Division herein appealed from be and the same hereby is affirmed in part, reversed in part, and remanded. Judgment is entered accordingly.

It is further determined and adjudged that Ryan Larson herein, have and recover of Gannett Company, Inc., et al., herein the amount of $1,252.80 as costs and disbursements in this cause in the Supreme Court and $168.20 as costs and disbursements in this cause in the Court of Appeals. Execution may be issued for the enforcement thereof.

Dated and signed: April 13, 2020

FOR THE COURT

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: AnnMarie S. O'Neill
Clerk of the Appellate Courts

Statement For Judgment

Costs and Disbursements in the Amount of: *$1,421.00*

Attorney Fees in the Amount of:

Other in the Amount of:

Total: *$1,421.00*

Satisfaction of Judgment filed: _____
Dated

Therefore the above judgment is duly satisfied in full and discharged of record

Attest: AnnMarie S. O'Neill *By:* _____
Clerk of the Appellate Court *Assistant Clerk*

STATE OF MINNESOTA **SUPREME COURT**

TRANSCRIPT OF JUDGMENT

I, AnnMarie S. O'Neill, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

In the City of St. Paul *April 13, 2020*
Dated

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: AnnMarie S. O'Neill
Clerk of the Appellate Courts

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1068

Ryan Larson,
Respondent,

vs.

Gannett Company, Inc., et al.,
Appellants.

Filed May 7, 2018
Reversed and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-CV-15-9371

Stephen C. Fiebiger, Stephen C. Fiebiger Law Office, Chtd., Burnsville, Minnesota, for respondent.

Steven J. Wells, Timothy J. Droske, Angela M. Porter, Dorsey & Whitney, PLLP, Minneapolis, Minnesota, for appellants.

Leita Walker, Faegre Baker Daniels LLP, Minneapolis, Minnesota, for amici curiae Star Tribune Media Company LLC, The Associated Press, Fox/UTV Holdings, LLC, The Minnesota Newspaper Association, and The Reporters Committee for Freedom of the Press.

Randy M. Lebedoff, Minneapolis, Minnesota, for amicus curiae Star Tribune Media Company LLC.

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Florey, Judge.

SYLLABUS

The fair-report privilege extends to protect news reports that accurately summarize or fairly abridge information relayed at a law-enforcement agency's official press conference or by a law-enforcement agency's official news release.

OPINION

BRATVOLD, Judge.

This appeal arises from a district court decision setting aside a jury verdict and vacating the resulting judgment in a defamation suit. Appellants Multimedia Holdings Corporation d/b/a KARE 11-TV (KARE 11) and d/b/a the St. Cloud Times (St. Cloud Times) (collectively, appellants) seek review of the district court's decision to grant respondent Ryan Larson a new trial.[1] Larson sued appellants for defamation based on news reports they issued about his arrest following the 2012 murder of a police officer.

We hold (1) the fair-report privilege protected appellants' news reports that accurately summarized and fairly abridged statements made by law enforcement at an official press conference and in an official news release; and (2) the district court erred in vacating the jury's verdict that appellants' statements were not false and in ordering a new trial. Because of these

---

[1] Respondent's claims against two other defendants, Gannett Satellite Networks Inc., and Gannett Company Inc. were dismissed.

determinations, we do not need to reach other issues raised by appellants. Thus, we reverse the district court's new-trial order, reinstate the jury's verdict, and remand for entry of judgment in favor of appellants.

FACTS

On Thursday, November 29, 2012, at approximately 11:00 p.m., Cold Spring police officer Tom Decker was shot and killed near a bar. Larson lived above the bar, and Decker was following up on a request from Larson's family to check on his welfare because he was possibly suicidal. Police arrested Larson and booked him in the Stearns County jail in connection with the murder. Larson's name and anticipated charge appeared in the jail log; similar information was in an application to detain that was signed by a judge a few days later.

On the morning of November 30, law-enforcement officials held a joint press conference about the shooting, during which Minnesota Bureau of Criminal Apprehension Deputy Superintendent Drew Evans, Stearns County Sheriff John Sanner, and Cold Spring Police Chief Phil Jones made statements and answered questions. While they stressed that the investigation was in its early stages and refused to answer some questions, they stated that police had arrested Larson and that they did not have "any information to believe" that other individuals were involved. They also said it was "apparent" that Decker was "ambushed at the scene."

The Minnesota Department of Public Safety issued a news release on November 30, 2012, stating that "[w]ithin an hour" of the shooting a SWAT team arrested Larson, who "was booked into the Stearns County Jail on murder charges."

Decker's shooting and the investigation that followed were "breaking news" in Minnesota. At least one television station provided live coverage of the joint press conference. While covering the shooting, KARE 11 and the St. Cloud Times made 11 statements that are the focus of Larson's defamation lawsuit.

Statements on November 30 by KARE 11

KARE 11 covered Decker's shooting in its 5:00 p.m., 6:00 p.m., and 10:00 p.m. newscasts on November 30, 2012. During the 6:00 p.m. newscast, KARE 11 reported that Decker "was shot and killed last night while conducting a welfare check on a suicidal man." The report continued: "Police say that man—identified as 34-year-old Ryan Larson—ambushed Officer Decker and shot him twice—killing him." Then, the newscast cut to a reporter who interviewed Decker's mother, and the reporter stated that Decker's mother "holds no ill-will against the man accused of killing her son." The newscast closed by saying, "Ryan Larson, the man accused of killing Officer Decker, could be charged as early as Monday." Larson's mugshot and criminal history accompanied this statement.

During the 10:00 p.m. newscast, KARE 11 opened by stating, "Investigators say 34-year-old Ryan Larson

ambushed the officer, shooting him twice. Larson is in custody." During that program, a reporter stated: "He was the good guy last night going to check on someone who needed help. That someone was 34-year-old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom." The story cut to the interview with Decker's mother, who stated: "His mind must have really been messed up to do something like that. I know Tom would have forgave him." KARE 11 ended by describing Larson's background: "He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail."

KARE 11 also posted an article to its website, either on November 30 or December 1, which stated: "Investigators believe [Larson] fired two shots into Cold Spring police officer Tom Decker, causing his death."

Statements on December 1 by the St. Cloud Times

On December 1, 2012, the St. Cloud Times published a story on the front page with the headline, "Man faces murder charge." The article stated: "Ryan Michael Larson, 34, is in Stearns County Jail and faces possible charges of second-degree murder. Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker."

Larson's Release and Statements on December 5 by the St. Cloud Times

By December 4, 2012, investigators determined that there was insufficient evidence to further detain Larson, and released him. On December 5, 2012, the St. Cloud Times published an article about Larson's release. Referring to a community member, the article stated: "[S]he had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. 'This isn't over,' she said."

Larson Officially Cleared as a Suspect

After Larson's release, police continued their investigation. By January 2, 2013, Eric Thomes was the lead suspect, but he committed suicide "just hours after agents came to question him." A search of Thomes's property revealed a weapon that investigators determined was the gun that killed Decker. Investigators officially cleared Larson in August 2013.

Procedural History

Larson sued appellants, alleging defamation and identifying 11 statements made either by KARE 11 on November 30 or by the St. Cloud Times on December 1 and 5. The statements may be summarized into three groups. The first group of statements attributed

information to what police or investigators said or believed.[2]

1. "Police **say** that man—identified as 34-year-old Ryan Larson—ambushed Officer Decker and shot him twice, killing him."

2. "Investigators **say** 34-year-old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody."

3. "[Decker] was the good guy last night, going to check on someone who needed help. That someone was 34-year-old Ryan Larson who investigators **say** opened fire on Officer Tom Decker for no reason anyone can fathom."

4. "Investigators **believe** [Larson] fired two shots into Cold Spring police officer Tom Decker, causing his death."

5. "Police **say** Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker."

The second group of statements referred to the accusation against Larson.

6. Decker's mother "holds no ill-will against the man **accused** of killing her son."

---

[2] We have numbered the statements and bolded the relevant words for easy reference.

7. "Ryan Larson, the man **accused** of killing Officer Decker, could be charged as early as Monday."

8. "Man faces murder **charge**."

The third group of statements conveyed other information about Larson.

9. Decker's mother stated: "His mind must have really been messed up to do something like that. I know Tom would have forgave him."

10. "[Larson] does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail."

11. Comment by a community member after Larson's release: "[S]he had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. 'This isn't over,' she said."

Appellants moved for summary judgment in December 2015, arguing that the fair-report privilege barred Larson's defamation claim. On May 19, 2016, the district court granted summary judgment, in part, after determining that appellants' statements reporting information from "the jail log and the [a]pplication to [d]etain and [o]rder are entitled to the [fair-report] privilege." Similarly, the district court reasoned that, "to the extent the news conference and news release only communicated the fact of Mr. Larson's arrest or the charge of crime made by the officer in making or returning his arrest, these sources are entitled to the

[fair-report] privilege" but that the privilege did not extend to appellants' statements that went beyond Larson's arrest and anticipated charge. But the district court denied summary judgment because "genuine issues of material fact exist[ed] regarding whether [appellants] abused the privilege."

A jury trial began on November 7, 2016. On November 10, the district court issued a new summary-judgment order on the fair-report privilege, expressly modifying its May 19 summary-judgment order. In the November 10 order, the district court concluded that statements 1-5, involving what police said or believed, were not protected by the fair-report privilege because they were "not substantially accurate as a matter of law" and the statements went beyond "the fact of [Larson's] arrest." The district court reasoned that "the effect" of the news reports was that "police firmly believed" that Larson had killed Decker, "they were likely proceeding with murder charges," and that charges "could be brought as early as Monday." Because appellants' statements "created the impression of finality to the investigation," and law enforcement "repeatedly emphasized" that the investigation was preliminary, the news reports produced a "harsher effect" than "the precise truth would have produced." The district court also determined that statements 6-8, regarding accusations against Larson, were not substantially accurate because they implied that Larson had, in fact, been formally charged by the prosecution, which was not true.

On November 16, the seventh day of the trial, appellants moved for judgment as a matter of law, in part arguing that statements 9-11 were not defamatory as a matter of law. The district court took the motion under advisement and, on the next day of trial, denied other issues raised by the motion, but granted the motion, in part, by dismissing statements 9-11 as "not capable of . . . defamatory meaning."

Statements 1-8 went to the jury along with a 25-page special verdict form that included eight separate interrogatories about each statement to determine appellants' liability, in addition to separate questions on damages. On November 21, 2016, the jury returned its verdict, finding that each statement was defamatory, referred to Larson, and was published. But the jury also determined that each statement was not false. The district court directed entry of judgment in appellants' favor on December 5, 2016, and judgment was entered on January 5, 2017.

On January 3, 2017, Larson moved for a judgment as a matter of law or, alternatively, for a new trial. The district court granted in part and denied in part Larson's motion. In an order dated June 13, 2017, the district court vacated the December order and judgment in appellants' favor and scheduled a new trial. The district court first modified its November 10 summary-judgment order by stating that the fair-report privilege "does not apply to" this case. The court reasoned that appellants' statements were not protected because the information relayed by law enforcement at the press conference and in the news release went "beyond the

mere fact of arrest or charge." The district court then determined that statements 1-8 were "as a matter of law . . . defamatory in nature and false." The district court also concluded that it had erred in dismissing Larson's claims regarding statements 9-11 because a reasonable jury could have found that these statements implied that Larson killed Decker. On these grounds, the district court granted a new trial concerning all 11 statements. The district court denied Larson's request to determine additional issues as a matter of law. This appeal follows.

ISSUES

I. Did the district court err in granting judgment as a matter of law because the fair-report privilege does not apply to news reports about statements made by law enforcement at an official press conference and in an official news release?

II. Did the district court err in granting a new trial?

ANALYSIS

Appellants argue that the district court erred in granting judgment as a matter of law to Larson based on its conclusion that the fair-report privilege did not apply to news reports about law-enforcement statements at the November 30 press conference and in the subsequent news release. In particular, appellants contend that the district court incorrectly determined that statements 1-8 were false as a matter of law. Appellants also argue that the district court incorrectly

granted a new trial on all statements, including statements 9-11, which the district court had properly dismissed during trial. Alternatively, appellants urge us to conclude that the district court incorrectly denied their motion for judgment as a matter of law because Larson failed to offer evidence that appellants were negligent or caused his damages.

We first hold that the fair-report privilege applies to fair and accurate reports of statements by law enforcement during an official press conference and in an official news release. We also conclude that the fair-report privilege protected fair and accurate news reports about the November 30 press conference and news release. Then, we determine that there were genuine issues of fact as to whether statements 1-8 were substantially accurate summaries or fair abridgments of law-enforcement statements from the official press conference and news release. Next, we conclude the district court erred in vacating the judgment on the jury's verdict and in ordering a new trial. The district court's jury instructions sufficiently stated the applicable law and any error was harmless. As a result, we do not reach appellants' alternative arguments. We reverse the district court's order entering judgment as a matter of law and for a new trial, and remand with directions to enter judgment in appellants' favor.

I. The fair-report privilege extends to fair and accurate news reports about law-enforcement statements made at an official press conference or in an official news release.

To establish a claim of defamation for a statement made by a defendant, a plaintiff must show that: "(1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff's reputation and to lower [him] in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual." *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013) (quotations omitted). Even if a plaintiff satisfies each of these elements, a defendant is not liable if an absolute or qualified privilege protects the defamatory statement. *See Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 329 (Minn. 2000). But a defendant may lose an otherwise applicable qualified privilege by abusing it. *Id.* at 329, 333. This court reviews the application of defamation privileges de novo. *See Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014).

A. The district court erred in concluding that the fair-report privilege did not apply to this case.

Minnesota has recognized the fair-report privilege for over a century, but questions remain about its scope. In *Nixon v. Dispatch Printing Co.*, the Minnesota Supreme Court held that the fair-report privilege

extends to protect reports of judicial proceedings, but does not apply to reports of legal pleadings filed with a district court. 101 Minn. 309, 311-13, 112 N.W. 258, 258-59 (1907). Most recently, the supreme court ruled that the privilege applies to an "accurate and complete report or a fair abridgement of events that are part of the regular business of a city council meeting." *Moreno*, 610 N.W.2d at 333. Whether the privilege applies to reports about information relayed by law enforcement at press conferences and in news releases is an issue of first impression in Minnesota.[3]

Moreno guides our understanding of the scope of the fair-report privilege. In that case, during public comment at a city council meeting, a citizen stated that a local police officer was "dealing drugs out of his Police car." *Id.* at 323. A newspaper reported the citizen's accusation, summarized the police department's response, and relayed some details from the newspaper's own investigation. *Id.* at 324. The police officer sued the newspaper for defamation. *Id.* at 325. The supreme court held that the fair-report privilege applied to a news report of events at a city council meeting, including the citizen's accusation. *Id.* at 332-33. In doing so, the supreme court predicated much of its analysis on

---

[3] We agree with the district court that the fair-report privilege applies to news reports that summarize information in a jail log or in a court order authorizing detention. Because appellants' news reports contained information not included in the jail log and detention order, we must determine if the fair-report privilege protects appellants' statements summarizing the press conference and the news release.

section 611 of the Restatement (Second) of Torts (1976). *Id.* at 331. That section states:

> The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgment of the occurrence reported.

Restatement (Second) of Torts § 611.

The supreme court explained that the fair-report privilege is based on two principles. "First, because the meeting was public, a fair and accurate report would simply relay information to the reader that she would have seen or heard herself were she present at the meeting. The second principle is the obvious public interest in having public affairs made known to all." *Moreno*, 610 N.W.2d at 331 (citations and quotation omitted). The supreme court concluded the fair-report privilege extended to legislative proceedings because the same "policy considerations" that supported applying the privilege to judicial proceedings in *Nixon* also supported its application to legislative proceedings. *Id.* at 332. The court also noted that the legislature "in the criminal context, [recognized] the policy objectives of a fair and accurate reporting privilege are furthered by protecting such reports from challenges of common law

malice." *Id.* at 333 (citing Minn. Stat. Ann. § 609.765, advisory comm. cmt. (West 1964)).[4]

After holding that the fair-report privilege extended to city council meetings, the supreme court also held that the privilege may be abused if the report is not fair and accurate or if the report includes "additional contextual material, not part of the proceeding" and that material "either conveyed a defamatory impression or commented on the veracity or integrity of any party." *Id.* at 333-34. Because the news article at issue in *Moreno* reported on events outside the city council meeting, the supreme court remanded for factual determinations regarding the additional material in the news article. *Id.* at 334.

Based on *Moreno*, we conclude that the fair-report privilege applies to protect news reports that accurately and fairly summarize statements made by law enforcement during an official press conference and in an official news release for three reasons. First, a law-enforcement press conference is a "meeting open to the public that deal[s] with matters of public concern." *See* Restatement (Second) of Torts § 611. Likewise, a

---

[4] The advisory committee note to Minn. Stat. § 609.765, subd. 3(4), states that "[u]nder the recommended section, if the report is fair and true, malice is immaterial and no criminal liability arises. The public interest in publication of the proceedings referred to would seem to call for this position." Minn. Stat. Ann. § 609.765, advisory comm. cmt. (West 1964). Further, we note that in *Moreno*, the supreme court appears to have mistakenly cited to Minn. Stat. § 609.675 (2016) (exposure of unused refrigerator or container to children) instead of Minn. Stat. § 609.765 (2016) (criminal defamation). 610 N.W.2d at 333.

law-enforcement news release is a "report of an official action or proceeding." *See id.* *Moreno*'s analysis of the city council meeting is applicable to the November 30 press conference and news release. The press conference and news release were public, therefore, "a fair and accurate report would simply relay information to the reader that she would have seen or heard herself were she present at the meeting." *See Moreno*, 610 N.W.2d at 331. And, there was an "obvious public interest" in relaying to the public the information provided by law enforcement. In fact, public interest in police statements about the slaying of a police officer is perhaps more obvious than public interest in a private citizen's statements during public comment at a city council meeting. While the citizen was commenting on possible criminal activity by a police officer, the citizen had no official capacity. *Id.* at 332. In contrast, the press conference and news release in Larson's case were official statements by law-enforcement authorities on a recent murder, when public concern over apprehension of the killer was high.

Second, comments to Restatement (Second) of Torts § 611 support the view that the fair-report privilege applies to official written statements by law enforcement. For example, comment (i) states the privilege "also extends to a report of any meeting, assembly or gathering that is open to the general public and is held for the purpose of discussing or otherwise dealing with matters of public concern." Restatement (Second) of Torts § 611 cmt. i. Comment (d) extends the privilege to "the report of any official proceeding, or any action

taken by any officer or agency of the government of . . . any State or any of its subdivisions." Restatement (Second) of Torts § 611 cmt. d. Comment (d) continues, "Since the holding of an official hearing or meeting is itself an official proceeding, the privilege includes the report of any official hearing or meeting, even though no action is taken." *Id.* These comments suggest the privilege extends to law-enforcement press conferences and news releases because both types of statements disseminate official information to the public.

Third, the criminal defamation statute that *Moreno* analyzed also suggests that the fair-report privilege extends to this context. While the statute explicitly provides that criminal defamation is justified when the communication is a "fair and true report or a fair summary" of judicial and legislative proceedings, it also extends a privilege to "other public or official proceedings." Minn. Stat. § 609.765, subd. 3(4). The November 30 press conference is in the nature of an official proceeding because law enforcement from the state, county, and municipality jointly convened the conference to inform the public about an ongoing investigation.

The district court rejected application of the fair-report privilege based on three arguments: (1) the fair-report privilege does not apply to official statements that comment on more than the fact of an arrest or charge; (2) the fair-report privilege does not apply to "extra-judicial statements; and (3) statements beyond the fact of arrest threaten the impartiality of the jury pool. We address each argument in turn.

First, the district court concluded that the fair-report privilege did not apply to reports about law-enforcement statements at press conferences "that go beyond the mere fact of arrest and the charge of arrest" and that precede commencement of judicial proceedings. In doing so, the district court relied on comment (h) of section 611 of the Restatement (Second) of Torts, which the supreme court referenced approvingly in *Moreno.* 610 N.W.2d at 332. Comment (h) states:

> An arrest by an officer is an official action, and a report of *the fact of the arrest* or of *the charge of crime* made by the officer in making or returning the arrest is *therefore within the conditional privilege covered by this Section.* On the other hand statements made by the police or by the complainant or other witnesses or by the prosecuting attorney as to the facts of the case or the evidence expected to be given are not yet part of the judicial proceeding or of the arrest itself and are not privileged under this Section.

Restatement (Second) of Torts § 611 cmt. h (emphasis added). The district court reasoned that "Minnesota courts have consistently analyzed extra-judicial statements like the ones at issue in this case under Comment h and not under any other section of the Restatement." The district court also stated that construing "these statements under a different provision of the Restatement would strip Comment h of any meaning."

The district court erred in its analysis of comment (h). The district court's statement that Minnesota courts have analyzed "statements like the ones at issue in this case under Comment h and not under any other section of the Restatement" is unfounded. Neither the district court nor Larson point to any cases, much less Minnesota cases, applying comment (h) to official statements by law enforcement.[5]

Comment (h) should be understood to mean that the privilege does not apply to unofficial police comments that are not a part of an official meeting or statement by law enforcement. *Moreno* cited comment (h) to support its conclusion that "[a] reporter also may not make additional comments, *not part of the meeting*, that would convey a defamatory impression or impute corrupt motives to any one, [or] . . . indict expressly or by innuendo the veracity or integrity of any of the parties." 610 N.W.2d at 332 (emphasis added) (quotation omitted); *see also Carradine v. State*, 511 N.W.2d 733, 737 (Minn. 1994) (holding police officer comments to press that departed from official report and added to plaintiff's injury were not privileged).

---

[5] The district court seemed to rely on two federal cases applying the fair-report privilege under Minnesota law after *Nixon* but before *Moreno*. *See Schuster v. U.S. News & World Report, Inc.*, 602 F.2d 850, 851-55 (8th Cir. 1979) (holding privilege applied to grand jury indictment); *Hurley v. Nw. Publ'ns, Inc.*, 273 F. Supp. 967, 962-72 (D. Minn. 1967) (holding privilege applied to complaint filed "pursuant to the prior order of [a] Probate Court arising out of probate proceedings pending therein"). Neither of these cases, however, mentions or cites comment (h).

Additionally, the district court's conclusion that comment (h) means the privilege is limited to the fact of arrest or criminal charge is not consistent with *Moreno*, which applied the privilege to a news report of a citizen's statements about criminal activity by a police officer, even though the officer had not been arrested or charged with any wrongdoing. 610 N.W.2d at 324. The news report about the citizen's statements was privileged because it summarized public comments at a city council meeting. *Id.* at 333. The logical extension of the district court's ruling, if we attempt to construe it along with *Moreno*, suggests that the privilege would have applied had appellants reported on law-enforcement statements during a city council meeting. We can discern no meaningful distinction between citizen statements about criminal activity that are made at a city council meeting and police statements about a recent crime at an official press conference.

Second, the district court characterized the press conference and news release as "extra-judicial" statements, and determined that the fair-report privilege did not apply to them as a result. It is correct that several Minnesota cases, state and federal, have analyzed whether the statements summarized in news reports originated in judicial proceedings. *See*, *e.g.*, *Schuster*, 602 F.2d at 851-55; *Hurley*, 273 F. Supp. at 969-72; *Nixon*, 101 Minn. at 311-13, 112 N.W. at 258-59. But no state or federal Minnesota case has held the fair-report privilege applies only to news reports that summarize statements in judicial proceedings and in no other

official proceedings. In fact, *Moreno* confirmed that the privilege is not limited to judicial proceedings, by holding that the privilege applies to news reports about legislative proceedings and city-council meetings. 610 N.W.2d at 332-33.

Third, the district court pointed out that the Minnesota Rules of Professional Conduct prohibit prosecutors from making "extra-judicial statements" that will have a "substantial likelihood of materially prejudicing a jury trial in a pending criminal matter." *See* Minn. R. Prof. Conduct 3.6. We acknowledge the importance of ensuring that media coverage of crimes does not taint the jury pool. *See Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 568-69, 96 S. Ct. 2791, 2807 (1976) (recognizing tension between preserving an unbiased jury pool and protecting freedom of the press). We trust that law enforcement also has this concern in mind and accordingly tempers its official statements.

The ethical rule cited by the district court does not persuade us that the fair-report privilege is inapplicable to news reports of official statements at press conferences and in news releases. As *Moreno* stated, "the public interest is served by the fair and accurate dissemination of information concerning the events of public proceedings." 610 N.W.2d at 332. Additionally, voir dire serves to protect a defendant's right to an unbiased jury. *See Stuart*, 427 U.S. at 563-64, 96 S. Ct. at 2805 (recognizing voir dire as a method to preserve the defendant's right to a fair trial, despite intense press coverage). We conclude that the public interest is served by fair and accurate reports about information

conveyed by law enforcement at an official press conferences or in an official news release. While this conclusion leads us to extend the fair-report privilege to news reports of official law-enforcement statements, we also note that this privilege is qualified and does not protect news reports that fail to fairly and accurately reflect official statements.

Accordingly, the fair-report privilege applied to fair and accurate news reports of law-enforcement statements made at the November 30 official press conference and in the official news release. Thus, the district court erred when it determined, in its posttrial order granting Larson judgment as a matter of law, that the fair-report privilege "does not apply to this case."

B. Whether appellants abused the fair-report privilege in the news reports identified by Larson raised a genuine issue of material fact for the jury.

Even if the fair-report privilege is applicable, the privilege can be abused or "defeated" upon a showing that the report was not fair and accurate, or that the report included additional material that was outside the official proceeding and the additional material conveyed a defamatory meaning. *Moreno*, 610 N.W.2d at 334. In denying summary judgment, the district court determined that the evidence presented a question of fact whether the news reports were fair and accurate. In granting a new trial to Larson and in vacating the

jury's verdict, the district court reversed itself, in part, and determined that statements 1-8 were false as a matter of law.

Moreno expounded on "what additions will generally defeat the fairness and accuracy of a report." *Id.* at 333. *Moreno* referenced approvingly comment (f). *Id.* at 333. Although not explicitly discussed in *Moreno*, comment (f) states that that the report does not need to be "exact in every immaterial detail or . . . conform to that precision demanded in technical or scientific reporting." Restatement (Second) of Torts § 611 cmt. f. Comment (f) continues, "It is enough that [the report] conveys to the persons who read it a substantially correct account of the proceedings." *Id.* Whether a defendant has abused a privilege is "generally a question for the jury." *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980).

Appellants argue that their reporting of the press conference and news release was substantially accurate as a matter of law and the district court erred in submitting this case to the jury. Larson argues that appellants abused any privilege because their reports inaccurately communicated that police had conclusively identified Larson as the killer. Larson's argument in this regard is confusing. At times, he appears to suggest that appellants' reports were not substantially accurate because Larson did not shoot Decker. But the appropriate standard is whether appellants' reports accurately summarized or fairly abridged statements made by law enforcement at the press

conference or in the news release. *See Moreno*, 610 N.W.2d at 334.

We conclude that there was a genuine issue of fact whether appellants' reports, i.e., statements 1-8, were substantially accurate summaries or fair abridgements of law-enforcement statements at the press conference and in the news release. Appellants' reports used terminology and recited some facts not mentioned at the press conference or in the news release. Most of these differences appear to be minor details, such as stating that Decker was shot twice. But some differences may be more significant. At the press conference, law enforcement did not "say" that *Larson* ambushed Decker, but law enforcement did "say" that Decker was shot and ambushed and that they had arrested Larson in connection with the shooting. Further, the news release and jail log indicated that Larson was being held and a murder charge was anticipated. Thus, if law-enforcement statements from the jail log, press conference, and news release are considered together, a reasonable jury may conclude that statements 1-8 were substantially accurate reports of official statements.

In *Utecht v. Shopko Dep't Store*, the supreme court clarified when a judge should defer to a jury verdict in a defamation case. 324 N.W.2d 652, 653-54 (Minn. 1982). The court stated it had "often cautioned that summary judgment is not a substitute for trial" and urged judges to allow the jury to decide whether words "capable of the defamatory meaning" were understood to be defamatory. *Id.* A similar analysis applies to

whether a news report is a fair and accurate summary. As a result, we conclude that a genuine issue of material fact existed as to whether statements 1-8 accurately reported or fairly abridged law-enforcement statements from the November 30 press conference and news release.

Consistent with this ruling, the district court correctly denied summary judgment to appellants before trial and erred in granting partial judgment to Larson after trial by determining that statements 1-8 were false as a matter of law.

II. The district court erred in granting a new trial.

Generally, "the decision to grant a new trial does lie within the sound discretion of the trial court and will not be disturbed absent a clear abuse of that discretion." *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). But if "the new trial was based on an error of law, not an exercise of discretion," the appellate court reviews the decision de novo. *Id.* While decisions granting a new trial are not generally appealable, the order granting a new trial here was appealable because the district court determined that the new trial was warranted based on errors of law. *See* Minn. R. Civ. App. P. 103.03(d); *O'Brien v. Wendt*, 295 N.W.2d 367, 370 (Minn. 1980). In order to grant a new trial, the error must have been prejudicial. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010).

The district court granted a new trial to Larson for three related reasons. First, the district court determined it erred when it denied requested jury instructions. Before the case was submitted to the jury, Larson asked the court to instruct the jury on falsity by implication, but the district court denied the request.[6] After trial, Larson asked for a new trial on this ground and the district court concluded it had erred because, according to the district court, each of the statements implied that Larson killed Decker.

Second, the district court rejected appellants' argument that the fair-report privilege affected its analysis of falsity, reiterating that "statements made by law enforcement at a press conference that go beyond the mere fact of arrest or charge are not protected

---

[6] Larson also asked the court to instruct the jury on defamation by implication, by adding to the definition of a defamatory statement language similar to the pattern instruction:

A statement or communication may be defamatory because the defendant:

1. Left out certain facts so the statement conveyed a defamatory meaning.
2. Linked statements in a way that conveyed a defamatory meaning.
3. Stated an opinion that conveyed defamatory facts.

See 4 *Minnesota Practice*, CIVJIG 50.10 (2014). The district court declined. Larson's new-trial motion sought a new trial on this ground and the district court concluded that it erred in failing to give this additional language as part of the definition of defamation. Because the jury found each of the eight statements to be defamatory, we conclude that any error in the instruction on defamation was not prejudicial to Larson and cannot support an order for new trial. *McKinnon*, 784 N.W.2d at 419.

before judicial proceedings commence." Additionally, the district court concluded that statements 1-8, regarding what police said or the accusations against Larson, were false as matter of law because "[t]here is no evidence that Mr. Larson killed Officer Decker." Thus, a new trial was required to address negligence and damages on those statements. Third, the district court decided that a new trial was necessary to correct its error in dismissing statements 9-11 because those statements also implied that Larson killed Decker and thus raised a question of fact for the jury.[7]

We conclude that the district court erred in granting a new trial for three reasons. First, the fair-report privilege applies to this case and the district court erred in failing to use the privilege as the starting point from which to analyze the falsity instruction.[8]

---

[7] The district court also set aside the jury's verdict on the ground that the jury was not instructed on defamation by republication. *See* Restatement (Second) of Torts § 578 ("[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it.") Because Larson did not ask during trial for an instruction on defamation by republication, he forfeited this issue as a basis for the new-trial order unless he showed plain error affecting substantial rights. *See* Minn. R. Civ. P. 51.04(a)-(b). Larson's brief on appeal does not argue plain error, thus, we do not consider this issue.

[8] Notably, appellants do not challenge the falsity instruction because they seek reinstatement of the jury verdict. Because appellants do not raise the issue, we do not determine whether the falsity instruction correctly stated the applicable law for the fair-report privilege. *See Wolner v. Mahaska Indus.*, 325 N.W.2d 39, 42 (Minn. 1982) ("Where a party makes no objections to jury instructions before the jury retires, and does not specify fundamental errors in a motion for a new trial, the instructions are the law

The falsity instruction given in this case closely followed the pattern instruction.

> A statement or communication is false if it is not substantially accurate. Substantial accuracy does not require every word to be true. A statement or communication is substantially accurate if its substance or gist is true. In determining whether a statement was false, the words must be construed as a whole without taking any word or phrase out of context. The meaning of the statement must be construed in the context of the article and broadcast as a whole.

See 4 *Minnesota Practice*, CIVJIG 50.25 (2014). The district court declined Larson's request to add the following: "A statement or communication is false if the implication of the statement is false." *See* 4 *Minnesota Practice*, CIVJIG 50.25 (2014). This court will not overturn a jury verdict if the instructions "overall fairly and correctly state the applicable law." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). Even if a district court's instructions do not fairly and accurately describe the applicable law, we will reverse the jury's verdict only "if the error destroy[ed] the substantial correctness of the charge as a whole, cause[d] a miscarriage of justice, or result[ed] in substantial prejudice." *Domagala v. Rolland*, 805 N.W.2d 14, 31 (Minn. 2011).

---

of the case and may not be challenged for the first time on appeal.").

Here, the district court's falsity instruction did not destroy the "substantial correctness of the charge as a whole," *see id.*, because the instruction directed the jury to determine substantial accuracy, to construe words as a whole, and to assess the meaning of each statement in context. Caselaw suggests that, when the fair-report privilege applies to a defamation claim, the falsity instruction should focus the jury's attention on the substantial accuracy of the news report and not the content of what is being reported. *See generally Moreno*, 610 N.W.2d at 331 ("[O]nce it is established that the report is within the scope of the fair and accurate reporting privilege, fault is not determined by the truth or falsity of the content of the defamatory statement. It is determined by the accuracy with which the statement is reported."). We note that the special verdict form quoted statements 1-8 verbatim so the jury was directed to focus its attention on the substantial accuracy of the news report.

Second, the district court erred in its conclusion that statements 1-8 required an instruction on falsity by implication, which is when true statements "because of the particular juxtaposition of the statements or the omission of particular facts" become false. *Schlieman v. Gannett Minn. Broad., Inc.*, 637 N.W.2d 297, 303 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002). In *Diesen v. Hessburg*, the Minnesota Supreme Court held, by a plurality, that an allegedly false implication that arises out of true statements is generally not actionable in defamation by a public-official plaintiff against a news media. 455 N.W.2d 446, 451-52

(Minn. 1990).[9] In a subsequent decision by this court, we observed that *Diesen*'s holding "is consistent with First Amendment principles that guarantee a free press." *Schlieman*, 637 N.W.2d at 303. The same First Amendment principles may support the conclusion that falsity by implication is not actionable in a defamation action by a private plaintiff where the fair-report privilege protects media reports. However, we need not decide this weightier constitutional issue because we determine that the district court erred in its legal conclusion that statements 1-8 implied Larson shot Decker.

As the district court aptly stated before it charged the jury, statements 1-8 are factually true or false because they are reports about what police said or believed and what accusations Larson faced. Because the statements contain caveats such as "police say," the district court erred in concluding, posttrial, that these statements implied Larson actually killed Decker. Also, the district court sufficiently instructed the jury on substantial accuracy, including directions to consider the statements in context; therefore, we conclude that the district court erred when it determined that falsity by implication applied to statements 1-8.

Third, even if we assume that the district court erred in dismissing statements 9-11, this error was

---

[9] To be clear, the district court considered *Diesen* and reasoned that its prohibition against defamation by implication did not apply because Larson is a private individual and "did not voluntarily thrust himself into the public sphere like a public official."

harmless. Appellants urge us to reach this conclusion under the incremental-harm doctrine, which provides that "if a jury properly might find that the additional [defamatory] statements significantly added to any injury sustained by plaintiff over and above any injury sustained as a result of [absolutely privileged statements], then plaintiff should be allowed to proceed to trial . . . ; otherwise, not." *Carradine*, 511 N.W.2d at 737. The supreme court has applied this doctrine to defamation cases against public officials that are protected by absolute privilege. *See id.* And the supreme court stated that the fair-report privilege falls somewhere in between an absolute and qualified privilege. *Moreno*, 610 N.W.2d at 331.

Significant parallels between absolute privilege and the fair-report privilege suggest that the incremental harm doctrine should apply here. *See id.* at 328, 331 (explaining that absolute privilege protects "a publisher of potentially defamatory statements regardless of motive and cannot be defeated by any showing of malice" while the fair-report privilege is "somewhat broader in its scope" than other conditional privileges because common-law malice does not affect its application). In both situations—statements by public officials and news reports summarizing official statements—the public has a significant interest in hearing the protected statements. *See id.* ("An absolute privilege applies to protect the public service or the administration of justice" while fair-report privilege exists in part based on "the obvious public interest in having public affairs made known to all." (quotation omitted)).

Larson offered no evidence that he suffered any additional harm through statements 9-11 that he did not also sustain through statements 1-8, which were protected by the fair-report privilege and found to be substantially accurate by the jury. Accordingly, applying the incremental harm doctrine, we conclude that Larson suffered no prejudice as a result of the district court's decision to dismiss statements 9-11, and, consequently, the district court erred in granting a new trial.

DECISION

The district court erred in concluding that the fair-report privilege did not apply to this case, erred in setting aside the jury's verdict, and erred in vacating the judgment with regard to statements 1-8. Additionally, the district court erred by ordering a new trial and including statements 9-11. As a result, we reverse the district's order granting a new trial and remand with instructions to enter judgment in favor of appellants. Based on our decision, there is no reason to address appellants' other arguments.

Reversed and remanded.

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson,

Plaintiff,

v.

Gannett Company Inc., Gannett Satellite Information Network Inc., Multimedia Holdings Corporation, d/b/a KARE 11-TV and d/b/a St. Cloud Times,

Defendants.

Case Type: Personal Injury
Judge Susan N. Burke

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR FOR A NEW TRIAL AND GRANTING DEFENDANTS' MOTION TO STRIKE

(Filed Jun. 13, 2017)

Court File No.
27-CV-15-9371

This matter came before the Honorable Susan N. Burke on March 21, 2017, on Plaintiffs motion for judgment as a matter of law or for a new trial and Defendants' motion to strike Plaintiff's reply brief. Stephen Fiebiger, Esq., appeared for Plaintiff. Steven Wells, Esq., and Emily Mawer, Esq., appeared for Defendants. For the following reasons, Plaintiff's motion for judgment as a matter of law or for a new trial is granted in part and denied in part, and Defendants' motion to strike Plaintiff's reply brief is granted.

INTRODUCTION

The Court holds that Mr. Larson may bring claims based on defamation by implication. The Court further holds that all eight of the Defendants' statements that were submitted to the jury implied that Mr. Larson killed Officer Decker, and that these statements were all defamatory in nature and false as a matter of law. The Court orders a new trial on whether Defendants knew or, in the exercise of reasonable care, should have known each statement was false, and on damages.

The Court also holds that, given the context in which three statements previously dismissed by the Court were made, a reasonable jury could have found that each of those statements also implied that Mr. Larson killed Officer Decker. The Court orders a new trial on the three previously dismissed statements as well.

BACKGROUND

This is a defamation action based on statements made in KARE 11's broadcasts and *St. Cloud Times's* news articles covering the murder of Cold Spring Police Officer Tom Decker. Ryan Larson was initially arrested, but released after a few days. He was never charged with a crime. After about a month, the BCA publicly cleared Mr. Larson as a suspect. There was evidence Mr. Eric Thomes killed Officer Decker, but Mr. Thomes committed suicide shortly after law enforcement attempted to contact him for an interview in connection with the murder.

The case was tried to a jury from November 7, 2016, to November 17, 2016. At the close of evidence, Mr. Larson requested the jury be instructed on defamation and falsity by implication and moved for judgment as a matter of law. The Court denied his request and dismissed three statements. The following statements made by KARE 11 were submitted to the jury:

1. **Police say that man – identified as 34-year old Ryan Larson – ambushed Officer Decker and shot him twice, killing him.**
2. **Rosella holds no ill-will against the man accused of killing her son.**
3. **Ryan Larson, the man accused of killing officer Decker, could be charged as early as Monday.**
4. **Investigators say 34-year old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.**
5. **He was the good guy last night going to check on someone who needed help. That someone was 34-year old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.**
6. **Investigators believe he fired two shots into Cold Spring police officer Tom Decker, causing his death.**

The following statements made by *St. Cloud Times* were submitted to the jury:

7. **Man faces murder charge.**

8. **Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.**

The three statements dismissed by the Court were:

1. **His mind must have really been messed up to do something like that. I know Tom would've forgave him.**
2. **He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail.**
3. **[S]he had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. "This isn't over," she said.**

During trial, no evidence was presented that Mr. Larson killed Officer Decker. On November 21, 2016, a divided jury found that each of the eight statements was defamatory, but not false. On January 5, 2017, the Court entered judgment for Defendants. Mr. Larson now moves for judgment as a matter of law or for a new trial. Defendants move to strike Mr. Larson's reply brief.

ANALYSIS

I. Mr. Larson Is Entitled to Partial Judgment as a Matter of Law

Mr. Larson argues he is entitled to judgment as a matter of law regarding all eight statements sent to the jury. For the following reasons, the Court grants judgment as a matter of law that all eight statements were defamatory in nature and false. However, the Court denies Mr. Larson's motion as to whether Defendants knew or, in the exercise of reasonable care, should have known that the statements were false. The Court denies Mr. Larson's motion for judgment as a matter of law on all other grounds.

1. Legal Standard

Minnesota Rule of Civil Procedure 50 governs motions for judgment as a matter of law. A party is entitled to judgment as a matter of law on an issue only if there is no legally sufficient evidentiary basis for a reasonable jury to find for the non-moving party. Minn. R. Civ. P. 50.01. In determining whether a party is entitled to judgment as a matter of law, "the court must view the credibility of the evidence, and every inference which may fairly be drawn therefrom, in favor of the adverse party." *Paradise v. City of Minneapolis*, 297 N.W.2d 152, 155 (Minn. 1980).

2. Elements of a Defamation Claim

"To establish the elements of a defamation claim in Minnesota, a plaintiff must prove that: (1) the defamatory statement was 'communicated to someone other than the plaintiff'; (2) the statement is false; (3) the statement tends to 'harm the plaintiff's reputation and to lower [the plaintiff] in the estimation of the community,' and (4) 'the recipient of the false statement reasonably understands it to refer to a specific individual.'" *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013) (citations omitted).

3. Defamation by Implication

Mr. Larson argues that the Court should have allowed his claims based on defamation by implication. The Court agrees. A statement is defamatory if the statement tends to harm the reputation of a person and lower his esteem in the community. *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013) (citations omitted). A statement is also defamatory if the implication of the statement tends to harm the reputation of a person and lower his esteem in the community. *Diesen v. Hessburg*, 455 N.W.2d 446, 449-50 (Minn. 1990). The defamatory meaning must be interpreted in light of the context surrounding the statement. *Schlieman v. Gannett Minnesota Broad., Inc.*, 637 N.W.2d 297, 304 (Minn. Ct. App. 2001). A statement may be defamatory by implication if: (1) it leaves out certain facts so that the statement conveyed has a defamatory meaning, (2) it linked statements in a way that

conveyed a defamatory meaning, or (3) it stated an opinion that conveyed defamatory facts. *Utecht v. Shopko Dept. Store*, 324 N.W.2d 652, 65354 (Minn. 1982).

At trial, the Court held that it was not clear that Minnesota recognized defamation by implication based on *Diesen v. Hessburg*, 455 N.W.2d 446 (Minn. 1990). *Diesen* held that defamation by implication was not recognized in cases involving defamation claims brought by public officials against media defendants concerning criticism of their official actions. *Id.* at 449-52. However, this is not a case in which the allegedly defamatory statements criticize a public official for the way in which he is carrying out his official duties. Mr. Larson is a private individual, not a public official. He did not voluntarily thrust himself into the public sphere like a public official. He does not have access to public mediums for answering disparaging falsehoods like a public official. Thus, the Court should have allowed Mr. Larson's claims based on defamation by implication.

4. Falsity by Implication

Mr. Larson argues that the Court should have allowed his claims based on falsity by implication. The Court agrees. In a defamation case, a statement must be false in order to be actionable. A statement or communication is false if it is not substantially accurate. *See Jadwin v. Minneapolis Star & Tribune Co.*, 390 N.W.2d 437, 441 (Minn. Ct. App. 1986). Substantial

accuracy does not require every word to be true. *Id.* A statement or communication is substantially accurate if its substance or gist is true. *Id.* A statement or communication is also false if the implication of the statement is false. *See Lewis v. Equitable Life Assurance Soc. of the United States*, 389 N.W.2d 876, 888 (Minn. 1986); CIVJIG 50.25.

The falsity inquiry properly focuses on the underlying implication of a statement and not on whether the statement itself is false. *Lewis*, 389 N.W.2d at 888-89. In *Lewis*, employees were fired for gross insubordination and claimed they had to tell future employers thereby requiring the employees to self-publish defamatory statements. *Id.* The defendant argued that it was true that the reason employees were fired was for gross insubordination. *Id.* However, the court held it was proper to focus on the truth of the underlying implication of the statement: whether the employees *actually* engaged in gross insubordination. *Id.* Thus, the Court should have allowed Mr. Larson's claims based on falsity by implication.

5. Republication

Defendants argued that they were just the "messenger" delivering statements from law enforcement. However, this argument is contrary to law. Restatement (Second) of Torts § 578 ("[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it."); *see also Cianci v. New Times Publ'g Co.*, 639 F.2d 54, 60-61 (2d

Cir. 1980) (concluding that the republication rule applies to the press even though the press may be able to seek the protection of certain privileges including the fair report privilege); *Olinger v. Am. Say. & Loan Ass'n*, 409 F.2d 142, 144 (D.C. Cir. 1969) (concluding that "[t]he law affords no protection to those who couch their libel in the form of reports or repetition" and that "the repeater cannot defend on the ground of truth simply by proving that the source named did, in fact, utter the statement"). "Unless protected by a privilege, defendants are as liable for republication of a defamatory statement as if they had made the statement themselves." *Price v. Viking Press, Inc.*, 625 F. Supp. 641, 644-45 (D. Minn. 1985) (citing *Cianci*, 639 F.2d at 60-61 & Prosser, *Handbook on the Law of Torts* § 111 (4th ed. 1971)).

6. The Fair and Accurate Report Privilege

The fair and accurate report privilege allows media defendants to report on certain official acts and proceedings without being liable for reporting defamatory statements as long as their reporting is fair and accurate. Order Denying Defendants' Motion for Summary Judgment 11-12 (citing *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 333 (Minn. 2000)). This is true even if the statements conveyed are false and defamatory and even if they were published with actual malice. *Moreno*, 610 N.W.2d at 333.

However, statements made by law enforcement at a press conference that go beyond the mere fact of arrest or charge are not protected before judicial proceedings commence. Order Denying Defendants' Motion for Summary Judgment 11 (quoting *Moreno*, 610 N.W.2d at 333) ("While an arrest or indictment is an official act generally covered by [Section 611 of the Restatement (Second) of Torts], 'statements made by the police or by the complainant or other witnesses or by the prosecuting attorney as to the facts of the case or evidence expected to be given are not yet part of the judicial proceeding or of the arrest itself and are not privileged under this Section.")). The need for public dissemination of information during the brief period of time before arrestees are brought before a judge does not justify depriving defamed individuals of their constitutional right to a remedy, especially in light of the increased risk of defamatory statements prior to action by a court. *Id.* at 1, 11-18. Minnesota's Rules of Professional Conduct acknowledge the danger of these extra-judicial statements by prohibiting prosecutors and police from making extra-judicial statements that will have a substantial likelihood of materially prejudicing a jury. *Id* at 16 (citing Minn. R. Prof. Conduct 3.6, 3.8).

In this case, judicial proceedings had not yet commenced. Mr. Larson was not even charged with a crime. The fair report privilege does not apply to Defendants' statements. Thus, this is an ordinary defamation case. Mr. Larson must prove that Defendants' statements are defamatory in nature, false, and that Defendants

knew or, in the exercise of reasonable care, should have known the statements were false.

7. All Eight Statements Submitted to the Jury Are Defamatory in Nature and False as a Matter of Law

Given the context in which each statement was made, the implication of each statement was that Mr. Larson killed Officer Decker. There is no evidence that Mr. Larson killed Officer Decker. The statements are defamatory in nature and false. Viewing the evidence in the light most favorable to Defendants, no reasonable jury could find otherwise. Defendants argue that each statement accurately reported what law enforcement officials said. However, those who repeat defamatory statements are subject to liability as if they had originally made them. And, the fair report privilege does not apply. Mr. Larson was not even charged with a crime. Accordingly, Mr. Larson is entitled to judgment as a matter of law on the issues of the statement's defamatory nature and its falsity.

8. Substantial Accuracy and Waiver

Defendants argue that the Court recognized that the jury "could go either way" as to the question of substantial accuracy. The Court made this acknowledgment during a discussion of the Court of Appeals decision in *Jadwin v. Minneapolis Star and Tribune Company.* 309 N.W.2d 437 (Minn. Ct. App. 1986). The focus of this discussion was whether the accuracy of

Defendants' reports of law enforcement's statements under the fair report privilege was a question of fact or law. However, this entire discussion was irrelevant because the fair report privilege does not apply in this case.

Defendants argue that Mr. Larson waived the argument that the underlying content of the statements was at issue. Mr. Larson did not waive this argument. Mr. Larson repeatedly argued that the statements were false because he did not kill Officer Decker. Mr. Larson confirmed before closing that he was arguing that the statements were false because he did not kill Officer Decker.

9. Mr. Larson Is Not Entitled to Judgment as a Matter of Law on Other Grounds

Mr. Larson alternatively argues that he is entitled to judgment as a matter of law because in its November 10, 2016 Order, the Court already decided as a matter of law that the statements were not accurately reported under the fair report privilege. However, during the *Jadwin* discussion, the Court vacated this order. Moreover, the entire discussion was irrelevant because the fair report privilege does not apply. Finally, Mr. Larson's motion for judgment as a matter of law is already granted as to falsity and defamation.

Mr. Larson also argues he is entitled to judgment as a matter of law on the issue of negligence. In his supporting memorandum, Mr. Larson confuses the

concept of "negligent publication" with the fault standard of negligence. That is, Mr. Larson repeatedly refers to CIVJIG 50.15 that provides in part: "A publication is made negligently if a reasonable person would recognize that the defamatory matter will be communicated to a person other than plaintiff." There was never a dispute that KARE 11 and *St. Cloud Times* intentionally communicated their statements to people other than Mr. Larson. This does not entitle Mr. Larson to judgment as a matter of law that Defendants knew, or in the exercise of reasonable care, should have known that the published statements were false.

Mr. Larson also moves for judgment as a matter of law on other grounds. Mr. Larson claims the Court erred by admitting the Application to Detain and permitting testimony about the document. Mr. Larson claims the Court erred by giving a jury instruction on probable cause. Mr. Larson claims the Court erred by not including language from *Jadwin* in its falsity instruction. The Court properly admitted the Application to Detain and related evidence, and properly instructed the jury on probable cause and falsity. Moreover, Mr. Larson does not explain how any of these alleged errors would entitled him to judgment as a matter of law. The Court has already granted Mr. Larson's motion for judgment as a matter of law as to the defamatory nature and falsity of the statements submitted to the jury. Mr. Larson's motions for judgment as a matter of law on all other grounds should be denied.

10. Mr. Larson Is Entitled to a New Trial on the Eight Statements Submitted to the Jury

Because Mr. Larson is entitled to judgment as a matter of law as to the defamatory nature and falsity of the eight statements submitted to the jury, the Court orders a new trial on whether Defendants knew or, in the exercise of reasonable care, should have known each statement was false and on damages.

II. Mr. Larson Is Entitled to a New Trial on the Three Statements Dismissed by the Court

1. Legal Standard

Mr. Larson moves for a new trial on the three statements the Court dismissed. Minnesota Rule of Civil Procedure 59 establishes the exclusive grounds for granting a new trial. *Grorud v. Thomasson*, 177 N.W.2d 51, 52 (Minn. 1970). One ground for supporting a motion for a new trial is when an error of law occurred at trial. Minn. R. Civ. P. 59.01(f). In addition to establishing that an error of law occurred, a party moving for a new trial must also establish that the error was prejudicial. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. Ct. App. 2010).

2. "His mind must have really been messed up to do something like that. I know Tom would've forgave him."

Mr. Larson argues that a reasonable jury could have found this statement made by Rosella Decker, Officer Decker's mother, and broadcast by KARE 11 was defamatory by implication, and it should have been submitted to the jury. The Court agrees.

A statement may be defamatory by implication if: (1) it leaves out certain facts so that the statement conveyed has a defamatory meaning, (2) it linked statements in a way that conveyed a defamatory meaning, or (3) it stated an opinion that conveyed defamatory facts. *Utecht v. Shopko Dept. Store*, 324 N.W.2d 652, 653-54 (Minn. 1982).

A reasonable jury could have found that the statement implies that Mr. Larson killed Officer Decker. Accordingly, Mr. Larson is entitled to a new trial on this statement.

3. "He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson in being held in the Stearns County Jail."

Mr. Larson argues that a reasonable jury could have found this statement made by Julie Nelson during KARE 11's 10:00 p.m. news broadcast was

defamatory by implication, and it should have been submitted to the jury. The Court agrees.

A statement may be defamatory by implication if it linked statements in a way that conveyed a defamatory meaning. *Utecht*, 324 N.W.2d at 653-54. The defamatory meaning of a statement must be interpreted in light of the context surrounding the statement. *Schlieman v. Gannett Minnesota Broad., Inc.*, 637 N.W.2d 297, 304 (Minn. Ct. App. 2001).

The context in which this statement appeared was KARE 11's 10:00 p.m. news broadcast that began with the story of Officer Decker's murder. The opening lead-in read by the anchor, Julie Nelson, included the statement, "**Investigators say 34-year old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.**" The story was then sent to a correspondent, Jana Shortal, live in Cold Spring who stated that Officer Decker "**was the good guy last night going to check on someone who needed help**." The shot changes to Mr. Larson's color mugshot, and Ms. Shortal states, "**That someone was 34-year old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom**." It was then that the story cut to Rosella Decker, and she states- "**His mind must have really been messed up to do something like that. I know Tom would've forgave him**" The story shortly thereafter returned to Ms. Nelson in the studio. Over Mr. Larson's color mugshot, Ms. Nelson states: "**Charges could be filed as early as Monday against Ryan Larson, the man . . . accused of killing Officer**

Decker." She closed the story by stating: "**He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail**."

Given this context, a reasonable jury could have found that the statement implied that Mr. Larson was responsible for killing Officer Decker. Accordingly, Mr. Larson is entitled to a new trial on this statement.

4. "[S]he had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. 'This isn't over,' she said."

Mr. Larson argues that a reasonable jury could have found this statement made by Roxie Knowles and published in a December 5, 2012 article by *St. Cloud Times* was defamatory by implication, and it should have been submitted to the jury. The Court agrees.

The article explains that Roxie Knowles, the twin sister of Officer Decker's former wife, Becky Decker, said she came to the jail Tuesday because **she had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. "This isn't over," she said.**

A reasonable jury could have found that the statement implied that Mr. Larson killed Officer Decker.

Accordingly, Mr. Larson is entitled to a new trial on this statement.

5. Mr. Larson Is Not Entitled to a New Trial on Other Grounds

Mr. Larson moves for a new trial on numerous other grounds, including the Court's jury instructions on falsity (not having requested language from *Jadwin*), negligence and probable cause, and the Court's admission of the Application to Detain and a juvenile record. The Court properly instructed the jury on these matters, and properly admitted the Application to Detain and related evidence as well as evidence related to Mr. Larson's juvenile record.

The Court has already granted Mr. Larson's motion for a new trial on the three previously dismissed statements because a reasonable jury could have found they implied Mr. Larson killed Officer Decker. The Court has already granted a new trial on the statements that were submitted to the jury on the issues of negligence and damages. Mr. Larson is not entitled to a new trial on any other grounds.

III. Defendants' Motion to Strike Mr. Larson's Reply Brief Should Be Granted

Defendants move to strike Mr. Larson's reply brief because it exceeds the allowable page limits "No memorandum of law submitted in connection with either a dispositive or nondispositive motion shall exceed 35

pages, exclusive of the recital of facts[,] . . . except with permission of the court. . . . If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except with permission of the court." Gen. R. Practice 115.05. Mr. Larson's initial memorandum of law in support of his motion does not contain a recitation of facts and is 35 pages in length. His reply memorandum also does not contain a recitation of facts. Thus, the entire reply memorandum runs afoul of the page limit Accordingly, Mr. Larson's reply brief should be stricken in its entirety.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff Ryan Larson's Motion for Judgment as a Matter of Law is **GRANTED IN PART AND DENIED IN PART.**

    a. Mr. Larson's Motion for Judgment as a Matter of Law as to the defamatory nature and falsity of all eight statements submitted to the jury is **GRANTED.**

    b. These statements include:

    c. Police say that man – identified as 34-year old Ryan Larson – ambushed Officer Decker and shot him twice, killing him.

    d. Rosella holds no ill-will against the man accused of killing her son.

e. Ryan Larson, the man accused of killing officer Decker, could be charged as early as Monday.

f. Investigators say 34-year old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.

g. He was the good guy last night going to check on someone who needed help. That someone was 34-year old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.

h. Investigators believe he fired two shots into Cold Spring police officer Tom Decker, causing his death.

i. Man faces murder charge.

j. Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.

k. Mr. Larson's other motions for judgment as a matter of law are **DENIED.**

2. Plaintiff Ryan Larson's Motion for a New Trial is **GRANTED** as to the eight statements submitted to the jury listed above as well as the three dismissed statements listed below.

a. His mind must have really been messed up to do something like that. I know Tom would've forgave him.

b. He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail.

c. [S]he had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail. "This isn't over," she said.

3. Defendants' Motion to Strike Plaintiff's Reply Brief is **GRANTED**.

4. The judgment entered for Defendants on January 5, 2017, is **VACATED**.

5. This matter is scheduled for trial during the **August 14, 2017-September 15, 2017 trial block.** The parties may contact the Court for a trial date certain.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: 6/13/17

/s/ Susan Burke
Susan Burke
District Court Judge

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson, Plaintiff, v. Gannett Company Inc., Gannett Satellite Information Network Inc., Multimedia Holdings Corpation, d/b/a KARE 11-TV and d/b/a St. Cloud Times, Defendant.	Case Type: Personal Injury Judge Susan N. Burke **ORDER FOR JUDGMENT** (Filed Dec. 5, 2016) Court File No. 27-CV-15-9371

This matter was tried to a jury from November 7, 2016, to November 17, 2016. Stephen Fiebiger, Esq., appeared for Plaintiff. Steven Wells, Esq., Angela Porter, Esq., and Emily Mawer, Esq., appeared for Defendants.

FINDINGS OF FACT

The jury returned a divided verdict on November 21, 2016. As to all eight statements on the verdict form, the divided jury found that the statements were defamatory, the statements referred to Plaintiff, and the statements were published. However, the divided jury found that all eight statements on the verdict form were not false.

CONCLUSIONS OF LAW

Because the divided jury found that the statements were not false, Plaintiff Ryan Larson is not entitled to recover any damages in this case.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff Ryan Larson's Complaint is **DISMISSED** in its entirety with prejudice and on the merits.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: December 5, 2016

/s/ Susan N. Burke
SUSAN N. BURKE
District Court Judge

Filed in Fourth Judicial District Court
9:31 am, Jan 05, 2017
Hennepin County Civil, MN

JUDGMENT
THE FORGOING SHALL CONSTITUTE THE JUDGMENT AND JUDGMENT ROLL OF THE COURT
KATE FOGARTY, COURT ADMINISTRATOR
ENTERED *Jan 05, 2017*
BY _____

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson, Plaintiff, v. Gannett Company Inc., Gannett Satellite Information Network Inc., Multimedia Holdings Corporation, d/b/a KARE 11-TV and d/b/a St. Cloud Times, Defendants.	Case Type: Personal Injury Judge Susan N. Burke **SPECIAL VERDICT FORM** Court File No. 27-CV-15-9371

We, the jury duly impaneled and sworn to try the issues in the above-entitled case, do hereby answer the questions propounded by the Court as follows:

KARE 11 Broadcast: 6:00 p.m. on November 30, 2012

Question 1

Statement: Police say that man – identified as 34-year old Ryan Larson – ambushed Officer Decker and shot him twice, killing him.

Liability

(a) By the greater weight of the evidence, was this statement by KARE 11 defamatory?

Answer: Yes __X__ No ____

If your answer to Question 1(a) was "Yes," answer Question 1(b). If your answer to Question 1(a) was "No," skip to Question 2(a).

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 1(b) was "Yes," answer Question 1(c). If your answer to Question 1(b) was "No," skip to Question 2(a).

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 1(c) was "Yes," answer Question 1(d). If your answer to Question 1(c) was "No," skip to Question 2(a).

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 1(d) was "Yes," answer Question 1(e). If your answer to Question 1(d) was "No," skip to Question 2(a).

(e) By the greater weight of the evidence, was KARE 11 negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 1(e) was "Yes," answer Question 1(f). If your answer to Question 1(e) was "No," skip to Question 2(a).

(f) By clear and convincing evidence, was this statement made by KARE 11 with actual malice?

Answer: Yes ____ No ____

If your answer to Question 1(f) was "Yes," answer Question 1(g). If your answer to Question 1(f) was "No," skip to Question 1(h).

(g) By clear and convincing evidence, did KARE 11 act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 1(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 1(e) was "Yes," answer Questions 1(i) and 1(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Special Damages

If your answer to Question 1(e) was "Yes," answer Question 1(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 1(e) was "Yes," answer Question 1(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $_____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25]

If your answer to Question 1(f) was "Yes," answer Questions 1(m) and 1(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 1(f) and 1(g) were both "Yes," answer Question 1(o).

(o) What amount of money will serve to punish KARE 11 and discourage others from behaving in a similar way?

Question 2

Statement: Rosella holds no ill-will against the man accused of killing her son.

Liability

(a) By the greater weight of the evidence, was this statement by KARE 11 defamatory?

Answer: Yes __X__ No ____

If your answer to Question 2(a) was "Yes," answer Question 2(b). If your answer to Question 2(a) was "No," skip to Question 3(a).

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 2(b) was "Yes," answer Question 2(c). If your answer to Question 2(b) was "No," skip to Question 3(a).

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 2(c) was "Yes," answer Question 2(d). If your answer to Question 2(c) was "No," skip to Question 3(a).

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 2(d) was "Yes," answer Question 2(e). If your answer to Question 2(d) was "No," skip to Question 3(a).

(e) By the greater weight of the evidence, was KARE 11 negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 2(e) was "Yes," answer Question 2(f). If your answer to Question 2(e) was "No," skip to Question 3(a).

(f) By clear and convincing evidence, was this statement made by KARE 11 with actual malice?

Answer: Yes ____ No ____

If your answer to Question 2(g) was "Yes," answer Question 2(g). If your answer to Question 2(g} was "No," skip to Question 2(h).

(g) By clear and convincing evidence, did KARE 11 act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 2(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 2(e) was "Yes," answer Questions 2(i) and 2(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv Embarrassment $ _____

Special Damages

If your answer to Question 2(e) was "Yes," answer Question 2(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 2(e) was "Yes," answer Question 2(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $ _____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25]

If your answer to Question 2(f) was "Yes," answer Questions 2(m) and 2(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 2(f) and 2(g) were both "Yes," answer Question 2(o).

(o) What amount of money will serve to punish KARE 11 and discourage others from behaving in a similar way?

$ _____

Question 3

Statement: Ryan Larson, the man accused of killing officer Decker, could be charged as early as Monday.

Liability

(a) By the greater weight of the evidence, was this statement by KARE 11 defamatory?

Answer: Yes __X__ No ____

If your answer to Question 3(a) was "Yes," answer Question 3(b). If your answer to Question 3(a) was "No," skip to Question 4(a).

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 3(b) was "Yes," answer Question 3(c). If your answer to Question 3(b) was "No," skip to Question 4(a).

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 3(c) was "Yes," answer Question 3(d). If your answer to Question 3(c) was "No," skip to Question 4(a).

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 3(d) was "Yes," answer Question 3(e). If your answer to Question 3(d) was "No," skip to Question 4(a).

(e) By the greater weight of the evidence, was KARE 11 negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 3(e) was "Yes," answer Question 3(f). If your answer to Question 3(e) was "No," skip to Question 4(a).

(f) By clear and convincing evidence, was this statement made by KARE 11 with actual malice?

Answer: Yes ____ No ____

If your answer to Question 3(f) was "Yes," answer Question 3(g). If your answer to Question 3(f) was "No," skip to Question 3(h).

(g) By clear and convincing evidence, did KARE 11 act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 3(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he

sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 3(e) was "Yes," answer Questions 3(i) and 3(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Special Damages

If your answer to Question 3(e) was "Yes," answer Question 3(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 3(e) was "Yes," answer Question 3(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $ _____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25]

If your answer to Question 3(f) was "Yes," answer Questions 3(m) and 3(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 3(f) and 3(g) were both "Yes," answer Question 3(o).

(o) What amount of money will serve to punish KARE 11 and discourage others from behaving in a similar way?

$ _____

KARE, 11 Broadcast: 10:00 p.m. on November 30, 2012

Question 4

Statement: Investigators say 34-year old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.

Liability

(a) By the greater weight of the evidence, was this statement by KARE 11 defamatory?

Answer: Yes __X__ No ____

If your answer to Question 4(a) was "Yes," answer Question 4(b). If your answer to Question 4(a) was "No," skip to Question 5(a).

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 4(b) was "Yes," answer Question 4(c). If your answer to Question 4(b) was "No," skip to Question 5(a).

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 4(c) was "Yes," answer Question 4(d). If your answer to Question 4(c) was "No," skip to Question 5(a).

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 4(d) was "Yes," answer Question 4(e). If your answer to Question 4(d) was "No," skip to Question 5(a).

(e) By the greater weight of the evidence, was KARE 11 negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 4(e) was "Yes," answer Question 4(f). If your answer to Question 4(e) was "No," skip to Question 5(a).

(f) By clear and convincing evidence, was this statement made by KARE 11 with actual malice?

Answer: Yes ____ No ____

If your answer to Question 4(f) was "Yes," answer Question 4(g). If your answer to Question 4(f) was "No," skip to Question 4(h).

(g) By clear and convincing evidence, did KARE 11 act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 4(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 4(e) was "Yes," answer Questions 4(i) and 4(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Special Damages

If your answer to Question 4(e) was "Yes," answer Question 4(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 4(e) was "Yes," answer Question 4(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $ _____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25]

If your answer to Question 4(f) was "Yes," answer Questions 4(m) and 4(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 4(f) and 4(g) were both "Yes," answer Question 4(o).

(o) What amount of money will serve to punish KARE 11 and discourage others from behaving in a similar way?

$ _____

Question 5

Statement: He was the good guy last night going to check on someone who needed help. That someone was 34-year old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.

Liability

(a) By the greater weight of the evidence, was this statement by KARE 11 defamatory?

Answer: Yes __X__ No ____

If your answer to Question 5(a) was "Yes," answer Question 5(b). If your answer to Question 5(a) was "No," skip to Question 6(a).

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 5(b) was "Yes," answer Question 5(c). If your answer to Question 5(b) was "No," skip to Question 6(a).

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 5(c) was "Yes," answer Question 5(d). If your answer to Question 5(c) was "No," skip to Question 6(a).

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 5(d) was "Yes," answer Question 5(e). If your answer to Question 5(d) was "No," skip to Question 6(a).

(e) By the greater weight of the evidence, was KARE 11 negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 5(e) was "Yes," answer Question 5(f). If your answer to Question 5(e) was "No," skip to Question 6(a).

(f) By clear and convincing evidence, was this statement made by KARE 11 with actual malice?

Answer: Yes ____ No ____

If your answer to Question 5(f) was "Yes," answer Question 5(g). If your answer to Question 5(f) was "No," skip to Question 5(h).

(g) By clear and convincing evidence, did KARE 11 act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 5(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 5(e) was "Yes," answer Questions 5(i) and 5(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Special Damages

If your answer to Question 5(e) was "Yes," answer Question 5(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 5(e) was "Yes," answer. Question 5(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $ _____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25.]

If your answer to Question 5(f) was "Yes," answer Questions 5(m) and 5(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 5(f) and 5(g) were both "Yes," answer Question 5(o).

(o) What amount of money will serve to punish KARE 11 and discourage others from behaving in a similar way?

$ _____

KARE11.com News Story

Question 6

Statement: Investigators believe he fired two shots into Cold Spring police officer Tom Decker, causing his death.

Liability

(a) By the greater weight of the evidence, was this statement by KARE 11 defamatory?

Answer: Yes __X__ No ____

If your answer to Question 6(a) was "Yes," answer Question 6(b). If your answer to Question 6(a) was "No," skip to Question 7(a).

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 6(b) was "Yes," answer Question 6(c). If your answer to Question 6(b) was "No," skip to Question 7(a).

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 6(c) was "Yes," answer Question 6(d). If your answer to Question 6(c) was "No," skip to Question 7(a).

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 6(d) was "Yes," answer Question 6(e). If your answer to Question 6(d) was "No," skip to Question 7(a).

(e) By the greater weight of the evidence, was KARE 11 negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 6(e) was "Yes," answer Question 6(f). If your answer to Question 6(e) was "No," skip to Question 7(a).

(f) By clear and convincing evidence, was this statement made by KARE 11 with actual malice?

Answer: Yes ____ No ____

If your answer to Question 6(f) was "Yes," answer Question 6(g). If your answer to Question 6(f) was "No," skip to Question 6(h).

(g) By clear and convincing evidence, did KARE 11 act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 6(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 6(e) was "Yes," answer Questions 6(i) and 6(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Special Damages

If your answer to Question 6(e) was "Yes," answer Question 6(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 6(e) was "Yes," answer Question 6(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $ _____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25]

If your answer to Question 6(f) was "Yes," answer Questions 6(m) and 6(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 6(f) and 6(g) were both "Yes," answer Question 6(o).

(o) What amount of money will serve to punish KARE 11 and discourage others from behaving in a similar way?

$ _____

***St. Cloud Times* Article: December 1, 2012**

Question 7

Statement: Man faces murder charge.

Liability

(a) By the greater weight of the evidence, was this statement by the *St. Cloud Times* defamatory?

Answer: Yes __X__ No ____

If your answer to Question 7(a) was "Yes," answer Question 7(b). If your answer to Question 7(a) was "No," skip to Question 8(a).

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 7(b) was "Yes," answer Question 7(c). If your answer to Question 7(b) was "No," skip to Question 8(a).

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 7(c) was "Yes," answer Question 7(d). If your answer to Question 7(c) was "No," skip to Question 8(a).

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 7(d) was "Yes," answer Question 7(e). If your answer to Question 7(d) was "No," skip to Question 8(a).

(e) By the greater weight of the evidence, was the *St. Cloud Times* negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 7(e) was "Yes," answer Question 7(f). If your answer to Question 7(e) was "No," skip to Question 8(a).

(f) By clear and convincing evidence, was this statement made by the *St. Cloud Times* with actual malice?

Answer: Yes ____ No ____

If your answer to Question 7(f) was "Yes," answer Question 7(g). If your answer to Question 7(f) was "No," skip to Question 7(h).

(g) By clear and convincing evidence, did the *St Cloud Times* act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 7(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 7(e) was "Yes," answer Questions 7(i) and 7(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Special Damages

If your answer to Question 7(e) was "Yes," answer Question 7(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 7(e) was "Yes," answer Question 7(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $ _____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25]

If your answer to Question 7(f) was "Yes," answer Questions 7(m) and 7(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 7(f) and 7(g) were both "Yes," answer Question 7(o).

(o) What amount of money will serve to punish the *St. Cloud Times* and discourage others from behaving in a similar way?

$ _____

Question 8

Statement: Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.

Liability

(a) By the greater weight of the evidence, was this statement by the *St. Cloud Times* defamatory?

Answer: Yes __X__ No ____

If your answer to Question 8(a) was "Yes," answer Question 8(b). If your answer to Question 8(a) was "No," you are finished with the verdict form.

(b) By the greater weight of the evidence, did this statement refer to Ryan Larson?

Answer: Yes __X__ No ____

If your answer to Question 8(b) was "Yes," answer Question 8(c). If your answer to Question 8(b) was "No," you are finished with the verdict form.

(c) By the greater weight of the evidence, was this statement published?

Answer: Yes __X__ No ____

If your answer to Question 8(c) was "Yes," answer Question 8(d). If your answer to Question 8(c) was "No," you are finished with the verdict form.

(d) By the greater weight of the evidence, was this statement false?

Answer: Yes ____ No __X__

If your answer to Question 8(d) was "Yes," answer Question 8(e). If your answer to Question 8(d) was "No," you are finished with the verdict form.

(e) By the greater weight of the evidence, was the *St. Cloud Times* negligent in the publication of this statement?

Answer: Yes ____ No ____

If your answer to Question 8(e) was "Yes," answer Question 8(f). If your answer to Question 8(e) was "No," you are finished with the verdict form.

(f) By clear and convincing evidence, was this statement made by the *St. Cloud Times* with actual malice?

Answer: Yes ____ No ____

If your answer to Question 8(f) was "Yes," answer Question 8(g). If your answer to Question 8(f) was "No, " skip to Question 8(h).

(g) By clear and convincing evidence, did the *St. Cloud Times* act with deliberate disregard for the rights or safety of others?

Answer: Yes ____ No ____

Answer Question 8(h).

(h) By the greater weight of the evidence, does this statement significantly add to Ryan Larson's harm over and above any harm he sustained as a result of statements reporting the fact of his arrest and the arresting charge?

Answer: Yes ____ No ____

Actual Damages

If your answer to Question 8(e) was "Yes," answer Questions 8(i) and 8(j).

(i) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(j) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Special Damages

If your answer to Question 8(e) was "Yes," answer Question 8(k).

(k) What amount of money will fairly and adequately compensate Ryan Larson for damages directly caused by this statement, up to the time of this verdict, for:

i. Special damages $ _____

Loss of Future Earning Capacity

If your answer to Question 8(e) was "Yes," answer Question 8(l).

(l) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future directly caused by this statement, for:

i. Loss of future earning capacity $ _____

Presumed Damages

[Based on your answers on the special verdict form, Ryan Larson will be awarded either actual damages or presumed damages. He will not be awarded both. For the difference between actual and presumed damages, see Instruction Nos. 20 and 25]

If your answer to Question 8(f) was "Yes," answer Questions 8(m) and 8(n).

(m) What amount of money will fairly and adequately compensate Ryan Larson for damages for the use of this statement, up to the time of this verdict, for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

(n) What amount of money will fairly and adequately compensate Ryan Larson for damages reasonably certain to occur in the future for the use of this statement for:

i. Harm to his reputation $ _____

ii. Mental distress $ _____

iii. Humiliation $ _____

iv. Embarrassment $ _____

Punitive Damages

If your answers to Questions 8(f) and 8(g) were both "Yes," answer Question 8(o).

(o) What amount of money will serve to punish the *St. Cloud Times* and discourage others from behaving in a similar way?

$ _____

_____ _____

Date and Time **Jury Foreperson**

After six hours of deliberation (but not before) seven of the eight of you may return a verdict. If a verdict is returned by seven jurors rather than eight, all seven must sign:

JURORS CONCURRING

/s/ [Illegible] /s/ [Illegible]

/s/ [Illegible] /s/ [Illegible]

/s/ [Illegible] /s/ [Illegible]

/s/ [Illegible]

11-21-2016 10:43 am /s/ [Illegible]

Date and Time **Jury Foreperson**

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson, Plaintiff, v. Gannett Company Inc., Gannett Satellite Information Network Inc., Multimedia Holdings Corpation, d/b/a KARE 11-TV and d/b/a St. Cloud Times, Defendant.	Case Type: Personal Injury Judge Susan N. Burke **ORDER** (Filed Nov. 10, 2016) Court File No. 27-CV-15-9371

ANALYSIS

The fair report privilege does not apply to statements made by police at a news conference or in a news release that go beyond the fact of arrest or charge of a crime. (Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment 11-20.) Moreover, under the fair report privilege, a news report must be a substantially accurate summary of the occurrence reported. *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 333 (Minn. 2000); *see also* Restatement (Second) Torts § 611.

Six of the allegedly defamatory statements in this case go beyond the fact of arrest. They are not covered by the fair report privilege. These statements include:

Police say that man – identified as 34-year old Ryan Larson – ambushed Officer Decker and shot him twice, killing him.

* * *

Ryan Larson, the man accused of killing officer Decker, could be charged as early as Monday.

* * *

Investigators say 34-year old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.

* * *

He was the good guy last night going to check on someone who needed help. That someone was 34-year old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.

* * *

Investigators believe he fired two shots into Cold Spring police officer Tom Decker, causing his death.

* * *

Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.

Even if the fair report privilege was extended to apply to statements made by police at news conferences and news releases, these six allegedly

defamatory statements would still not be privileged because the statements are not substantially accurate as a matter of law.

The fair report privilege is a qualified privilege, and to claim its protection, a news report must be accurate and complete or a fair abridgment of the occurrence reported. *Moreno*, 610 N.W.2d at 333; *see also* Restatement (Second) Torts § 611. The legal test regarding whether a report is "fair and accurate" was explained in *Jadwin v. Minneapolis Star & Tribune*, 390 N.W.2d 437 (Minn. Ct. App. 1986). The question is whether the report is "substantially accurate." A statement is substantially accurate "if its gist or sting is true, that is, if it produces the same effect on the mind of the recipients which the precise truth would have produced." *Id.* at 441 (quoting *Williams v. WCAU-TV*, 555 F. Supp. 198, 202 (E.D. Pa. 1983)).

In determining whether Defendants' statements were substantially accurate, the Court must allow some degree of leeway in accuracy when describing legal issues to the public. *Id.* at 442. The Court is to read the reports in light of "expected lay interpretation[s]" rather than strictly scrutinizing whether a report was technically accurate in defining legal charges or describing legal rulings. *Id.* at 442 n. 2 (citing *Ricci v. Venture Magazine, Inc.*, 574 F. Supp. 1563, 1567 (D. Mass. 1983) (courts are to apply a "common sense standard of expected lay interpretation of media reports of trials, rather than inquiring whether a report was strictly correct in defining legal charges and describing legal rulings")).

"Where there is no dispute as to the underlying facts, the question of whether a statement is substantially accurate is one of law for the court." *Id.* at 441 (citing *Williams*, 555 F. Supp. at 203). In this case, there is no dispute as to the underlying facts. This case is not like *McKee v. Laurion* where there were credibility issues with respect to what the plaintiff in that case did or did not say. 825 N.W.2d 725 (Minn. 2013).

In this case, the effect the precise truth of the news conference, news release, and jail log would produce on the mind of the recipient was that Officer Decker had been shot in what appeared to be an ambush-style killing when he responded to call for a welfare check. The subject of the welfare check, Ryan Larson, had been interviewed by Steams County deputies and some of that investigation was ongoing. Mr. Larson was taken into custody and booked at the Stearns County Jail on murder charges. The investigation was in its very early stages and was active and ongoing as police continued to investigate the crime.

To the contrary, the effect each of the defendants' statements would produce on the mind of the recipient was that police firmly believed Ryan Larson killed Officer Decker, that they were likely proceeding with murder charges, and those charges could be brought as early as Monday. There was no sense that the investigation was in its early, preliminary stages. There was no sense that the investigation was ongoing. The effect of each statement was that police had their man. The investigation was over. Each of defendants' statements gave the impression that police had concluded without

doubt that Ryan Larson killed Officer Decker and that the investigation was not active. Each of these statements created the impression of finality to the investigation and certainty to the idea that Mr. Larson had killed Officer Decker that was not present in the news conference, news release, and jail log.

During the news conference, law enforcement officials repeatedly emphasized the fact that the investigation was in its preliminary stages. For example, in response to a question whether there was reason to believe there might be some other individual involved, Drew Evans of the BCA replied "Again, we don't have any re – information to believe that at this time, but it's in early stages of the of the investigation, we continue to follow-up on all leads." (News Conference Transcript 5.) In response a question regarding whether something had happened in Mr. Larson's life that could have triggered him to be upset, Sheriff Sanner replied "Again, it's far too early in the investigation to make a comment in reference to that." (*Id.* at 6.)

Law enforcement repeatedly refused to answer specific questions asked by reporters and largely refused to comment on the facts of the case. The transcript of the news conference is replete with statements like: "Again, that's part of the active and ongoing investigation." (*Id.* at 5); "That's part of the active investigation. We can't discuss that at this time." (*Id.*); "Again, that's part of the active investigation and we just can't comment on that at this time." (*Id.*); "It's – again, that's part of the active crime scene and

we just – we can't discuss the details of the active crime scene at this time." (*Id.* at 6.)

Law enforcement officials did not comment on or imply what their individual or collective beliefs were regarding Mr. Larson's guilt or responsibility for the crime. They did not comment on the strength of the evidence. In fact, it appears that had reporters directly asked the police if they were saying that Mr. Larson was the person responsible for shooting Officer Decker, the officers would have either denied that statement or refused to comment and reiterated that the investigation was active and ongoing. Similarly, it appeared that if reporters had asked the police officers if they believed Mr. Larson was the person responsible for shooting Officer Decker, the officers again would have either denied that statement or refused to comment and reiterated that the investigation was active and ongoing. Furthermore, had reporters directly asked the police if they were saying that Mr. Larson was accused of or charged with murdering Officer Decker, the officers would have denied those statements as well.

For these reasons, each of the Defendants' statements produced a harsher effect or sting on the mind of the recipients than the precise truth would have produced. Thus, these six allegedly defamatory statements are not substantially accurate.

Two allegedly defamatory statements do convey the fact of arrest or charge of a crime. However, neither of these statements are substantially accurate.

Therefore, neither statement is protected by the fair report privilege. These statements are:

> **Rosella holds no ill-will against the man accused of killing her son.**
>
> * * *
>
> **Man faces murder charge.**

The effect the precise truth of the news conference, the news release and the jail log would produce on the mind of the recipient was that investigators were in the early hours of their investigation, they had arrested one suspect and were continuing an active investigation, and that the Stearns County Attorney's Office had not charged Mr. Larson with a crime.

To the contrary, the effect each of these statements would produce on the mind of the recipient is that Mr. Larson had been formally charged with murder by the Stearns County Attorney's Office. In this context, "accused" generally means charged with a crime. *Accuse – Definition of accuse in English | Oxford Dictionaries*, (last visited November 10, 2016), https://en.oxforddictionaries.com/definition/accuse ("Charge (someone) with an offence or crime"); *Accuse | Definition of Accuse by Merriam-Webster*, (last visited November 10, 2016), http://www.merriam-webster.com/dictionary/accuse ("to charge with a fault or offense : to charge with an offense judicially or by a public process"); *American Heritage Dictionary Entry: accuse*, (last visited November 10, 2016), https://ahdictionary.com/word/search.html?q=accuse ("To charge formally with a wrongdoing"). The

statement "Man faces murder charge" clearly would produce on the mind of the recipient that Mr. Larson had been formally charged with murder. These statements produced a harsher effect or sting on the mind of the recipients than the precise truth would have produced. Thus, these statements are not substantially accurate, and therefore, they are not protected under the fair report privilege.

The Court's Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment dated May 19, 2016, is so modified.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Court's Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment dated May 19, 2016, is so modified.
2. Defendants' Motion for Summary Judgment is **DENIED**.

BY THE COURT:

Dated: 11/10/2016

/s/ Susan N. Burke
SUSAN N. BURKE
District Court Judge

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson, Plaintiff, v. Gannett Company Inc., Gannett Satellite Information Network Inc., Multimedia Holdings Corpation, d/b/a KARE 11-TV and d/b/a St. Cloud Times, Defendant.	Case Type: Personal Injury Judge Susan N. Burke **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** (Filed May 19, 2016) Court File No. 27-CV-15-9371

This matter came before the Honorable Susan N. Burke on February 19, 2016, on Defendants' motion for summary judgment. Stephen Fiebiger, Esq., appeared for Plaintiff. Mark Anfinson, Esq., appeared for Defendants.

INTRODUCTION

The Court holds the fair report privilege does not apply to extra-judicial statements made by police regarding an arrest and criminal investigation before any judicial control is exercised, even if those statements are made in the context of a news conference or disseminated by a news release. The need for public

dissemination of information during the brief period of time before an arrestee is brought before a judge does not justify depriving defamed individuals of their constitutional right to a remedy, especially in light of the increased risk of defamatory statements prior to action by a court. Moreover, genuine issues of material fact exist as to whether the reporting was fair and accurate when law enforcement officials offered only limited statements and repeatedly qualified their answers indicating that the investigation was ongoing and in its preliminary stages.

BACKGROUND

The undisputed facts are as follows.[1] At 9:00 a.m. on November 30, 2012, a news conference was conducted in Cold Spring, Minnesota. The news conference was led by Drew Evans of the Bureau of Criminal Apprehension ("BCA") and also included Stearns County Sheriff John Sanner and Cold Spring Police Chief Phil Jones. The subject of the news conference was the shooting death of Cold Spring police officer Tom Decker on November 29, 2012. Both KARE 11 – TV ("KARE 11") and the St. Cloud Times assigned staffers to Cold Spring to cover Officer Decker's death, and both media companies had staffers attend the news conference.[2]

---

[1] Bolded statements are statements specifically identified in Plaintiff's Complaint and set out verbatim.

[2] Defendant Gannett Company, Inc. ("Gannett") owns and operates Defendants Gannett Satellite Information Network, Inc.

During the news conference, law enforcement officials largely declined to share specific details of the investigation with the media. Officials responded to questions asked by reporters by stating that they could not comment and that the investigation was still active and ongoing. Officials consistently stressed that the investigation was in its very early stages, and they repeatedly refused to comment on many facts of the case. Nonetheless, a few details regarding the facts of the case were released during the news conference.

Sheriff Sanner stated that Officer Decker was assigned to conduct a welfare check on Ryan Larson, the plaintiff in this matter. Sheriff Sanner stated that the family of Mr. Larson was concerned that Mr. Larson was possibly suicidal. Sheriff Sanner stated that after pulling into the parking lot of Winners Bar, "Officer Decker left his squad car and a very short time later was confronted by an armed individual, shot twice, and died." Mr. Evans explained that Mr. Larson, "was taken into custody and was booked into the Stearns County jail in connection with" the killing of Officer Decker. When asked if there was any reason to believe that there might be some other individual involved in the shooting, Mr. Evans replied that law enforcement had no "information to believe that at this time[.]" Mr. Evans followed this comment with yet another statement explaining that the investigation was still in its

---

("Gannett SINI") and Multimedia Holdings Corporation ("Multimedia Holdings"). Gannett SINI and Multimedia Holdings own and operate KARE 11. Multimedia Holdings owns and operates the St. Cloud Times.

preliminary stages, and that law enforcement would be following up on any and all leads in its investigation. Mr. Evans also stated that it was apparent to law enforcement based on their preliminary investigation that Officer Decker "was ambushed at the scene."

The Minnesota Department of Public Safety also issued a news release on November 30, 2012. The news release explains that Officer Decker was shot and killed around 11:00 p.m. on November 29, 2012, near Winners Bar while conducting a welfare check at a nearby apartment. It states that "[w]ithin an hour" after launching a search for the shooter, "Stearns County SWAT team investigators took Ryan Michael Larson, 34, of Cold Spring into custody. Larson was booked into the Stearns County Jail on murder charges" earlier that morning. Staffers of KARE 11 and the St. Cloud Times both received copies of the news release.

After Mr. Larson was arrested, he was booked into the Stearns County jail. Mr. Larson's booking information was recorded on the Stearns County jail log. The jail log stated that Mr. Larson had been booked on November 30, 2012, on a charge of second-degree murder. The jail log also contains a disclaimer which states, in part:

> An arrest does not mean that the inmate has been convicted of the crime. Booking at the County Jail does not indicate guilt. Information contained herein should not be relied upon for any type of legal action. The County Sheriff's Office cannot represent that the information is current, accurate, or complete.

KARE 11 broadcast news stories about Officer Decker's murder on its 5:00 p.m., 6:00 p.m., and 10:00 p.m. newscasts on November 30, 2012. In its 5:00 p.m. story, anchor Julie Nelson reported: "Tonight – a 34 year old man named Ryan Larson is in jail – accused of Officer Decker's murder." This newscast included a pre-recorded "package piece" by reporter John Croman. Mr. Croman received a copy of the news release after arriving in Cold Spring and watched a recording of the entire news conference. Mr. Croman's package piece included an interview with Rosella Decker, Officer Decker's mother. After Mr. Croman's package piece was broadcast, the coverage returned to Mr. Croman live in Cold Spring where he was joined by reporter Jana Shortal. Ms. Shortal gave some background information on Mr. Larson including his criminal history. The coverage returned to Ms. Nelson where she closed by stating: "[C]harges against Ryan could come next week." While the 5:00 p.m. broadcast identified Mr. Larson as a suspect, neither Ms. Nelson, Mr. Croman, or Ms. Shortal stated that Mr. Larson shot and killed Officer Decker or reported that investigators or police said that Mr. Larson had shot and killed Officer Decker.

KARE 11's 6:00 p.m. newscast began with the story of Officer Decker's killing. Ms. Nelson led into the story stating Officer Decker "was shot and killed last night while conducting a welfare check on a suicidal man. **Police say that man – identified as 34-year old Ryan Larson – ambushed Officer Decker and shot him twice, killing him.**" Producer Panhia Yang

wrote the script read by Ms. Nelson on the 6:00 p.m. newscast. She testified that she understood the difference in being charged with a crime as opposed to being arrested and booked on suspicion of a crime.

After Ms. Nelson's lead-in on Officer Decker's murder, the story was sent to Mr. Croman in Cold Spring. Mr. Croman broadcast another package piece that included his interview with Rosella Decker. During the package piece, Mr. Croman stated: "**Rosella holds no ill-will against the man accused of killing her son.**" He thought that this statement was significant because in his experience, the families of victims do not often have charitable things to say about the accused. Mr. Croman testified that he understood what it meant to be arrested and booked on suspicion of a crime.

After the package piece was finished, the story went back to Mr. Croman live in Cold Spring, where he described the emotional atmosphere in Cold Spring, highlighting the procession of a white hearse with Officer Decker's body and ringing church bells. Mr. Croman chose to highlight the procession because it was an interesting visual and, at the time, he did not know that it was common for the bodies of slain police officers to be escorted by other law enforcement officials. The broadcast returned to Ms. Nelson, and she closed the coverage by stating: "**Ryan Larson, the man accused of killing officer Decker, could be charged as early as Monday.**" Mr. Larson's color mugshot appeared simultaneous with this statement and along with a short summary of his background information including his criminal history.

KARE 11's 10:00 p.m. newscast began with the story of Officer Decker's murder. Ms. Nelson's opening script reported: "**Investigators say 34-year old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.**" The story was then sent to Ms. Shortal live in Cold Spring who broadcast her own package piece that included the interview with Rosella Decker. Ms. Shortal testified that she understood the difference between being charged with a crime as opposed to being arrested and booked on suspicion of a crime.

Ms. Shortal's package piece also included a statement by Cold Spring resident Amanda Weber referring to Officer Decker: "He definitely was one of the good guys." After Ms. Weber's statement, the shot shifted to police cars with Ms. Shortal reporting over the image: "**He was the good guy last night going to check on someone who needed help.**" The shot changed to Mr. Larson's color mugshot, and Ms. Shortal stated: "**That someone was 34-year old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.**" Ms. Shortal also commented: "**If there were one job Tom Decker loved more than policing in this town, it was fathering his kids, Kelley and Jade, Justin and Devon, ages 5, 6, 7, and 8.**"

The story then went back to the interview with Rosella Decker where she stated: "**His mind must have really been messed up to do something like that. I know Tom would've forgave him.**" The story returned to Ms. Shortal live in Cold Spring where she

reported from a shot that included Winners Bar noting that this was the location where Officer Decker was "ambushed." The story then went back to Ms. Nelson to close the story. Over Mr. Larson's color mugshot, Ms. Nelson stated: "Charges could be filed as early as Monday against Ryan Larson, the man . . . accused of killing Officer Decker." She then described Mr. Larson's background: "**He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail.**"

Ms. Nelson referred viewers to KARE11.com. A screenshot of KARE11.com was broadcast that included an article titled "Suspect jailed in fatal shooting of Cold Spring officer." Although this article appeared in the screenshot at the end of the 10:00 p.m. broadcast on November 30, 2012, the article is dated 2:04 p.m. on December 1, 2012. However, the posting date is often when the story was last updated, so it is possible that the story was posted to KARE11.com on November 30, 2012, but last updated on December 1, 2012. In any case, the article characterizes Officer Decker's killing as an "alleged ambush" and states: "**Investigators believe [Mr. Larson] fired two shots into Cold Spring police officer Tom Decker, causing his death.**"

On December 1, 2012, the St. Cloud Times published several news stories about Officer Decker's killing. One of the front-page stories was written by reporter Kari Petrie on November 30, 2012, and

contained the following headline: "**Man faces murder charge.**" Ms. Petrie did not write the headline, but did write the body of the article. Ms. Petrie testified that she had a general understanding of the legal process involved with the filing of formal criminal charges. The body of the article contained the following statements: "Ryan Michael Larson, 34, is in Stearns County Jail and faces possible charges of second-degree murder. **Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.**"

At 1:17 p.m. on December 1, 2012, after the St. Cloud Times had published its newspaper for that day, the Stearns County Sher-riff signed a document titled "Application for Judicial Determination of Probable Cause to Detain" ("Application to Detain"). The Application to Detain began, "Facts constituting probable cause to believe a crime was committed and [Mr. Larson] committed" it. It then described particular facts to justify the requested detention of Mr. Larson past the pre-charge detention period that was set to expire at 12:00 p.m. on December 3, 2012. The Application to Detain was approved on December 3, 2012 ("Order"),[3] and Mr. Larson was held for an extended hold.

By December 4, 2012, prosecutors had reviewed the evidence against Mr. Larson and determined that there was insufficient evidence to continue to detain

[3] The Court was only provided with the first page of the Order as an exhibit to the affidavit of John Bodette.

Mr. Larson. Thus, on December 4, 2012, Mr. Larson was released from the Stearns County Jail.

On December 5, 2012, the St. Cloud Times published an article about Mr. Larson's release from jail. The article was written by Ms. Petrie and reporter David Unze. The article quoted citizens that had turned out to see Mr. Larson released. The article reported that Roxie Knowles, the twin sister of Officer Decker's former wife, was present at the jail. The article reported:

> **[S]he had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail.**
>
> **"This isn't over," she said.**

Law enforcement continued its investigation. On January 2, 2013, BCA agents attempted to interview with Eric Thomes of Cold Spring. However, he fled the agents and entered an outbuilding on his property. Law enforcement officials tried for several hours to contact Mr. Thomes, but he refused to exit the building. Shortly before 7:00 p.m. on January 2, 2013, law enforcement officials entered the building to find that Mr. Thomes had committed suicide. A subsequent search of Mr. Thomes led investigators to a .20 gauge shotgun located at a separate property. BCA Laboratory firearms experts determined that the gun was likely the weapon used to kill Officer Decker. In light of this evidence, Mr. Larson was cleared as a suspect by the BCA in August of 2013.

On November 26, 2014, Mr. Larson commenced this action against Defendants claiming that "[t]he false statements, innuendo and implication by defendants that plaintiff was responsible for the murder of officer Decker, shot and killed officer Decker, that police or investigators said he shot and killed officer Decker, and was charged with his murder . . . constitutes defamation that caused damage to plaintiff's reputation and injury to him " (Compl. ¶ 35.) The Complaint specifically identifies defamatory statements contained in KARE 11's 6:00 p.m. and 10:00 p.m. news broadcasts, the KARE11.com article titled "Suspect jailed in fatal shooting of Cold Spring officer," the St. Cloud Times article published on December 1, 2012, with the headline "Man faces murder charge," and the St. Cloud Times article published on December 5, 2012, covering Mr. Larson's release from jail that quotes Roxie Knowles.

ANALYSIS

Defendants have moved for summary judgment arguing that their potential liability is barred by the fair report privilege. They argue that all of the statements that Mr. Larson claims are defamatory were based directly on claims made by law enforcement during the news conference or contained in the news release, the jail log, and the Application to Detain and Order. Defendants maintain that their news stories fairly and accurately conveyed the claims made by law enforcement at the time as reflected in these sources, and consequently, the news stories fall under the fair

report privilege and cannot form the basis of Mr. Larson's defamation suit. Mr. Larson argues: (1) the news conference, news release, jail log, and Application to Detain and Order do not qualify for protection under the fair report privilege in Minnesota, and (2) Defendants' news stories are not fair and accurate reports of the statements made in those materials.

The Court holds that to the extent the news conference and news release only communicated the fact of Mr. Larson's arrest or of the charge of crime made by the officer in making or returning his arrest, these sources are entitled to the privilege. Other statements made in these sources are not entitled to the privilege. Further, the Court holds that the jail log and the Application to Detain and Order are entitled to the privilege. Finally, the Court finds that genuine issues of material fact exist regarding whether Defendants abused the privilege.

I. Summary Judgment Standard

Rule 56.03 provides that summary judgment will be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. "The purpose of summary judgment is to determine whether issues of fact exist, not to resolve issues of fact" *Fain v. Anderson*, 816 N.W.2d 696, 702 (Minn. Ct. App. 2012) (citing *Albright v. Henry*, 174 N.W.2d

106, 113 (Minn. 1970)). The moving party has the burden of proving that no genuine issue of material fact exists, and the non-moving party has the benefit of that view of the evidence most favorable to it. *See Vieths v. Thorp Fin. Co.*, 232 N.W.2d 776, 778 (Minn. 1975). Further, all factual inferences are resolved in favor of the non-moving party. *See Northland Ins. Co. v. Bennett*, 533 N.W.2d 867, 871 (Minn. Ct. App. 1995).

II. Principles of Defamation Law

Mr. Larson's Complaint contains a single allegation of defamation. "To establish the elements of a defamation claim in Minnesota, a plaintiff must prove that: (1) the defamatory statement was 'communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to 'harm the plaintiff's reputation and to lower [the plaintiff] in the estimation of the community,' and (4) 'the recipient of the false statement reasonably understands it to refer to a specific individual.'" *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013) (citations omitted).

Statements that falsely accuse a person of a crime will be considered defamatory *per se* and do not require proof of actual harm in order to be actionable. *See Longbehn v. Schoenrock*, 727 N.W.2d 153, 158-60 (Minn. Ct. App. 2007). Defamation per *se* can be established if the statements imply or impute serious misconduct, even if the speaker does not directly accuse the person of such misconduct:

> With regard to false accusations of a crime, the words need not carry upon their face a direct imputation of crime. It is sufficient if the words spoken, in their ordinary acceptance, would naturally and presumably be understood, in the connection and under the circumstances in which they are used, to impute a charge of crime.

Id. at 158-59 (citations omitted). Generally, Minnesota law requires that "the defamatory matter be set out verbatim," and the plaintiff's action will be confined to those statements identified in the complaint. *Moreno v. Crookston Times, Printing Co.*, 610 N.W.2d 321, 326 (Minn. 2000).

III. The Fair Report Privilege

Even if a plaintiff can establish each element of a defamation claim, the defendant may still prevail if the statements are protected by a privilege. *Lewis v. Equitable Life Assurance Soc'y*, 389 N.W.2d 876, 889 (Minn. 1986). These privileges rest on public policy grounds and are grounded in the determination that statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be defamatory. *See id.* "Whether an occasion is a proper one upon which to recognize a privilege is a question of law for the court to determine," *id.* (citation omitted), and the party claiming the protection of a privilege bears the burden of proof. *See Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306

(Minn. 2007) (citing *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997)).

Defendants argue that the fair report privilege protects them from liability for Mr. Larson's defamation claims. However, the fair report privilege does not apply to statements made by the police about the facts of a criminal case that go beyond the mere fact of arrest and the charge of arrest before any court action has been taken. *Moreno*, 610 N.W.2d at 333 ("While an arrest or indictment is an official act generally covered by [Section 611 of the Restatement (Second) of Torts], 'statements made by the police or by the complainant or other witnesses or by the prosecuting attorney as to the facts of the case or evidence expected to be given are not yet part of the judicial proceeding or of the arrest itself and are not privileged under this Section.' ").

As discussed in *Moreno*, Minnesota cases have historically analyzed the fair report privilege within the context of "judicial proceedings." Minnesota courts have consistently held that the privilege does not apply in the absence of any court action or court control over the judicial proceedings wherein both sides of a matter have an opportunity to be heard. These courts balanced the need for a robust and unfettered press and the possible chilling effect on the dissemination of information to the public against the constitutional right to a remedy for those injured by defamatory statements and established limitations to the fair report privilege.

In *Nixon v. Dispatch Printing Co.*, 112 N.W. 258 (Minn. 1907), defamatory statements derived from a complaint in a divorce action were published in a newspaper. *Id.* at 311. The Court found that the newspaper was not entitled to the fair report privilege, holding that a complaint which has never been presented to the court for its action is not yet part of a "judicial proceeding" within the meaning of the privilege. *Id.* at 313. That is, the matter must be under the control of the court where both sides could be heard before the privilege would apply. The Court explained:

> The distinction between a complaint and judicial proceedings proper is clear. The first is ex parte, not subject to the control of the court in the first instance, the clerk must file it, and its publication can in no manner serve the administration of justice, or any other legitimate object of public interest. **The last are had in court, under the control of the judge where both sides may be heard.** A fair report of such a proceeding would include the claims of all parties as made in court. It is the publication of such a report only that is privileged. We hold, upon principle an authority, that a publication of judicial proceedings, if fair and impartial, is privileged; but a complaint or other pleading in a civil action, is not a judicial proceeding within the rule, and its publication, if it contains libelous matter, can only be justified by showing that it is true. It follows that the publication in this case was not privileged.

Id. at 313 (citations omitted) (emphasis added).

The *Nixon* Court further explained that "Wile fact that managers of newspapers have been accustomed to publish, when filed, the pleadings in civil actions, and to consider such publications as privileged, is immaterial, for neither custom nor opinion can withdraw person, character, or property from the protection of the Constitution." *Nixon*, 112 N.W. at 311. The *Nixon* Court discussed the policy reasons underlying its holding:

> It is true, as claimed by counsel for defendant, that a complaint, when filed in the office of the clerk of the court, becomes a part of the records in the action, and that by virtue of the statute (Rev. Laws 1905, § 614) the clerk must exhibit the records in his office for the inspection of any person demanding the same free of charge, except in cases where fees are provided by law, and then upon tender of such fees. This right, however, does not authorize the person inspecting the record to make an improper use thereof, or to publish to the world through the medium of the press libelous matter contained in the record. Complaints in civil actions are filed by the plaintiff. The court does not pass upon the question whether or not they shall be filed. Nor has the clerk of the court any right to refuse to file a complaint, when requested by the plaintiff, although it may contain libelous matter. Now, if the filing of such a complaint must be construed as a judicial proceeding within the rule stated, then any one who happens to read the complaint after it is filed is privileged to publish it, and send it into the houses and offices of thousands of the citizens

> of the state, and thereby brand the person against whom the complaint is filed with infamy If such be the law, then as easy and safe way has been provided whereby a party desiring to libel another may do so with impuity [sic] by entitling the libel in an action, labeling it a complaint, and filing it with the clerk. The constitutional guaranty to the citizen of a certain remedy for all wrongs which he may receive in his person, property, or character cannot be evaded by any such makeshift.

Id. at 312-13.

In *Hurley v. Northwest Publications, Inc.*, 273 F. Supp. 967 (D. Minn. 1967), the federal district court applying Minnesota law applied the rule in *Nixon* that a matter had to be sufficiently under the control of the court to be entitled to protection under the fair report privilege. *Hurley* also involved defamatory statements derived from a complaint that had been published by a newspaper. *Hurley*, 273 F. Supp. at 969-70. However, unlike the complaint in *Nixon* which had not been acted upon by a judge in any manner, the complaint in *Hurley* was specifically authorized by an order of the probate court. *Id.* at 970. In fact, the complaint in *Hurley* "arose out of the probate proceedings and was, in effect, a logical and necessary outgrowth and continuation of those proceedings. *Id.* at 971. Thus, the situation in *Hurley* was "cloaked with official sanction" such that the fear that the filing of a complaint would be used as an instrument for privileged defamation did not arise. *Id.* at 972. *Hurley* held that "the filing of the

complaint was sufficiently under the court's control to confer privilege." *Id.* Importantly, the defendants in *Hurley* urged the court to follow extra-jurisdictional cases and adopt a more modem view of the fair report privilege that was contrary to *Nixon. Id.* at 971. The court declined to do so, relying in part on an Advisory Committee Comment following the statute on criminal defamation that specifically acknowledged and approved of the reasoning in *Nixon. Id.*; *see also Moreno*, 610 N.W.2d at 332 (cautioning against relying on other jurisdictions because their defamations laws and privileges often were the result of state statutes or developed over time in that jurisdiction's common law).

In *Schuster v. U. S. News & World Report, Inc.*, the Eighth Circuit Court of Appeals, applying Minnesota law, addressed the *Nixon* rule in the criminal context. 602 F.2d 850, 853 (8th Cir. 1979). That case involved defamatory statements derived from a criminal indictment. *Id.* The Eighth Circuit held that "the contents of the San Diego indictments was privileged as fair and accurate reporting of judicial proceedings." *Id.* at 854. The Eighth Circuit contrasted the facts of its case from *Nixon*, stating that "Nixon applies only where a mere filing is involved. Here a grand jury had indicted individuals and criminal proceedings were underway. An indictment is a judicially recognized presentment of charges and thus differs substantially from a unilaterally filed private complaint." *Id.* at 854 n. 8. The importance is that a grand jury indictment reflects official action being taken by an agency of the court. *See* Restatement (Second) of Torts § 611, cmt. d ("[The

privilege] is also applicable to the proceedings of an agency of the court, such as a grand jury returning an indictment."). Notably, *Schuster* specifically recognized the public interest in an unfettered press and the possible chilling effect on the presentation of public issues that might result if the privilege did not apply to certain sources. *See id* at 853. Nonetheless, the court still required that some court action be taken before the fair report privilege would apply. *See id.*

In *Moreno*, the Minnesota Supreme Court expanded the fair report privilege to city council meetings. 610 N.W.2d at 332. However, in doing so, the Court explained that the fair report privilege is limited under Section 611 in that a reporter cannot "make additions of his own that would convey a defamatory impression, nor to impute corrupt motives to any one, nor to indict expressly or by innuendo the veracity or integrity of any of the parties." *Moreno*, 610 N.W.2d at 333 (quoting Restatement (Second) of Torts § 611, cmt. f). The Court used as an example of unprivileged conduct police statements that go beyond the fact of an arrest. In doing so, the Court quoted approvingly Comment h of Section 611 of the Restatement. The full text of Comment h reads:

> An arrest by an officer is an official action, and a report of the fact of the arrest or of the charge of crime made by the officer in making or returning the arrest is therefore within the conditional privilege covered by this Section. On the other hand statements made by the police or by the complainant or other

> witnesses or by the prosecuting attorney as to the facts of the case or the evidence expected to be given are not yet part of the judicial proceeding or of the arrest itself and are not privileged under this Section.

Restatement (Second) of Torts § 611, cmt. h) (emphasis added).

This limitation of the privilege also applies to extra-judicial statements made by police in press conferences. Citing Comment h to Section 611 of the Restatement and to cases throughout the country, one treatise summarized why these events are not covered under the fair report privilege:

> **Informal statements by police and prosecutors, as in interviews and press conferences, do not constitute "official proceedings" of the type covered by this privilege.** This is so, although in some cases the speakers themselves may be eligible for the protection of other privileges, or although reliance on the speakers, even in the absence of the privilege, may help support a defense of due care on the part of the publisher. A conversation between a reporter and a detective is not a public event that requires, or merits, coverage under this privilege. And extrajudicial defamation of the citizenry by the police is not a vital process of democratic government.

Harper, James and Gray on Torts § 5.24 pp. 244-45 (emphasis added).

Minnesota's Rules of Professional Conduct acknowledge the danger of these extrajudicial statements. The rules prohibit prosecutors and police from making extra-judicial statements that will have a substantial likelihood of materially prejudicing a jury trial in a pending criminal matter. *See* Minn. R. Prof. Conduct 3.6 & 3.8. The rules reflect a balance between the right to a fair trial and safeguarding the right of free expression, noting that without limits on free expression, important constitutional rights would be nullified. Minn. R. Prof. Conduct 3.6 cmt. 1. The rules explain:

> In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused.

Minn. R. Prof. Conduct 3.8, cmt. 5.

Police may have an official duty to keep the public informed on the facts of an ongoing criminal investigation. However, statements made at that time run a greater risk of being defamatory. *See*, *e.g.*, *Stokes v. CBS Inc.*, 25 F. Supp. 2d 992, 1007 (D. Minn. 1998) (recognizing that statements made to the media by police "runs the risk of excessive publication" and is

especially risky when the motivation behind the statements "is to uncover information against a specific criminal suspect").

a. News Conference and News Release

Defendants argue that the news conference is entitled to the privilege because it was conducted by high-ranking officials in their official capacities for the specific purpose of disseminating information in the public interest and was open to the public. However, under applicable Minnesota law, these extra-judicial statements are analyzed in the context of "judicial proceedings." Comment h to Section 611 specifically identifies these types of statements within the context of judicial proceedings. Minnesota courts have consistently analyzed extra-judicial statements like the ones at issue in this case under Comment h and not under any other section of the Restatement. To construe these statements under a different provision of the Restatement would strip Comment h of any meaning.

Moreover, the news conference is unlike other proceedings identified in the Restatement. Restatement (Second) of Torts § 611, cmt. d (listing, for example: grand jury indictments; proceedings before administrative, executive, or legislative bodies that are "judicial in character;" extradition hearings; impeachment proceedings; proceedings before Congress or a state legislature; disciplinary hearings of licensed professionals).

The policy considerations underlying Minnesota's court decisions do not change simply because the extra-judicial statements are characterized as falling under a different provision of the Restatement. The possible chilling effect on free expression and the dissemination of information in the public interest would still not outweigh the constitutional right to a remedy for defamation. Accordingly, the fair report privilege does not apply to these extra-judicial statements even when they are contained in a police news conference.

Defendants also argue that the news release is entitled to the privilege. For the same reasons that the extra-judicial statements communicated at the news conference are not entitled to the privilege, those same statements appearing in the news release likewise are not entitled to the privilege. The limitation cannot be defeated by writing the statements down and handing them to a reporter. Accordingly, the fair report privilege does not apply to these extra-judicial statements even when they are contained in a police news release.

In this case, the content of the news conference and news release went far beyond disseminating the fact of the arrest or of the charge of crime made by the officer in making or returning the arrest. Most of the information conveyed in these sources was the type of information specifically identified in *Moreno* and the Restatement as not falling under the scope of the privilege. *See Moreno*, 610 N.W.2d at 333. To the extent the news conference and news release communicated merely the fact of Mr. Larson's arrest and the charge of

the arrest, those statements are privileged. Other statements are not.

b. Jail Log

Mr. Larson argues that the jail log is not a legal document entitled to the fair report privilege. He also highlights the disclaimer at the bottom of the jail log that makes clear that its contents are not to be relied upon for any legal purpose. For the following reasons, the Court finds that the jail log is a protected source under the fair report privilege.

The jail log is a publicly available law enforcement record. Although Minnesota has not extended the fair report privilege to jail logs, Minnesota does recognize the general principle that fair and accurate reports of public records qualify for the fair report privilege. *Jadwin v. Minneapolis Star & Tribune Co.*, 390 N.W.2d 437, 441 (Minn. Ct. App. 1986) (citing *Time, Inc. v. Firestone*, 424 U.S. 448, 455-57 (1976) and *Nixon v. Dispatch Printing Co.*, 112 N.W. 258 (1907)) ("Newspapers have a qualified privilege when making a fair and accurate report of public records."). More specifically, Minnesota's federal district court has recognized that publicly available law enforcement records are generally subject to the fair report privilege. In *Conroy v. Kilzer*, 789 F. Supp. 2d 1457 (D. Minn. 1992), the federal district court found that the fair report privilege protected newspaper articles based on publically available law enforcement reports containing defamatory statements about a former St. Paul fire chief relating

to the investigation of arson cases. *See id* at 1464-66 (recognizing that the fair report privilege protects "fair and substantially accurate reports of public proceedings and the contents of public records").

The jail log is a publically available record created and maintained by law enforcement. It contains information that Comment h of Section 611 of the Restatement specifically identifies as protected: the fact of an arrest and the arresting charge. The jail log does not include any other information related to the facts of the case or the surrounding facts of the arrest itself.

The disclaimer at the bottom of the jail log does not exclude the source from protection. That disclaimer simply states that booking at the jail does not indicate guilt, and the information contained in the jail log should not be relied upon for any type of legal action. In this case, no legal action was taken in reliance on the information contained in the jail log. Accordingly, the jail log is protected by the fair report privilege.

c. Application to Detain and Order

The Application to Detain was filed with the district court on December 1, 2012, and approved by the court on December 3, 2012. When the court approved the Application to Detain in the Order, it exercised the type of official control over the proceeding that Minnesota courts have required in extending the fair report privileged to a particular document as part of a judicial proceeding. Thus, both the Application to Detain and Order are protected by the fair report privilege.

However, these sources can only be used to protect the statement identified in the December 5, 2012, St. Cloud Times article. Contrary to the affidavit of John Bodette implying that these sources were used in preparing the December 1, 2012, St. Cloud Times article, the Application to Detain was not signed by the Steams County Sheriff until 1:17 p.m. on December 1, 2012, and it is undisputed that the December 1, 2012, article had been written on November 30, 2012. Thus, the only possible report of Defendants' that could have relied on these sources would be the December 5, 2012, St. Cloud Times article.

IV. Fair Report Privilege and Substantial Accuracy

Even if all of Defendants' sources fell within the fair report privilege, there would still be issues of fact for the jury concerning whether or not Defendants fairly and accurately reported the contents of these sources. The fair report privilege is a qualified privilege, and to claim its protection, a news report must be accurate and complete or a fair abridgment of the occurrence reported. *See Moreno*, 610 N.W.2d at 333; Restatement (Second) Torts § 611. The legal test regarding whether a report is "fair and accurate" was explained in *Jadwin v. Minneapolis Star & Tribune*, 390 N.W.2d 437 (Minn. 1986).

The question is whether the report is "substantially accurate." *Id.* A report is considered substantially accurate "if its gist or sting is true, that is, if it

produces the same effect on the mind of the recipients which the precise truth would have produced." *Jadwin*, 390 N.W.2d at 441. The fair report privilege is not absolute, and it will be lost if it is shown that the privilege has been abused. For example, "although it is unnecessary that the report be exhaustive and complete, it is necessary that nothing be omitted or misplaced in such a manner as to convey an erroneous impression to those who hear or read it, as for example . . . the use of a defamatory headline in a newspaper report, qualification of which is found only in the text of the article." Restatement (Second) of Torts § 611, cmt. f. Moreover, the privilege "can be defeated if additional contextual material, not part of the proceeding [or record], is added that conveys a defamatory impression or comments on the veracity or integrity of any party." *Moreno*, 610 N.W.2d at 333; *see also* Restatement (Second) of Torts § 611, cmt. f. Plaintiff bears the burden of showing that the privilege has been abused. *See Lewis*, 389 N.W.2d at 890. Whether or not the privilege has been abused is a question of fact for the jury. *See Moreno*, 610 N.W.2d at 321; *Hurley*, 273 F. Supp. at 972.

a. Genuine Issue of Material Fact Regarding Gist or Sting of Statements

Mr. Larson argues that statements regarding what law enforcement "believed" or "said" and statements identifying him as being "accused" of murdering Officer Decker are not substantially accurate. Mr. Larson also challenges statements about his criminal

history. Statements from KARE 11's 6:00 p.m. broadcast include:

> **Police say that man – identified as 34-year old Ryan Larson – ambushed Officer Decker and shot him twice, killing him.**
>
> * * *
>
> **Rosella holds no ill-will against the man accused of killing her son.**
>
> * * *
>
> **Ryan Larson, the man accused of killing officer Decker, could be charged as early as Monday.**

(Compl. ¶¶ 13-14.) Statements from KARE 11's 10:00 p.m. broadcast include:

> **Investigators say 34-year old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody.**
>
> * * *
>
> **He was the good guy last night going to check on someone who needed help. That someone was 34-year old Ryan Larson who investigators say opened fire on Officer Tom Decker for no reason anyone can fathom.**
>
> * * *
>
> **His mind must have really been messed up to do something like that. I know Tom would've forgave him**

* * *

> **The story discussed plaintiff Larson's background and Ms. Nelson stated: "He does not have an extensive criminal history, but was cited with disorderly conduct in 2009. He was a second year machine tool student at St. Cloud Tech. Larson is being held in the Stearns County Jail."**

(Compl. ¶¶ 16-25.) One statement from the KARE11.com titled "Suspect jailed in fatal shooting of Cold Spring officer" was also identified in the Complaint: "**Investigators believe he fired two shots into Cold Spring police officer Tom Decker, causing his death.**" (Compl. ¶ 27.) Mr. Larson challenges the headline of the December 1, 2012, St. Cloud Times article, "**Man faces murder charge**," and the statement in the body of that article, "**Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker.**" (Compl. ¶ 31.) Finally, Mr. Larson challenges a statement made in the December 5, 2012, St. Cloud Times article:

> **[S]he had one thing she wanted to say to Larson if she got to [sic] the chance to see him leave the jail.**
>
> **"This isn't over," she said.**

(Compl. ¶ 32.)

Viewing the evidence in the light most favorable to Mr. Larson, a reasonable jury could easily find that these statements are not substantially accurate. All

but the statement identified in the December 5, 2012, St. Cloud Times article can only be compared with the protected portions of the news conference, news release, and jail log since these were the only sources that existed at the time these statements were made.

During the news conference, law enforcement officials repeatedly emphasized the fact that the investigation was in its preliminary stages. Law enforcement repeatedly refused to answer specific questions asked by reporters and largely refused to comment on the facts of the case. The officials did not comment on or imply what their individual or collective beliefs were regarding Mr. Larson's guilt or responsibility for the crime. They did not comment on the strength of the evidence. In fact, it appears that had reporters directly asked the police if they were saying that Mr. Larson was the person responsible for shooting Officer Decker, the officers would have either denied that statement or refused to comment and reiterated that the investigation was active and ongoing. Similarly, if reporters had asked the police officers if they believed Mr. Larson was the person responsible for shooting Officer Decker, the officers again would have either denied that statement or refused to comment and reiterated that the investigation was active and ongoing. Furthermore, had reporters directly asked the police if they were saying that Mr. Larson was accused of or charged with murdering Officer Decker, the officers would have denied those statements as well. Viewing the evidence in the light most favorable to Mr. Larson, a reasonable jury could determine that Defendants' statements

could have produced a different effect on the mind of the recipients than that which the precise truth of Defendants' sources would have produced.

b. Statements by Rosella Decker and Roxie Knowles Do Not Stem From Protected Sources

Two statements identified in Mr. Larson's Complaint do not stem from the news conference, news release, jail log, or Application to Detain and Order: (1) the statement by Rosella Decker during KARE 11's 10:00 p.m. broadcast – "**His mind must have really been messed up to do something like that. I know Tom would've forgave him**;" and (2) the statement by Roxie Knowles in the December 5, 2012, St. Cloud Times article – "**[Ms. Knowles] had one thing she wanted to say to Larson" if she got the chance to see him leave the jail: 'This isn't over,' she said.**" (Compl. ¶¶ 22 & 32.)

Defendants argue that these statements are consistent with what law enforcement officials were saying at the time based on the news conference and news release. However, even if these sources fell within the scope of the fair report privilege, the legal test in applying the privilege asks whether the statement is a fair and accurate report of the protected source. It cannot be maintained that the statements of Rosella Decker and Roxie Knowles were derived from any of the sources Defendants argue are protected by the fair report privilege. Thus, it could not be the case that

these statements fairly and accurately report the content of Defendants' sources. Accordingly, Defendants are not entitled to the fair report privilege with regard to these statements.

c. Statement Regarding Officer Decker's Family

Defendants argue that the following statement identified in Mr. Larson's Complaint is either true or not capable of being construed as defamatory:

> Reporter Shortal also commented on officer Decker's family stating: "If there were one job Tom Decker loved more than policing in this town, it was fathering his kids, Kelley and Jade, Justin and Devon, ages 5, 6, 7, and 8." (Compl. ¶ 23.)

The Court agrees that this statement is not capable of being construed as defamatory as it does not comment at all on Mr. Larson nor does it have any implication that could be construed as defaming Mr. Larson. Accordingly, Defendants are entitled to summary judgment in their favor with regard to this statement.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendants' motion for summary judgment with regard to Plaintiff's defamation claim based on the statement, "If there were one job Tom Decker loved more than policing in this

town, it was fathering his kids, Kelley and Jade, Justin and Devon, ages 5, 6, 7, and 8," is **GRANTED**.

2. As to every other statement identified in Plaintiff's Complaint, Defendants' motion for summary judgment is **DENIED.**

BY THE COURT:

Dated: 5/19/2016

/s/ Susan N. Burke
SUSAN N. BURKE
District Court Judge

No. A17-1068

STATE OF MINNESOTA
IN SUPREME COURT

Ryan Larson,

Appellant/Cross-Respondent,

vs.

Gannett Company Inc., Gannett Satellite Information Network Inc., Multimedia Holdings Corporation, d/b/a KARE 11-TV and d/b/a St. Cloud Times,

Respondents/Cross-Appellants.

PETITION FOR REHEARING BY RESPONDENTS/CROSS-APPELLANTS

DORSEY & WHITNEY LLP
Steven J. Wells (#0163508)
Timothy J. Droske (#0388687)
Nicholas J. Bullard (#0397400)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600
wells.steve@dorsey.com
droske.tim@dorsey.com
bullard.nick@dorsey.com

Attorneys for Respondents/ Cross-Appellants

STEPHEN C. FIEBIGER LAW OFFICE
Stephen C. Fiebiger (#0149664)
2500 West County Road 42, Suite 190
Burnsville, MN 55337
Telephone: (952) 746-5171

Attorney for Appellant/ Cross-Respondent

[i] **TABLE OF CONTENTS**

[ii] **TABLE OF AUTHORITIES**

Minnesota Cases

Other Cases

Statutes and Rules

---

[1] INTRODUCTION

Respondents (Defendants at trial) agree with the Court's conclusion that the district court erred in failing to recognize the existence of the fair and accurate reporting privilege, and that statements 7 through 11 were non-actionable as a matter of law. But Defendants respectfully request that the Court rehear and reconsider the remand instruction for a new trial in its Opinion, which addresses only issues relating to the applicability of the fair and accurate reporting privilege for statements 1 through 5. The Court concludes that the jury instructions and special verdict form were "prejudicial" because they "did not adequately set forth the relevant factors that the jury should consider in determining that the privilege was defeated for lack of fairness and substantial accuracy." Op. 4. But that conclusion is mistaken because it assumes that questions relating to the fair and accurate reporting

privilege were submitted to the jury, when it is undisputed that the privilege issue was *never* submitted to or considered by the jury. In fact, because of the district court's pretrial holding that the fair and accurate reporting privilege was inapplicable as a matter of law, this case was submitted to the jury on the basic instructions that apply to all defamation cases in the absence of privilege. And the jury found, relying on textbook instructions that this Court acknowledges came right out of the Model Jury Instructions Guide, that the allegedly defamatory statements were not false. There is, then, no basis for a remand on the fair and accurate reporting privilege because the jury has already found that, *even in the absence of privilege*, Larson failed to meet his constitutional requirement for proving falsity.

[2] The Court's remand instruction to the district court is also mistaken for the independent reason that Defendants raised other alternative grounds for upholding the jury verdict in its appeal to the Court of Appeals, i.e., the absence of any evidence of negligence or causation of damages—additional constitutional requirements in a defamation case. The Court of Appeals never reached those issues because of its holding regarding the fair and accurate reporting privilege. But the applicability of the fair and accurate reporting privilege is moot if, again, Larson failed at trial to meet his constitutional requirement to demonstrate negligence and that Defendants caused actual damages. Accordingly, if this Court does not simply reinstate the jury's falsity determination, it should, as it did in

Chafoulias v. Peterson, 668 N.W.2d 642 (Minn. 2003), *reh'g granted*, 668 N.W.2d at 666 (Minn. 2003), remand to the Court of Appeals for consideration of whether the alternative grounds argued by Defendants, but never addressed by the Court of Appeals, support judgment as a matter of law in favor of Defendants.

Defendants squarely raised these issues to the Court of Appeals and this Court. Defs. Ct. App. Br. 39-46, 50-52; Defs. Sup. Ct. Br. 49-53, 59-60. The Court overlooked, failed to consider, misapplied, or misconceived this when it instead remanded directly to the district court for a new trial, and the petition should be granted to order this relief. *See* Minn. R. Civ. App. P. 140.01.

[3] **ARGUMENT**

I. The Proper Relief Is not a Remand for a New Trial, but Reinstatement of the Jury Verdict.

The Court properly "conclude[d] that the [fair and accurate reporting] privilege does apply." Op. 2-3, 32. But the Court's determination that "the district court did not adequately instruct the jury on the fairness and accuracy inquiry," does not compel the "conclu[sion] that the error was potentially prejudicial to Larson and that he is entitled to a new trial so that a jury can determine whether the *privilege* was defeated concerning statements 1 through 5." Op. 37-38 (emphasis added). That conclusion overlooked, failed to consider, misapplied, or misconceived two undisputed

procedural facts: (1) the jury *never* considered the privilege's applicability in the first place (as a result of the district court's pretrial determination of its inapplicability); and (2) the jury found for Defendants on the element of "falsity" in the *absence* of any privilege issue. *See* App.Add.44-69. Because falsity and the applicability of privilege are distinct inquiries, the jury's findings on falsity pursuant to instructions that correctly stated the law as to non-privileged statements are dispositive and eliminate any basis for remand. Simply put, there is no need or basis for a retrial on issues related to privilege when, even if the statements are not privileged, the jury has already found that they are true. These issues were squarely presented to this Court, and ignoring the jury's finding on the falsity element has constitutional implications.

[4] **A. Falsity and the applicability of a privilege are distinct.**

As the Court reaffirmed just last year, falsity and the existence of a privilege go to two distinct elements of a defamation claim. *See Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 873 (Minn. 2019) ("Under the common law, a plaintiff pursuing a defamation claim 'must prove that the defendant made: (a) a *false* and defamatory statement about the plaintiff; (b) in [an] *unprivileged* publication to a third party; (c) that harmed the plaintiff's reputation in the community.'" (quoting *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 673 (Minn. 2003) (emphases added)).

The Court's Opinion recognizes there is a significant distinction between the "falsity" inquiry in connection with the fair and accurate reporting privilege and the "falsity" element of defamation in the absence of privilege: "This distinction matters because when the privilege applies, the re-publisher is not liable if the statement is reported accurately and fairly, *even if the underlying statement is false*." Op. 33 (emphasis added). The converse is also true: Even when the privilege does *not* apply, there is no liability when the statement is *true. See Richie v. Paramount Pictures, Corp.*, 544 N.W.2d 21, 25 (Minn. 1996) ("In Minnesota, the elements of defamation require the plaintiff to prove that a statement was false. . . ." (internal quotation omitted)); *Rouse v. Dunkley & Bennett, P.A.*, 520 N.W.2d 406, 410-11 (Minn. 1994) (making clear plaintiff "bears the burden on proof of each element of his defamation claim," and the failure to satisfy that burden as to any one element defeats the claim).

[5] **B. The jury found, pursuant to instructions correctly stating the law as to non-privileged statements, that the statements were true.**

Although the Court concludes that the instructions to the jury did not adequately advise the jury of the factors to consider in applying the fair and accurate reporting privilege, it does not suggest that the jury was improperly instructed on falsity as applied to defamation claims *not* involving the fair and accurate reporting privilege: "The district court instructed the

jury here only on substantial accuracy, using the model jury instruction on the falsity element of a defamation claim." Op. 32. Indeed, the district court's falsity instructions were lifted verbatim from the Model Jury Instruction Guide. *Compare* App.Add.149 (model instruction on falsity), *with* Defs.Add.3 (district court's instruction on falsity). And as the Court itself observed: "Notably, Larson did not seek an instruction on republication." Op. 11. This is significant because there was thus nothing requiring the jury to focus on the truth or falsity of the underlying statements, particularly when Larson asked that each of the "police say" statements (statements 1 through 5) be submitted to the jury in its entirety on the Special Verdict Form. *See* Defs. Sup. Ct. Br. 52-53 (citing Doc.87 at 2-3; App.Add.44-62). This is also a critical and dispositive difference compared to how the jury was charged in *Lewis*, rendering that case inapplicable. *See id*. at 51-53 (showing that interrogatory focused exclusively upon truth or falsity of underlying statement).[1] Nor is there any error in the jury not being [6] instructed on or relying upon a "republication" or "implication" theory when Larson himself explicitly disavowed any such theory on the stand, instead making clear the claimed falsity and harm was that what the press reported was

[1] *Lewis* is also inapplicable because it applied falsity by implication in the context of a defamation claim involving "*compelled self-publication*." *See* Op. 33 n.14 (discussing *Lewis v. Equitable Life Assurance Society of the U.S.*, 389 N.W.2d 876, 888-89 (Minn. 1986)). The doctrine of republication, therefore, which could have been argued here but was not asserted, did not fit cleanly in that case.

not what the police said. Defs. Sup. Ct. Br. 52. For each of the five statements this Court remanded for a new trial—which all have a reference similar to "Police say" or "Investigators say"—Larson's attorney asked him why the statement was "false," and each time, Larson responded, "[b]ecause police never said that." *Id.* at 18 (quoting Tr.730-43).[2]

All of that allowed the jury properly to consider whether the entire statements were true or false, without regard to whether they were privileged. And that is what they did: They found each of the statements submitted to them (including statements 1 through 5) to be true. App.Add.44-69. That finding must be respected by this Court. It is well established that a jury "verdict will be sustained if it is possible to do so on any reasonable theory of the evidence." *Roemer v. Martin*, 440 N.W.2d 122, 124 (Minn. 1989). Here, the record evidence and the Court's Opinion clearly reflect that, without any regard to the applicability of the fair and accurate reporting privilege, there is sufficient evidence to support a finding that statements 1 through 5 in their entirety were not false. Thus, the jury's verdict here must be sustained. There is no basis for this Court to disregard the jury's finding in Defendants' favor as to the falsity element simply because the jury instructions did not reflect the proper instruction for the fair

---

[2] This is exactly why Larson did not ask for a republication instruction; he wanted to argue it was the press statements that had caused the harm, not the police statements. A republication instruction would have conflicted with Larson's causation of harm theory.

and accurate [7] reporting privilege, which goes to a separate element of the claim the jury never even considered. Reinstating the jury's verdict is required.

C. Defendants squarely raised the jury's finding on falsity as a separate and independent basis for affirmance.

Defendants made clear in their briefing to this Court that the jury's finding on falsity presented an independent basis for affirming the Court of Appeals' decision for Defendants, separate from the fair and accurate reporting privilege: "The jury's finding on falsity—*separate from the fair-report privilege*—is an alternative ground for affirming the Court of Appeals." Defs. Sup. Ct. Br. 49 (emphasis added); *see also* Defs. Ct. App. Br. 39-46 (same argument to the Court of Appeals). The Court's Opinion inaccurately characterized Defendants' position as only "contend[ing] that the statements in the news reports were 'fair and accurate as a matter of law,' " and alternatively, "to rely upon the jury's verdict that the statements were not false to conclude that the fair and accurate reporting privilege was not defeated for lack of substantial accuracy." Op. 30-31. This overlooked Defendants' express argument that the jury's instruction and finding on falsity was supported by the record and compelled that the verdict be reinstated. Defs. Sup. Ct. Br. 49-53; *see also* Defs. Ct. App. Br. 39-46.

D. The Court's focus on the fair and accurate reporting privilege mistakenly assumes that the jury considered the privilege question.

In the second sentence of the Opinion, the Court states: "Because we conclude that the privilege does apply, we must also consider whether the jury instructions adequately advised the jury on the proper focus of its inquiry in determining whether the privilege was defeated." Op. 2. It is undisputed, however, that the jury was never [8] presented with, or made, an "inquiry in determining whether the privilege was defeated." *See* App.Add.44-69. Such an inquiry was precluded by the district court's pretrial ruling that privilege did not apply as a matter of law. The incorrect assumption that the jury was "inadequately instructed" on an inquiry it never made has led the Court to overlook, in its remand instruction, the critical and dispositive importance of the jury's well-supported finding, applying instructions that correctly stated the law as applied to non-privileged statements, that Defendants' statements were true. Indeed, the problem with the jury instructions identified by the Court is that "the focus in determining whether the fair and accurate reporting privilege was defeated is not on the 'truth or falsity of the content of the defamatory statement,' but on 'the accuracy with which the statement is *reported*.'" Op. 32 (quoting *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 331 (Minn. 2000)). But that "focus" is simply irrelevant where—either because the privilege was never raised or, as here, the trial court determines

as a matter of law it does not apply—the jury decides that allegedly defamatory statements are true, without any regard for the separate defense of privilege.

E. The Court's remand violates fundamental First Amendment principles.

Significantly, failing to reinstate the verdict on falsity and instead remanding for a new trial frustrates fundamental and constitutional defamation law precepts. This Court has made clear that "[t]ruth is a complete defense to a defamation claim and 'true statements, however disparaging, are not actionable.'" *McKee v. Laurion*, 825 N.W.2d 725, 730 (Minn. 2013) (quoting *Steumpges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 [9] (Minn. 1980)); *see Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 13 (1990) (recognizing common law principle that "truth is a complete defense"); *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986) (constitutionally requiring that the plaintiff prove falsity to recover for defamation). Here, however, the Court, while finding that the district court erred, is ultimately doing the same thing the district court did—stripping away Defendants' successful and complete defense to the defamation claims based on the jury's finding that the statements were true. This is particularly problematic given that, "[a]s a general rule, the truth or falsity of a statement is a question for the jury," and one in which "[t]he plaintiff has the burden." *McKee*, 825 N.W.2d at 730. It turns those defamation principles on their head to grant Larson a new trial due to the district court's failure to properly instruct

the jury as to the separate defense of privilege, when the jury has already squarely found that Larson failed to meet his burden as to falsity in the absence of privilege—a complete defense to defamation. The implication of the Court's decision is that the falsity inquiry can be entirely displaced by the inquiry into the fair and accurate reporting privilege—a ruling that conflicts with the "constitutional requirement that the plaintiff bear the burden of showing falsity, as well as fault, before recovering damages." *Phila. Newspapers*, 475 U.S. at 776. Rehearing is required for the Court to reinstate the jury's verdict.

II. At a Minimum, this Court Must First Remand to the Court of Appeals to Address the Issues of Negligence and Causation of Damages.

Alternatively, and at a minimum, the Court must first remand this case to the Court of Appeals to consider the alternative grounds for entering judgment in [10] Defendants' favor that were raised on appeal, but have not yet been addressed. The Court of Appeals specifically acknowledged that, "[a]lternatively, appellants urge us to conclude that the district court incorrectly denied their motion for judgment as a matter of law because Larson failed to offer evidence that appellants were negligent or caused his damages." App.Add.2, 10-11, 28. The Court of Appeals, however, found it did "not need to reach [these] other issues raised by appellants," based on its determinations that (1) the fair and accurate reporting privilege applied, and (2) the

district court erred in vacating the jury's verdict that the statements were not false and in ordering a new trial. *Id.*; Defs. Ct. App. Br. 2, 50-52. Now, however, with the Court affirming the first holding but reversing the second, Defendants' alternative argument—which pertains to constitutionally-required elements of defamation[3]—must be considered.

This does not mean that Defendants' alternative arguments as to negligence and causation of damages must be taken up by this Court. Although Larson and Defendants briefed this alternative argument to the Court, Defendants also acknowledged that "those [11] arguments can be left for remand if necessary." Defs. Sup. Ct. Br. 2, 59-60. Defendants thus do not take issue with the Court's finding that it is "unnecessary to consider respondents' arguments regarding the evidence of negligence and damages." Op. 45 n.20. But now that

---

[3] The U.S. Supreme Court held that the First Amendment prohibits states from imposing strict liability for defamation in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345-48 (1974), after which this Court adopted a negligence standard for defamation claims brought by private individuals. *Moreno*, 610 N.W.2d at 329 (discussing *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 480 (Minn. 1985)). Moreover, this Court has recognized that "in *Gertz* . . . , the U.S. Supreme Court held that in a private plaintiff defamation action against a media defendant speaking on a matter of public concern, states may not constitutionally 'permit recovery of presumed . . . damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth.' " *Richie*, 544 N.W.2d at 25 (quoting *Gertz*). Instead, "it is necessary to restrict defamation plaintiffs who do not prove knowledge of falsity or reckless disregard for the truth to compensation for actual injury." *Id.* at 25-26 (quoting *Gertz*).

remand is necessary, the Court of Appeals must address those issues. It is of no consequence that if "a new trial must be held to determine whether the privilege was defeated," that "trial will also, encompass issues of negligence and damages." *Id.* Instead, it is the finding that a new trial is required that now compels the Court of Appeals to take up and consider Defendants' alternative arguments based on lack of evidence of negligence and causation of damages. *See* App.Add.2.

Rehearing should be granted so the Court can first order remand to the Court of Appeals on these outstanding issues, just as this Court did in *Chafoulias v. Peterson*, 668 N.W.2d 642 (Minn. 2003). There, like here, this Court affirmed in part and reversed in part the decision of the Court of Appeals on the question of a privilege's applicability in a defamation case and remanded the issue back to the district court. *Id.* at 660, *reh'g granted*, 668 N.W.2d at 666 (Minn. 2003). And also like here, the defendant "petitioned for rehearing, requesting that any remand first be made to the court of appeals to consider the alternative grounds" put before the Court of Appeals. *Id.* at 666. There, this Court concluded that its reversal "necessitates consideration of the alternative grounds raised, and accordingly our remand should be to the court of appeals to first address those issues." *Id.* at 667. The same result is compelled here. This Court's reversal and order for a new trial first necessitates consideration of the alternative grounds raised as to the [12] lack of evidence concerning negligence and damages, and remand should first

be to the Court of Appeals to address those issues. *See id.*

CONCLUSION

For all the foregoing reasons, Defendants request that their petition for rehearing be granted, and the jury's verdict be reinstated, or alternatively, that the Court first remand to the Court of Appeals to address the issues of negligence and causation of damages, which were fully raised below but not reached by the Court of Appeals.

Dated: March 11, 2020 DORSEY & WHITNEY LLP

By: /s/ Steven J. Wells
Steven J. Wells (#0163508)
Timothy J. Droske (#0388687)
Nicholas J. Bullard (#0397400)

50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
(612) 340-2600
wells.steve@dorsey.com
droske.tim@dorsey.com
bullard.nick@dorsey.com

Attorneys for Respondents/ Cross-Appellants

[13] [Certificate Of Compliance Omitted]

Instruction No. 13

Definition of "false"

A statement or communication is false if it is not substantially accurate. Substantial accuracy does not require every word to be true. A statement or communication is substantially accurate if its substance or gist is true.

In determining whether a statement was false, the words must be construed as a whole without taking any word or phrase out of context. The meaning of the statement must be construed in the context of the article or broadcast as a whole.

Plaintiff bears the burden of proving that a statement is false by the greater weight of the evidence.

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson, Plaintiff, v. Gannett Company, Inc., Gannett Satellite Information Network, Inc., Multimedia Holdings Corporation, d/b/a KARE 11-TV and d/b/a the St. Cloud Times, Defendants.	File No. 27-CV-15-9371 TRIAL DAY 6

The above-entitled matter came on for hearing before the Honorable Susan N. Burke, one of the Judges of the above Court, at the Hennepin County Government Center, Minneapolis, Minnesota, on the 15th day of November, 2016.

* * *

APPEARANCES

STEPHEN FIEBIGER, Attorney at Law, appearing with and on behalf of the Plaintiff.

STEVEN WELLS, Attorney at Law, and ANGELA PORTER, Attorney at Law, appearing with and on behalf of the Defendants.

KLAY BAYNAR, Clerk.

VICKI PIERCE, Court Reporter.

* * *

DIRECT EXAMINATION OF RYAN LARSON

[730] Q. Okay. Now I'd like to go through some of the statements that were made in the newscast and in the newspaper articles with you. And the first one was a statement on 6 o'clock KARE 11 news broadcast of November 30, 2012 where Julie Nelson said, "Police say that man identified as 34-year-old Ryan Larson ambushed Officer Decker and shot him twice, killing him." Do you recall seeing that [731] on the newscast that we watched?

A. I do.

Q. And was this statement true or false?

A. It's false.

Q. And why?

A. Because law enforcement never said that.

Q. And had you shot and killed Officer Decker?

A. Absolutely not.

MR. WELLS: Your Honor, I object and move that it be stricken. There's no foundation about his knowledge about what police said.

THE COURT: It's overruled. Or, I mean, I suppose you can ask him if he watched the news conference.

BY MR. FIEBIGER:

Q. Mr. Larson, had you seen the video of the news conference from November 30, 2012 with law enforcement that we watched here in court?

A. As of today? I've watched it more than anybody has.

Q. All right.

THE COURT: Okay, he can answer then.

Q. And having watched the news conference that you just said, was the statement, "Police say that man identified as 34-year-old Ryan Larson ambushed Officer Decker and shot him twice, killing him," was that true or false?

[732] A. It's a false statement.

Q. And can you explain why it's false?

A. Because the only way that anybody could possibly come to that as being said or summarized, I guess, is through a complete assumption of what law enforcement meant or what they said. In their news conference, their news release, their jail log, anything you want, that statement was never said. The only way you can come to that is by an assumption.

Q. Now when you heard that statement, how did it make you feel?

A. Being accused or told or, you know, having something published like that for everybody to see or hear, being accused of one of the most heinous crimes that a person could possibly be accused of, it – I mean, it hurts. It's not something I wish upon anybody.

* * *

[738] Q. In the newscast, anchor Julie Nelson read the following statement in her script, "Investigators say 34-year-old Ryan Larson ambushed the officer, shooting him twice. Larson is in custody." Is that statement true or false?

A. That statement is false.

Q. And why is it false?

A. Because authorities never said that.

Q. And how about with respect to you ambushing and shooting Officer Decker?

A. Authorities never said that. Not once was my name used in conjunction with a sentence that included the words "ambushed" or the fact that Officer Decker was shot twice.

Q. And did you ambush and shoot Officer Decker?

[739] A. I did not.

Q. In looking at that statement or listening to that statement, how did that make you feel?

A. Of course it made me feel horrible, hurt, insulted, embarrassed, confused. I mean, there's – you can put any negative emotion and it would apply to the feelings felt when you're accused of something like that. And when I say accused, I don't mean accused by law enforcement, I mean accused by the media.

Q. In that same newscast at 10 o'clock on November 30, 2012, there was a report by Jana Shortal, one of the reporters at KARE 11. And in her story she made the statement, "He was the good guy last night going to check on someone who needed help. That someone was 34-year-old Ryan Larson, who investigators say open fired on Officer Tom Decker for no reason anyone can fathom." And you heard that in the video that we watched from that newscast, right?

A. Yes, I did.

Q. And is that statement true or false?

A. The part about Tommy Decker being the good guy is true. The rest of it is completely fabricated and false.

Q. And why is it fabricated and false?

A. Because law enforcement never said those words.

Q. And how about with respect to you opening fire on [740] Officer Tom Decker, did that happen?

A. No, it did not. And those words were not even remotely uttered at the press conference, in the news release, in the jail log or any other law enforcement source.

Q. Now can you describe how that statement made you feel?

A. Again, hurt, confusion, frustration, anger. It's – it hurts. It all hurts.

* * *

[741] Q. In the 10 o'clock news of November 30, 2012, by KARE 11 there was a reference to kare11.com, and then there was an article on KARE 11 – or on kare11.com that had the sentence and the statement that said, "Investigators believe he fired two shots into Cold Spring Police Officer Tom Decker, causing his death." Do you recall seeing that?

A. I do.

Q. And is that statement true or false?

A. I don't know what investigators believe, I guess. I can't read minds. But they – that statement was never conveyed publicly to my knowledge.

Q. And had you killed Officer Decker?

A. No, I had not.

Q. When you saw that statement, how did that statement make you feel?

A. Hurt, confusion, anger, frustration, same as everything else. It's a bad situation, but –.

* * *

[743] Q. If you can look in the middle column of the "Man faces murder charge" story. There's a statement that says, "Police say Larson is responsible for the shooting death of Cold Spring-Richmond Police Officer Tom Decker." Do you see that statement?

A. I do.

Q. Okay. Was that true or false?

A. That is false.

Q. And why?

A. Because police never said that.

Q. Okay. And were you responsible for the shooting death of Officer Decker?

A. I was not.

* * *

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson, Plaintiff, v. Gannett Company, Inc., Gannett Satellite Information Network, Inc., Multimedia Holdings Corporation, d/b/a KARE 11-TV and d/b/a the St. Cloud Times, Defendants.	File No. 27-CV-15-9371 TRIAL DAY 8

The above-entitled matter came on for hearing before the Honorable Susan N. Burke, one of the Judges of the above Court, at the Hennepin County Government Center, Minneapolis, Minnesota, on the 17th of November, 2016.

* * *

APPEARANCES

STEPHEN FIEBIGER, Attorney at Law, appearing on behalf of the Plaintiff.

STEVEN WELLS, Attorney at Law, and ANGELA PORTER, Attorney at Law, appearing on behalf of the Defendants.

KLAY BAYNAR, Clerk.

VICKI PIERCE, Court Reporter.

* * *

[1132] You know, the case law is really clear about this at the US Supreme Court level, Your Honor, which is that in a – you know, in a defamation case, the burden is always on the plaintiff, and that's even more important – the burden to prove truth or falsity. And that's even more important where it's a private plaintiff case against the media on an issue of public importance. The Hepps case that's cited in Jadwin is, you know, a quintessential case for that proposition, and we're not aware of any case in which – in America ever in which a court has decided that even though a reasonable jury could come out different ways on a [1133] question at trial, that the Court gets to engage essentially as – some how as a matter of law and impose its own determination. I mean, that would be totally contrary to all the US Supreme Court law on the plaintiff's burden to prove to a jury that statements are true or false. Or prove falsity. And I don't think there's anything in Jadwin that was ever intended to sort of upset that balance that the US Supreme Court had struck, and it would be unconstitutional if they had.

* * *

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Ryan Larson, Plaintiff, v. Gannett Company, Inc., Gannett Satellite Information Network, Inc., Multimedia Holdings Corporation, d/b/a KARE 11-TV and d/b/a the St. Cloud Times, Defendants.	File No. 27-CV-15-9371 TRIAL DAY 8

The above-entitled matter came on for hearing before the Honorable Susan N. Burke, one of the Judges of the above Court, at the Hennepin County Government Center, Minneapolis, Minnesota, on the 17th of November, 2016.

* * *

APPEARANCES

STEPHEN FIEBIGER, Attorney at Law, appearing on behalf of the Plaintiff.

STEVEN WELLS, Attorney at Law, and ANGELA PORTER, Attorney at Law, appearing on behalf of the Defendants.

KLAY BAYNAR, Clerk.

VICKI PIERCE, Court Reporter.

* * *

[1205] KARE 11 and the St. Cloud Times have not accepted responsibility and accountability ever for the statements that they published about Mr. Larson that were defamatory and false. And instead, they insist they did nothing wrong. They present a story that they were doing nothing more than summarizing events from the news conference, the Department of Public Safety press release and the jail log in order so that readers could better understand what information was being presented by law enforcement after Officer Decker's killing.

But that's not what they did. Instead, they invented their own story of what happened, and it pointed the finger at Mr. Larson as being the cop killer of Officer Decker. And they told it to the public. KARE 11 and the St. Cloud Times, I submit, developed their explanation of what happened after they gathered information in getting ready for the case for trial after they had been sued.

Instead of reporting facts as stated by law enforcement, KARE 11 and the St. Cloud Times reported their version of the events, and they did so by broadcasting it on the 6:00 and 10 o'clock news and by [1206] publishing it in the St. Cloud Times on December 1st, 2012. And now they want to blame their false and defamatory statements on the police. They want to say

anyone else but them in terms of who's accountable. And in this case, they've come into court and say that it's Mr. Larson who's trying to shoot the messenger. I think it's time that KARE 11 and the St. Cloud Times stop accusing Mr. Larson of shooting anyone, and this is the place to do it.

We saw from the evidence what was really said by law enforcement at the news conference. And KARE 11 and the St. Cloud Times saying it's otherwise doesn't make it so. There's an old saying, I think we've all heard that, just by saying it's so doesn't make it so. And I submit that you keep that in the back of your mind someplace in terms of looking at the statements that were made and what was reported.

* * *

[1211] Here, as we've seen going through each of the statements, they were false and defamatory, as Mr. Larson had not shot and killed Officer Decker. And law enforcement officials never said he did shoot and kill Officer Decker. That's a recurring issue that comes up in the context of these statements.

* * *

[1222] With respect to the statements of KARE 11, they were published with actual malice because they knew they were false or they had serious doubts about their truth. They knew they were false at the law enforcement news conference, because nobody said them. It's really that clear. The statements were not said by anyone in law enforcement.

In terms of the negligence part of those statements, I would submit that it's not reasonable for a news station or newspaper to publish statements that haven't been made and then try to say all we're doing is summarizing them or paraphrasing them or interpreting [1223] what was said and putting that out to the public. Well, that's not their job, and we heard that. Their job is to report the facts, present the news so the viewer and the reader can get an honest description of what happened. We're not looking to watch for their paraphrasing or summaries or their interpretations. We want to know what law enforcement said, and that's not what they did. They gave their interpretation of what they said law enforcement said and now insist that they were correct in doing so. That's not reasonable, and I think you will see that.

* * *

[1229] But here, KARE 11 and the St. Cloud Times went way way beyond reporting the facts. They put their own interpretation on it and left it at that. They can call it summarizing what the police said, but they reported statements that were never made by the police and that were false and that they had serious doubts that were – about their truth, because they were never made.

* * *

[1233] Mr. Evans testified that at the news conference there had been no determination made that Ryan Larson was responsible for shooting and killing Officer Decker. He said there had been no conclusions made

that Ryan Larson ambushed Officer Decker, shooting him twice, killing him. He testified that at the news conference law enforcement was not giving out details of what they believed happened when Officer Decker was killed. He indicated it was early in the investigation. If asked if he was saying at the news conference that Mr. Larson was accused of or charged with murder of Officer Decker, Superintendent Evans said no, that isn't what he said. In response to being asked if he had been asked at the news conference if law enforcement believed Ryan Larson was responsible for shooting and killing Officer Decker, Superintendent Evans again responded no and no to that it was too early in the investigation.

KARE 11 and the St. Cloud Times telling you that it's otherwise doesn't make it so. And that's the stark contrast in the evidence we have here, but I would suggest that Superintendent Evans is telling the story [1324] correctly and telling the truth and that KARE 11 and the St. Cloud Times are not, and that they're giving you the story they think they need to give in order to avoid Mr. Larson's claims for defamation.

* * *

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

Ryan Larson, Court File No. 27-CV-15-9371

Plaintiff,

vs.

Gannett Company, Inc., Gannett Satellite Information Network, Inc., and Multimedia Holdings Corporation,

Defendants.

TRANSCRIPTION

OF

AUDIO RECORDING OF

PRESS CONFERENCE NOVEMBER 30, 2012

TRANSCRIBED BY: MARY P. MITCHELL, RDR, CRR

[2] FILENAME: "Press Conference November 30, 2012"

STEARNS CO. SHERIFF JOHN SANNER:

Obviously, this is a very difficult day for everyone in public safety. At about 9 o'clock last evening, the Stearns County Sheriff's Office received calls of concern from the family of Ryan Larson that he was

potentially suicidal. A short time later, Cold Spring officers responded to Mr. Larson's residence, and failed to make contact with him at that time.

Although, the officers did return approximately an hour and 45 minutes later, still attempting to make contact with the individual. And when the officers pulled up, Officer Decker left his squad car, and a very short time later was confronted by an armed individual, shot twice, and died.

BCA DEP. SUPT. DREW EVANS: First, on behalf of the Minnesota Department of Public Safety and the Minnesota Bureau of Criminal Apprehension, we'd like to offer our heartfelt condolences to the Cold Spring Police Department and the Cold Spring community, um, for the loss of Officer Decker, who served this community, and who is a resident of the community.

I'll briefly update you just on the current status of the investigation.

[3] Um, shortly after Officer Decker was killed, the area was surrounded by police that responded to the area. A SERT team from the Stearns County Sheriff's Office was eventually able to take into custody the subject of the welfare check. After that occurred, he was interviewed by Stearns County deputies, and some of that investigation is still ongoing.

Members of the BCA crime scene team have processed the crime scene, and that's still in process right now, gathering evidence related to this investigation.

We have agents and deputies from the Stearns County Sheriff's Office, along with other police personnel in the area, conducting follow-up investigation and interviews, um, around the entire state of Minnesota at this time.

As we've noted, this is an active and ongoing investigation. We'll continue to follow up to determine exactly what happened in this incident. And as we noted, um, Ryan Larson was taken into custody and was booked into the Stearns County jail in connection with this incident.

I'm going to give – turn this over to the chief, who will provide some background on Officer Decker, and then we'll take a few questions related to this incident.

[4] CHIEF PHIL JONES: It's a privilege for me to talk about Officer Tom Decker. He was a – a chief's dream. Not only did I have not a – no problems with him, um, but he was the type of officer who accumulated six letters of appreciation and commendations within his short six and a half years with us.

Um, we lost an officer; community lost a citizen. Um, Tom Decker was an active citizen, an active member of the community. He grew up on a farm just south of town with his parents, um, who still reside there, and attended Ricori schools. He's a hometown boy. Went off to Alexandria Technical College, where he was trained in law enforcement. And worked three more years as a police officer, and eventually ended up, um, finding what he called his dream job here with us at the Cold Spring/Richmond Police Department.

Tommy was also married, and had four children, all very young in age.

We're gonna miss him. The community and all of law enforcement will miss Tom Decker. Thank you.

STEARNS CO. SHERIFF JOHN SANNER: At this time we can open up to a few questions related to this incident.

[5] FEMALE PRESS: Was Officer Decker familiar with the suspect? Did he know him?

STEARNS CO. SHERIFF JOHN SANNER: I don't believe so.

MALE PRESS: Seems like it's a pretty extensive crime scene. We saw some people kinda walking out near the river. Um, any – any information that you can give us regarding that?

BCA DEP. SUPT. DREW EVANS: Again, that's part of the active and ongoing investigation. All I'll say is that it's an active crime scene and that we're, uh, looking for and gathering evidence related to this crime right now.

MALE PRESS: Is there any reason to believe there might be some other individual involved?

BCA DEP. SUPT. DREW EVANS: Uh, again, we don't have any information to believe that at this time, but it's in early stages of the investigation. We continue to follow up on all leads.

MALE PRESS: Do you know if Officer Decker ever removed his firearm from his holster?

BCA DEP. SUPT. DREW EVANS: That's part of the active investigation. We can't discuss that at this time.

MALE PRESS: Did you recover a weapon from [6] the suspect, that you believe was used in this?

BCA DEP. SUPT. DREW EVANS: Again, that's part of the active investigation, and we just can't comment on that at this time.

FEMALE PRESS: Where was Larson when he shot at Officer Decker? Was he in an apartment? Was he around the alley, around –

BCA DEP. SUPT. DREW EVANS: It's – again, that's part of the active crime scene, and we just, we can't discuss the details of the active crime scene at this time.

FEMALE PRESS: I asked about Officer Decker; was anybody in the police department familiar and had dealings with Mr. West [sic] in this case?

CHIEF PHIL JONES: Yes. I found one of my officers that, um, was familiar with this individual. Um, however, he didn't have – seem to have a lot of background either. So we are, um, basically looking into how long he's even lived in this location. We don't believe that he, uh, has occupied, uh, that apartment for very long.

FEMALE PRESS: You had mentioned that he was possibly suicidal, that was the family's concern. Any idea what was going on in his life or anything like that? Or had something triggered him last night to be [7] notably upset?

STEARNS CO. SHERIFF JOHN SANNER: Again, it's far too early in the investigation to make a comment in reference to that.

MALE PRESS: Anybody else injured or were any other outstanding people involved?

STEARNS CO. SHERIFF JOHN SANNER: No.

MALE PRESS: Was he related at all to Eric Decker, plays for the NFL, for the Broncos, from – went to Ricori?

CHIEF PHIL JONES: I suspect so.

MALE PRESS: You're saying there are a lot of Deckers in the area?

CHIEF PHIL JONES: There's a lot of Deckers around here. Um, but someone brought that up earlier and I said, "I'm not positive." If you track down Eric, he can probably let you know. Bring the Broncos.

MALE PRESS: Can you tell us where Officer Decker was hit with these two shots?

BCA DEP. SUPT. DREW EVANS: Uh, we're not prepared to comment on that at this time. Uh, the

Ramsey County Medical Examiner's Office will be performing an autopsy, and we'll be able to provide additional information once that's completed.

[8] MALE PRESS: Once –

FEMALE PRESS: Was he wearing a bullet-proof vest? Was he wearing a protective vest?

CHIEF PHIL JONES: Yes.

MALE PRESS: Any idea how much longer the, the scene's gonna sorta, you guys are gonna be there and what it's gonna take to kind of get all the pieces together?

BCA DEP. SUPT. DREW EVANS: We'll, we'll hold the scene until our investigation is complete. And I just can't comment on the length of time that will take.

MALE PRESS: Can you talk about the size of this police department and what kind of a loss Officer Decker is related to the size.

CHIEF PHIL JONES: On a small department like ours, we serve, we serve multiple jurisdictions: Um, the city of Cold Spring, the city of Richmond, and the surrounding Wakefield Township. We've got a jurisdiction of roughly 37 square miles, and about 9,500 citizens. We've got eight full-time and eight part-time. And there's a lot of demands, with only eight full-time officers, placed on each officer.

So Officer Decker was our use-of-force instructor, firearms instructor. Uh, he was, uh, our [9] department

jokester. He had a great sense of humor. All the, uh – everyone who met him liked him.

STEARNS CO. SHERIFF JOHN SANNER: We have time for just one more question.

FEMALE PRESS: You may have mentioned this and I apologize. Did – was he alone? Or did he have a partner with him when he arrived on scene there?

BCA DEP. SUPT. DREW EVANS: I could – he did, he had a – was with a partner when he was shot. And, you know, what I can say about this is from our preliminary investigation, it's, it's apparent to us that the officer was ambushed at the scene.

FEMALE PRESS: Was his partner, did he remain in the car? Did he ever get out and was he ever shot at?

BCA DEP. SUPT. DREW EVANS: Again, that's part of the active investigation. But he was, uh, he was on scene at the time of the shooting, and, uh, was certainly present when it occurred.

MALE PRESS: Can you, can you talk a little bit about was there a lockdown at the bar and the restaurants and the town and just kind of the process that went through that, all of that, as this was happening – happening?

UNIDENTIFIED MALE: Sheriff, do you want [10] to.

STEARNS CO. SHERIFF JOHN SANNER: Really, I mean, we're getting into an area now that we,

uh, just, it wouldn't be prudent for us to comment any further on this. We've answered the questions that we can at this particular time. When we get to a point in the investigation that we can give you, uh, good updates, we certainly will. Thank you.

UNIDENTIFIED MALE: Thanks everybody, we appreciate it.

(End of audio file.)

* * *

[11] REPORTER'S CERTIFICATE

I, Mary P. Mitchell, a Registered Diplomate Reporter and Certified Realtime Reporter, and Notary Public in the State of Minnesota, do hereby certify:

That the foregoing pages of typewritten material constitutes an accurate verbatim stenographic record taken by me from an audio recording to the best of my ability;

That the transcript may contain misidentified speakers, unintelligible or inaudible portions that were indecipherable to me and beyond my control;

That I am not financially interested nor do I have any contract with any parties, attorneys, or persons with an interest in any action related to this transcription that would affect or have a substantial tendency to affect my impartiality.

DATED: October 10, 2016.

/s/ Mary P. Mitchell
Mary P. Mitchell
Registered Diplomate Reporter
Certified Realtime Reporter

MINNESOTA DEPARTMENT OF PUBLIC SAFETY

NEWS RELEASE
Bruce Gordon, Director of Communications

FOR IMMEDIATE RELEASE
November 30, 2012

Alcohol and Gambling Enforcement Bureau of Criminal Apprehension Driver and Vehicle Services Emergency Communication Networks Homeland Security and Emergency Management Minnesota State Patrol Office of Communications Office of Justice Programs Office of Pipeline Safety Office of Traffic Safety State Fire Marshal

CONTACT:
Jill Oliveira, 651-793-2726

COLD SPRING POLICE OFFICER KILLED IN THE LINE OF DUTY

ST. PAUL—The Stearns County Sheriff's Office and the Minnesota Bureau of Criminal Apprehension are investigating the shooting death of a Cold Spring Police Department officer.

Officer Tom Decker, 31, was shot and killed around 11 p.m. Thursday night near Winner's Bar on Main Street in Cold Spring as Decker and his partner conducted a welfare check at a nearby apartment. Officer Decker died at the scene.

Law enforcement agencies from across the region along with the Minnesota State Patrol launched a search for the suspect. Within an hour, Stearns County

SWAT team investigators took Ryan Michael Larson, 34, of Cold Spring into custody. Larson was booked into the Stearns County Jail on murder charges early this morning.

"We're still in the very early stages of this ongoing and active investigation. Officers from many agencies are taking part, conducting interviews and processing the crime scene," said Bureau of Criminal Apprehension Assistant Superintendent Drew Evans. "The Bureau of Criminal Apprehension offers its condolences to Officer Decker's family and to the Cold Spring Police Department and community."

Officer Decker spent more than 10 years in law enforcement in Mille Lacs, Meeker and Stearns counties and had worked as an officer with the Cold Spring Police Department since March 2006. Decker was a native of Cold Spring. Funeral arrangements for Officer Decker are not yet set. Officer Decker's body has been taken to the Ramsey County Medical Examiner's Office for autopsy.

The shooting is being investigated by the Minnesota Bureau of Criminal Apprehension and the Stear County Sheriff's Office with assistance from the Cold Spring Police Department, the Minnesota State Patrol, the St. Cloud Police and several other agencies.

445 Minnesota Street, Suite 100 • Saint Paul,
Minnesota 55101-5155 • dps.mn.gov. •
facebook.com/MnPublicSafety •
@MnDPS_DPS ADD. 86