APPENDIX

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APPENDIX

Appendix A
Summary Disposition Order (07/01/2019)

13TH Judicial Circuit, Leelanau County, Michigan Case 2018-010099-NO. Final Judgment entitled *Order Granting and Denying in Part Defendants' Motions for Summary Disposition* (entered 07/01/2019).[1]

State of Michigan
13th Judicial Circuit -- Leelanau County

Joan M. Brovins and Thomas H. Oehmke, Plaintiffs	Case 2018-010099-NO
	Hon. Thomas G. Power Circuit Court Judge
vs.	
Patrick Cantwell Guinan (a/k/a Guinan Sr.) and Patrick Andrew Guinan (a/k/a Guinan Jr.), Defendants	

Order Granting and Denying In Part Defendants' Motions for Summary Disposition

At a session held on the 17th day of June, 2019 In the County of Leelanau, State of Michigan, Village of Suttons Bay
PRESENT: HON. THOMAS G. POWER
Circuit Judge

[1] *Brovins v. Guinan,* No. 18-010099-NO, 2019 WL 12383194 (Mich.Cir.Ct. July 01, 2019).

Motions having been filed, briefs having been submitted, and the court otherwise being advised in the premises;

IT IS HEREBY ORDERED: For the reasons set forth on the record, the Court grants and denies in part Defendants' Motions for Summary Disposition.

The Motions are granted as to the following Counts which are dismissed with prejudice:

1. Count I - Injunctive Relief Against Defendant Guinan, Sr. Only;
2. Count II - Maintaining a Private Nuisance Against Defendant Guinan, Sr. Only;
3. Count III - Strict Liability for Dog's Dangerous Propensities Against Both Defendants;
4. Count V - Intentional Infliction of Mental Distress Against Defendant Guinan, Jr. Only;
5. Count VI - Injunctive Relief Against Both Defendants;
6. Count VII - Slander and Defamation Against Defendant Guinan, Jr. Only.

The Motions for Summary Disposition are denied as to Count IV - Assaults against Defendant Guinan Jr. only. This is not a final order closing this case

Signed 07/01/2019
10:33AM
/S/ THOMAS G. POWER
CIRCUIT COURT JUDGE

Appendix B
State Court of Appeals Opinion (04/22/2021)

Michigan Court of Appeals Case 349861 had a final judgment entitled *Opinion and Judgment* (entered 04/22/2021).

2021 WL 1589573
UNPUBLISHED

Court of Appeals of Michigan.

Joan M. Brovins and Thomas H. Oehmke,
Plaintiffs-Appellants,
v.
Patrick Cantwell Guinan, also known as Guinan, Sr., and Patrick Andrew Guinan, also known as Guinan, Jr., Defendants-Appellees.
No. 349861
April 22, 2021

Leelanau Circuit Court, LC No. 2018-010099-NO
Before: Murray, C.J., and Markey and Letica, JJ.

Opinion
Per Curiam.

*1 Plaintiffs, Joan M. Brovins and Thomas H. Oehmke, appeal as of right an order granting summary disposition to defendants, Patrick Cantwell Guinan, also known as Guinan, Sr., and Patrick Andrew Guinan, also known as Guinan, Jr., under MCR 2.116(C)(10). We affirm.

Plaintiffs are husband and wife who reside at Oehmke's Florida home part of the year and at Brovins's Northport, Michigan home the other part of

the year. Guinan, Sr., lives in Florida part of the time and also owns a home near Brovins's Michigan home; both Michigan homes are located in the same Northport neighborhood. Guinan, Jr., is Guinan, Sr.'s adult son. Guinan, Jr., primarily resides out of the state, but sometimes visits his father in Michigan.

In September 2016, Guinan, Jr., was walking along East Camp Haven Road with his miniature pinscher, which was on a leash, when he came across plaintiffs. Brovins asked if she could pet the dog. Plaintiffs allege that the dog snarled and snapped at them. Plaintiffs allege that, over a year later, in September 2017, while plaintiffs and Guinan, Jr., were again out walking and crossed paths, the dog snarled and snapped at plaintiffs again. Neither plaintiff was ever bitten by the dog. A couple of weeks later, in October 2017, Oehmke encountered Guinan, Jr., and the dog on the road once again, and Oehmke claimed that Guinan, Jr., made a threatening statement to him. These were the only alleged incidents of physical proximity between plaintiffs and Guinan, Jr., that were set forth in the operative complaint, although plaintiffs also claimed that Guinan, Jr., at one point, walked near Brovins's driveway with the dog and a baseball bat, outside of plaintiffs' presence. Plaintiffs also complained about three other incidents—a green pickup truck in Brovins's driveway, discarded food containers found in their trash bin, and an unlatching of Brovins's gate on her deck—but plaintiffs only speculated that Guinan, Jr., was involved with these incidents.

Plaintiffs obtained ex parte personal protection orders (PPOs) against Guinan, Jr., on October 9, 2017, and in March 2018 they filed a lawsuit, raising various theories against Guinan, Jr., and Guinan, Sr.

It is not disputed that in October 2018, Guinan, Jr., used the Internet to provide a tip to the Federal Bureau of Investigation (FBI). He claimed that Oehmke was likely to be the person who used pipe bombs to target critics of Donald Trump during the 2018 national midterm elections. The court, thereafter, allowed plaintiffs to amend their complaint to add a count of defamation. The court eventually granted summary disposition to defendants.[1] Plaintiffs take issue with this ruling and with various interim rulings by the court.

I. NUISANCE

Plaintiffs contend that the trial court erred by finding no genuine issue of material fact regarding whether Guinan, Sr., maintained a private nuisance by allowing Guinan, Jr., to stay, at times, at Guinan, Sr.'s Michigan home. They contend that Guinan, Jr., stalked plaintiffs from the home and was thereby a nuisance. We disagree.

*2 This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Spohn v. Van Dyke Pub. Schs.*, 296 Mich. App. 470, 479; 822 N.W.2d 239 (2012).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers

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[1] The court allowed one count of the complaint to remain, but plaintiffs stipulated to its dismissal in order to facilitate this appeal.

> affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v. Rozwood*, 461 Mich. 109, 120; 597 N.W.2d 817 (1999) (citations omitted).]

As stated in *Capitol Props. Group, LLC v. 1247 Ctr. Street, LLC*, 283 Mich. App. 422, 431-432; 770 N.W.2d 105 (2009):

> The elements of a private nuisance are satisfied if (a) the other has property rights and privileges in respect to the use or enjoyment interfered with, (b) the invasion results in significant harm, (c) the actor's conduct is the legal cause of the invasion, and (d) the invasion is either (I) intentional and unreasonable, or (ii) unintentional and otherwise actionable under the rules governing liability for negligent, reckless, or ultrahazardous conduct. To prove a nuisance, significant harm to the plaintiff resulting from the defendant's unreasonable interference with the use or enjoyment of property must be proven. [Citations omitted.]

Plaintiffs allege that eight incidents, viewed together, created a question of fact regarding whether Guinan, Sr., maintained a private nuisance: the first

three incidents along the road, the alleged baseball bat incident, the pickup truck incident, the alleged depositing of garbage, the alleged unlatching of Brovins's gate, and the Internet FBI tip.[2] As for the pickup truck incident, during which a green pickup truck allegedly entered Brovins's driveway, Oehmke admitted that he could not see who was driving the truck. Even the operative complaint itself states that "no positive [identification] of the driver could be made." Oehmke also admitted that he did not know if Guinan, Jr., had unlatched the gate on Brovins's deck; instead he was conjecturing that Guinan, Jr., had done so. And it was also not demonstrated who had deposited the food containers in plaintiffs' trash can. "A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact." *Cloverleaf Car Co. v. Phillips Petroleum Co.*, 213 Mich. App. 186, 192-193; 540 N.W.2d 297 (1995).

Plaintiffs' reference to the Internet tip is similarly not supportive of their nuisance claim. There is no evidence that this tip resulted from Guinan, Sr.'s harboring of Guinan, Jr., in his Michigan home, and the tip clearly involved no invasion by Guinan, Sr., or Guinan, Jr., into plaintiffs' property interests.

*3 This leaves the first three incidents and the

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[2] There may have been two similarly worded tips sent around the same time. However, the third amended complaint (i.e., the operative complaint) refers to one tip. We employ the singular term "tip."

incident during which Guinan, Jr., and the dog were, allegedly, at the end of Brovins's driveway with a baseball bat. Viewing the evidence in the light most favorable to plaintiffs, a miniature-sized dog snapped at them, and, over a year later, snapped at them again, while they were walking on a public road. Guinan, Jr., restrained the dog by taking it away, using a leash, during both incidents. Later, again accepting plaintiffs' version of events, Oehmke told Guinan, Jr., to hang onto the dog, and Guinan, Jr., responded by making a threatening comment to Oehmke, while simultaneously attempting to film the interaction and claiming that he would post the video on YouTube. Oehmke admitted that the first three incidents took place on a public road. As for the baseball bat incident, even disregarding any hearsay issues,[3] Guinan, Jr., was simply walking his dog, alone and out of the presence of plaintiffs, during this incident, and no "nefarious" behavior was observed.[4] Even if one disregards whether Guinan, Sr., could be held responsible for the intentional actions of a third party, plaintiffs failed to establish a genuine issue of material fact regarding an interference with any "property rights" in the public road. *Capitol Props. Group*, 283 Mich. App. at 431.

In addition, there is no evidence that Guinan, Sr., intentionally caused any harm to plaintiffs, was reckless, or acted in an ultrahazardous manner, and

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[3] Oehmke admitted that the evidence of this incident was derived from the statement of a police officer.

[4] Guinan, Jr., stated that he was carrying a bat because he liked to hit stray golf balls down the road.

nor was there evidence of negligence on the part of Guinan, Sr. *Id.* at 432. Indeed, the facts of this case do not establish any duty that Guinan, Sr., owed to plaintiffs. *Kass v. Tri-Co. Security, Inc.*, 233 Mich. App. 661, 664, 667-668, 670; 593 N.W.2d 578 (1999) (discussing negligence, and its included concept of duty, in the context of a failure to protect someone from a third party's criminal acts). The trial court properly granted Guinan, Sr., summary disposition on the claim of nuisance.

II. AMENDMENT OF COMPLAINT

Plaintiffs contend that the trial court abused its discretion by disallowing their proposed amendment of the complaint to add a count of aggravated stalking. We disagree.

> "A trial court's decision on a motion to amend a complaint is reviewed for an abuse of discretion." *Long v. Liquor Control Comm.*, 322 Mich. App. 60, 67; 910 N.W.2d 674 (2017). "A trial court abuses its discretion when its decision is outside the range of principled outcomes." *Grayling v. Berry*, 329 Mich. App. 133, 151; 942 N.W.2d 63 (2019).

As stated in *Hakari v. Ski Brule, Inc.*, 230 Mich. App. 352, 355; 584 N.W.2d 345 (1998):

> A trial court should freely grant leave to amend pleadings if justice so requires. However, leave to amend a complaint may be denied for particularized reasons, such as *undue delay*, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by

> amendments previously allowed, undue prejudice to the opposing party, or where amendment would be futile. [Citations omitted; emphasis added.]

At the motion hearing for the proposed amendment, Oehmke stated that he had not alleged aggravated stalking in the original complaint because he had been unaware of the pertinent statute. He stated:

> *It's really adding no new facts*, it's simply acknowledging that under the statute there is a cause of action for stalking and therefore we don't have to rely on some perhaps more vague common law tort of intentional infliction of mental distress or trespass or other more common law type torts. [Emphasis added.]

Oehmke admitted that the PPOs "are a necessary element to establish aggravated stalking."[5]

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[5] MCL 750.411i(2) states: An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:

(a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.

(b) At least 1 of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the

(continued...)

Oehmke went on to state that "the FBI ... false report does not play into aggravated stalking, that's not, how shall I say, it's not behavior prohibited under the statutory tort." From these admissions and this information, it is apparent that the actions plaintiffs were putting forth in support of the proposed amendment (adding a count of "aggravated stalking") were (1) actions already alleged in the existing complaint, (2) actions other than the FBI tip, and (3) actions occurring after service of the PPO.[6] In their motion to amend, they stated that aggravated stalking took place because at least one act by Guinan, Jr., was in violation of a PPO. But the only actions listed in the complaint that occurred after service of the PPO were the alleged depositing of food containers in plaintiffs' trash can and the alleged unlocking of Brovins's gate.[7] Plaintiffs filed the motion to add the count of aggravated stalking in March 2019, despite the fact that the alleged depositing of food containers in the trash can and the alleged unlocking of the gate occurred in October

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[5](...continued)
victim.

(d) The individual has been previously convicted of a violation of this section or section 411h.

By stating that the PPOs "are a necessary element to establish aggravated stalking," Oehmke acknowledged that plaintiffs were focusing on MCL 750.411i(2)(a).

[6] We emphasize that plaintiffs were and are not seeking to add a separate count of "stalking" but specifically refer to an added count of "aggravated stalking."

[7] Oehmke acknowledged at his deposition that the PPOs had not been served at the time of the pickup truck incident.

2017. As such, the court acted well within its discretion by concluding that there had been undue delay on plaintiffs' part, *id.* at 355, in seeking the amendment, given that almost 1 ½ years had passed between the operative events and when plaintiffs sought the amendment. Because the trial court did not abuse its discretion, plaintiffs' remaining argument concerning allowing the PPOs into evidence is moot.

III. OTHER-ACTS EVIDENCE

*4 Plaintiffs contend that the trial court should have ruled admissible the criminal history of Guinan, Jr., and many telephone calls he made to a judge's chambers in an out-of-state case. Plaintiffs contend that this evidence showed Guinan, Jr.'s "motive" in allegedly harassing plaintiffs. We disagree.

This Court reviews for an abuse of discretion a trial court's decision regarding whether to admit evidence. *Lopez v. Gen. Motors Corp.*, 224 Mich. App. 618, 634; 569 N.W.2d 861 (1997). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Edry v. Adelman*, 486 Mich. 634, 639; 786 N.W.2d 567 (2010).

"Other-acts evidence is only admissible under MRE 404(b)(1) when a party shows that it is (1) offered for a proper purpose, i.e., to prove something other than the defendant's propensity to act in a certain way, (2) logically relevant, and (3) not unfairly prejudicial under MRE 403." *Rock v. Crocker*, 499 Mich. 247, 257; 884 N.W.2d 227 (2016). MRE 403 provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Plaintiffs cite only *People v. Denson*, 500 Mich. 385, 398; 902 N.W.2d 306 (2017), in their discussion of this issue, evidently for the well-known principle that evidence of other bad acts is generally only admissible if it is probative for a purpose other than showing propensity. They claim that the other bad acts were admissible because the acts showed Guinan, Jr.'s motive for allegedly harassing plaintiffs, in that he bore a grudge against what plaintiffs refer to as "officialdom." This argument is not persuasive.

First, Guinan, Jr.'s criminal history—consisting mainly of misdemeanors and traffic offenses—standing alone, does not prove that he had any animus toward "officialdom." In other words, that he was convicted of offenses simply does not prove any such animus against those who convicted him.

Second, that Guinan, Jr., made an excessive number of telephone calls to a judge's chambers in a different case arguably does tend to show that he had a propensity toward harassment—but this type of propensity evidence is precisely the type of evidence that MRE 404 seeks to exclude. And even assuming, arguendo, that the multiple telephone calls showed an animus toward "officialdom," plaintiffs were not part of "officialdom" merely by virtue of being lawyers. Indeed, the dispute between plaintiffs and Guinan, Jr., arose when they were interacting with Guinan, Jr., as private citizens walking along a public road. As such, the probative value of the telephone-calls evidence was extremely minimal, and

the trial court did not abuse its discretion by ruling that the evidence would be excluded under MRE 403.[8]

IV. CHOICE OF LAW

Plaintiffs contend that the court should have applied Florida law to the count in their complaint labeled "slander and defamation," and they further contend that Florida law applies only a qualified privilege, not an absolute privilege, with regard to tips given to law-enforcement officers. Plaintiffs additionally argue that, even if Michigan law is applied, this Court should rule that no absolute privilege exists in the present case because Guinan, Jr., was not a victim of or a witness to the pipe-bombing situation. Instead, they contend Guinan, Jr., acted maliciously and should be liable for his false FBI tip.[9] We disagree.

*5 This Court reviews choice-of-law questions de novo. *Frydrych v. Wentland*, 252 Mich. App. 360, 363; 652 N.W.2d 483 (2002). "The applicability of a privilege is a question of law that is also reviewed de novo." *Eddington v. Torres*, 311 Mich. App. 198, 199-200; 874 N.W.2d 394 (2015).

Guinan, Jr., is correct in stating that, contrary to outdated, unpublished caselaw cited by plaintiffs,

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[8] Plaintiffs mention the PPOs in their statement of questions presented for this issue but do not make an argument about them in the body of their argument section. Accordingly, the argument about the PPOs is deemed abandoned. See, e.g., *Houghton ex rel. Johnson v. Keller*, 256 Mich. App. 336, 339-340; 662 N.W.2d 854 (2003).

[9] The trial court ruled that the tip was subject to an absolute privilege, but it did not make an express ruling on the choice-of-law issue.

Michigan applies an absolute privilege to statements such as the tip Guinan, Jr., provided to the FBI. In *Eddington*, the plaintiff alleged that a person had falsely reported to the police that the plaintiff had committed four crimes. *Id.* at 199. The plaintiff alleged that the accusations were "made with knowledge that they were untrue or with reckless disregard for the truth." *Id.* "[T]he trial court concluded that the statements were subject to an absolute privilege and could not be the basis of a defamation claim," and this Court affirmed. *Id.* This Court stated that "reports of crimes or of information about crimes to the police are absolutely privileged," and noted that "the privilege attache[s] even if the reporting party made the report maliciously." *Id.* at 202. This Court continued:

> [W]e could not reliably have practical law enforcement if crime victims, or those with knowledge of crimes, were forced to risk a lawsuit upon reporting what they know or what they suffered. The law is not blind to the fact that such reports are occasionally maliciously fictitious: it is a crime to lie to a police officer about an ongoing investigation, MCL 750.479c, or to make an intentionally false report to the police, MCL 750.411a.... [T]he ... privilege would not insulate a person against an investigation or charge for such crimes. Consequently, false reports may not be made with impunity. [*Id.*]

There is an "absolute privilege that arises in

the context of a defamation claim and covers any report of criminal activity to law enforcement personnel," and that if this were to change, such change must come from the Legislature or the Michigan Supreme Court. *Id.* at 203.

Plaintiffs' attempt to argue that there is no absolute privilege for Guinan, Jr.'s tip because the law is allegedly in flux or because Guinan, Jr., was somehow not a witness to the alleged crime in the tip is belied by the clear language of *Eddington.* Plaintiffs are clearly disappointed that Guinan, Jr., was not criminally charged in either state or federal court as a result of the tip, but this absence of charges does not dispense this Court's obligation to follow the rule of *Eddington.* If Michigan law is applied, then the defamation count is clearly untenable.

The problem with plaintiffs' argument about Florida law is twofold. First, plaintiffs, while fully acknowledging that Michigan law applies to the remainder of their claims, set forth absolutely no analysis or authority regarding whether dépeçage is applicable in Michigan. See *Olmstead v. Anderson*, 428 Mich. 1, 4 n. 2; 400 N.W.2d 292 (1997) ("It should be noted that some courts have decided different issues in the same case by applying the law of different states. This practice is called dépeçage."). "It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v. Taylor*, 457 Mich. 232, 243; 577 N.W.2d 100 (1998) (quotation

marks and citation omitted). Accordingly, we decline to address whether dépeçage is an accepted practice in Michigan. *Id.*

*6 In any event, plaintiffs cite a single Florida case in support of their argument about defamation, *Fridovich v. Fridovich*, 598 So.2d 65 (Fla., 1992). Plaintiffs contend that only a qualified privilege exists in Florida, such that malicious accusations made to the police can be used as the basis for a defamation suit. But in *Fridovich*, the appellate court stated, "We thus hold, as a majority of the other states have held in this context, that defamatory statements voluntarily made by private individuals to the police or the state's attorney *prior to the institution of criminal charges* are presumptively qualifiedly privileged." *Id.* at 69 (emphasis added). The plaintiff in that case was indicted on the basis of a false report to law enforcement. *Id.* at 68. The plaintiff's "siblings instituted a conspiracy to have him falsely arrested, indicted, convicted, and sentenced for the first-degree murder of his own father, a charge that carries a maximum penalty of death." *Id.* Plaintiffs cite *Fridovich*, yet utterly fail to set forth how Florida law governs or might govern a situation such as the present one, wherein the FBI quickly dismissed the false tip as not credible and no charges were pursued. In their complaint, plaintiffs cite *Ghanam v. Does*, 303 Mich. App. 522, 545; 845 N.W.2d 128 (2014), for the proposition that "[a]ccusations of criminal activity are considered 'defamation per se' under the law and so do not require proof of damage to the plaintiff's

reputation."[10] But this is *Michigan* caselaw. We find that plaintiffs' briefing is deficient because they are asking this Court to search for Florida authority to sustain their position that they have set forth, under Florida law, a prima facie case of defamation.[11] This Court should not be forced to do so. *Wilson*, 457 Mich. at 243.

Finally, even accepting that plaintiffs' briefing is sufficient for us to entertain whether Florida law should apply to the defamation claim, we find that Michigan law is appropriate in light of the facts that (1) plaintiffs were alleging damages to both Oehmke and Brovins as a result of the FBI tip; (2) Brovins is admittedly a resident of Michigan; (3) the biggest "audience" regarding the false claim was located in Michigan, because of a published newspaper article, whereas Oehmke stated that only two people in Florida knew of the claim; and (4) most importantly, the main FBI "interview" took place in Michigan. The presumption for applying the law of the forum state (i.e., Michigan) has not been overcome. *Sutherland v. Kennington Truck Serv., Ltd.*, 454 Mich. 274, 285-286; 562 N.W.2d 466 (1997). See also, generally, *Olmstead*, 428 Mich. at 28; *Frydrych*, 252 Mich. App. at 363-364.[12]

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[10] Only Oehmke was accused of criminal activity in the FBI tip.

[11] Plaintiffs even go so far as to ask this Court to grant summary disposition to *them* on the defamation claim and to remand the claim for a trial regarding only damages.

[12] As a final comment, we note that plaintiffs are (continued...)

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

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[12](...continued)
attempting to inject additional issues into their appeal by way of their appellate brief's statement of facts, relying on proceedings that are not part of the lower court record for the instant case. We disregard these arguments because of improper briefing and because of the improper attempt to expand the record on appeal. *Detroit Leasing Co. v. Detroit*, 269 Mich. App. 233, 237; 713 N.W.2d 269 (2005).

Appendix C

State Supreme Court Order (11/02/2021)

Michigan Supreme Court Case 162976 had a final judgment entitled *Order Denying Application for Leave to Appeal* (entered 11/02/2021).

959 N.W.2d 701 (Mem)

Supreme Court of Michigan

Joan M. Brovins and Thomas H. Oehmke, Plaintiffs-Appellants,

v.

Patrick Cantwell Guinan, also known as Guinan, Sr., and Patrick Andrew Guinan, also known as Guinan, Jr., Defendants-Appellees.

JSC: 162976
COA: 349861
June 9, 2021
Leelanau CC: 2018-010099-NO

Order

On order of the Chief Justice, the motion of defendant-appellee Patrick Andrew Guinan, a/k/a Guinan, Jr., to extend the time for filing his answer to the application for leave to appeal is GRANTED. The answer will be accepted as timely filed if submitted on or before June 21, 2021. On further order of the Chief Justice, the motion of plaintiffs-appellants to supplement their application is GRANTED. The supplement submitted on June 7, 2021, is accepted for filing.

Appendix D
Family Court Decision (11/15/2019)

Thomas H. Oehmke vs. Patrick Andrew Guinan, 2017-010009-PH, Leelanau County (Michigan) Circuit Court, Family Court Division, *Decision and Order after Hearing on Motion Regarding Violation of Personal Protection Order, Motion to Modify Personal Protection Order, Motion to Terminate Personal Protection Order* (entered 11/15/2019).

State of Michigan
in the County of Leelanau
Family Court Division

Thomas Oehmke, Petitioners, -vs- Patrick Andrew Guinan, Respondent.	2017010009PH

Decision and Order after Hearing on Motion Regarding Violation of Personal Protection Order, Motion to Modify Personal Protection Order, Motion to Terminate Personal Protection Order

Petitioners filed a Motion and Order to Show Cause on November 19, 2018 and on June 24, 2019 and alleged six violations of the Personal Protection Order. In a civil contempt proceeding, a petitioner has the burden of proving the respondent's guilt by clear and convincing evidence.

The Court conducted hearings on the above-referenced motions on September 18, October 2 and

October 18. 2019. The Court also heard and ruled about several Motions in Limine both before and on the hearing dates.

Petitioners presented twelve witnesses. Respondent presented four witnesses.

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This leaves the questions of

• whether the Petitioners have met their burden of clear and convincing evidence that Aggravated Internet Stalking occurred and that Respondent should be held in contempt;

• whether there are sufficient grounds to modify the existing PPO;

• whether Petitioner has established grounds for continuation or the PPO or whether Respondent established that a PPO is no longer necessary and should be terminated.

This Court's predecessor entered a PPO against Respondent on October 10, 2017 that, among other things, prohibited Respondent from "posting a message through the use of any medium of communication, including the Internet or any electronic medium, pursuant to MCL 750.411s. That PPO was amended and extended on July 2, 2018 to be in effect until December 31, 2021. On September 9, 2019 Court further prohibited Respondent from being at this father's home at 8576 N. Bayview Ave., Northport, MI.

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If the Court concludes that Respondent violated MCL 750.411s, the court will also consider whether Respondent was engaged in constitutionally protected speech involving a matter of public concern that may not be prohibited under MCL 750.411s(6). Buchanan v Crisler, supra at 904. The Court will now

make findings of fact and conclusions of law under MCL 750.411s (1) and (1) (a) through (d).

There is no dispute or question that Respondent submitted an on-line a tip to the FBI Public Access Line. This occurred on October 25, 2018 at 8:16 AM EDT. (Ex B) Exhibit B provides the submitted text to have been as follows:

> Most likely suspect for the recent bomb packages in a Tom Oehmke, a deranged michigan lawyer with a history of making threats Thomas Harold Oehmke of 11997 E Camp Haven Road Northport Mi 49670 and winters in Florida 472 Bahia Ave Key Largo FL 33037 Oehmke has indeed sent similar packages like the ones most recently mailed to high level ranking former government officials Oehmke has mailed a very similar package to my father Patrick C Guinan this past April and my father had it returned to sender.

The requirements of MCL 750.411s (1) have been met, as clearly Respondent did not have Petitioners' consent to do post the tip. The Court found no evidence to support that Respondent posted more than one message on the internet regarding the Petitioners. Respondent testified that he had one further conversation with the FBI and that was a result of the FBI reaching out to him in Florida. FBI Agent Boyersmith's declaration (Ex 19) references similar language to the posted tip, but also additional information. Without any evidence of a 2nd use of the "internet or a computer, computer program, computer

system, or computer network, or other electronic medium of communication" the only logical conclusion is that the additional information referenced by Agent Boyersmith was from some conversation between the FBI and Respondent. Hence, the Court's inquiry is limited to whether the tip quoted above and contained in Exhibit B satisfies all the remaining mandated requirements of MCL 750.411s.

FACTOR 1 (a) Did Patrick Andrew Guinan know or have reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact with the Oehmke/Brovins?

If question was, did the posting cause 2 or more separate noncontinuous acts of uncontested contact with Petitioners the answer would be "No." There was only 1 contact with Petitioner Oehmke after the tip. That was the visit by the FBI to the Oehmke/Brovins home early on October 26, 2018. The Court finds that repeated references to this as a "raid" are unfounded. Petitioner Oehmke testified that he initially thought the 3 men were Seventh Day Adventists coming to proselytize. The agents accepted his declining of their request to enter his home. The agents asked "rapid fire" questions, but left saying "sorry for troubling you." There was no contact with Petitioner Brovins other than her hearing voices that she thought may be an electrical crew and then observing 3 men with her husband outside the home. Petitioner Brovins was not mentioned in the tip and was not questioned by the FBI. Other than the subject matter of the investigatory visit, the encounter was a typical encounter with law

enforcement investigating an alleged crime or a potential suspect.

Respondent was never asked what he thought the outcome of his making the on-line tip would or could be. Regardless, one may infer that any person making a complaint or providing a tip to law enforcement regarding a crime would know and/or have reason to know that the report would probably or at least could result in some law enforcement contact with the person referenced in the report. This did occur in the early morning hours at the Oehmke/Brovins home on October 26, 2018 as described above.

It is also logical to conclude that Respondent would know that the report would probably and/or could result in 2 or more contacts with the person referenced in the report. However, the remaining relevant inquiry under factor 1[a] is would a person know or have reason to know of 2 or more resulting separate noncontinuous unconsented contacts with the Petitioners. The Merriam-Webster Dictionary definitions of the adjective separate is "not joined, connected, or combined" and noncontinuous as "having one or more interruptions in a sequence or in a stretch of time or space." As noted, the logical result of making a private tip to the FBI regarding an alleged crime is at a minimum an investigation by law enforcement that would probably and could involve contact with the subject of the tip. An investigation by its inherent nature can also involve more than one act. The Court finds additional interviews by the FBI could be expected to occur. However, the Court also finds additional interviews and any follow up investigation to be of a continuous nature, all related and connected to the same

investigatory focus. This is in contrast to the examples of public posting noted in Buchanan v Crisler, supra. (Falsely posting messages that a person is interested in sexual contact could result in numerous contacts from others to that person; falsely posting an advertisement that a person is giving things away free also could result in numerous contacts from others to that person.)

The 2nd FBI investigatory act put into evidence occurred in Florida at the home of a neighbor of the Petitioners. Similarly, there was no "raid" of the Petitioners' Florida residence or their neighbor's home. Agent Boyersmith declared that no one was at the Two Turtles Lane address and no search was conducted. The neighbor the FBI then visited was James Stocklas, a retired magistrate. He indicated that he thought the FBI was joking, that he found it humorous and even laughed that Petitioner Oehmke was suspected of being the pipe bomber. (Ex 41) The acts in Florida were not contacts with either of the Petitioners. Even if they were, they were continuous acts following up the tip and not the required "noncontinuous" acts as discussed below.

The contacts Petitioner Oehmke had with his two neighbors Mike Halpern and James Stocklas when Petitioners returned to Florida were consensual, as he approached them and brought up the topic. The only evidence presented of continued dissemination of information regarding the on-line tip was a result of a) Petitioners filing an Amended Complaint by Petitioners in Joan Brovins and Thomas Oehmke vs. Patrick Cantwell Guinan and Patrick Andrew Guinan, Leelanau Circuit Court 2018-010099 NO and b) the *Leelanau Enterprise* covering the lawsuit in a December 2018 edition of its

paper. This court concludes that both were consensual and neither could be reasonable foreseeable by Respondent.

The requirements of factor 1(a) have not been met with clear and convincing evidence:

• Petitioner Brovins failed to establish that she was the subject of Respondent's on-line tip.

• Petitioner Oehmke, the subject of the tip, failed to establish that Respondent knew or had reason to know that 2 or more separate noncontinuous unconsented contacts could occur.

FACTOR 1 (b): By posting the message, did Guinan intend to cause conduct that would make the Oehmke/Brovins feel terrorized, frightened, intimidated, threatened, harassed, or molested?

Even in a light most favorable to Respondent there is no support for any conclusion other than, his posting the on-line tip was done with an intent to have an adverse impact on at least Petitioner Oehmke. As noted above, the logical outcome of such a tip would result in law enforcement initiating an investigation. However, being investigated by the FBI for mailing pipe bombs throughout the country is in another class of alleged criminal activity. The Court finds that such would cause even a veteran attorney as Oehmke to feel frightened, harassed and/or threatened. The requirements of factor 1 (b) have been clearly and convincingly met as to Petitioner Oehmke, but not as to Petitioner Brovins as she was not the subject of the tip. Petitioner Brovins was impacted but there is no clear and convincing evidence of Respondent's intent to impact her.

FACTOR 1 (c): Would conduct arising from posting a message that you are the most likely suspect for the recent bomb packages, a deranged person with a history of making threats and leading to the initiation of an FBI investigation cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested?

The Court considers itself a reasonable person. More importantly the question is what would be the reaction of a typical reasonable person to being accused of being a most likely suspect for the mailing of recent bomb packages to government officials and being a deranged person with a history of making threats and then having the FBI appear at your door? The Court unequivocally concludes that such conduct would lead a reasonable person to feel at least frightened, intimidated, harassed and/or threatened. Being stopped by law enforcement regarding an alleged traffic violation may cause trepidation in a reasonable person and could cause outright fear in populations that historically have had or feel they have had unpleasant outcomes from encounters with law enforcement.

Whether that is a reasonable reaction among certain demographics is not at issue herein. This posted message is of an entirely different caliber than more routine interactions with law enforcement. Factor lc requires a finding that reasonable person would suffer emotional distress. Emotional distress "means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling." MCL 750.411s (8) (g). It is problematic that in defining

distress the statute also uses the word distress. The Merriam-Webster Dictionary defines the word as "to cause to worry or be troubled." A traffic stop may cause a person to worry. An allegation that you are the pipe bomber and deranged and a visit from the FBI would cause significant worry to a reasonable person. The Court concludes that such conduct would lead a reasonable person to be significantly worried or troubled. The requirements of factor 1(c) have been clearly and convincingly met.

FACTOR 1 (d): Did conduct arising from posting the message cause the Oehmke/Brovins to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested?

When applying factor Id specifically to the Petitioners the initial operative phrase is "conduct arising from the posting of the message." Under 1[d] there is no requirement that the conduct be separate or noncontinuous. The conduct established by the Petitioners is 1) the FBI visit to their home on October 26, 2019 and the 20-minute questioning of Thomas Oehmke; 2) the FBI visit to and questioning the Petitioners' neighbor in Florida on October 25, 2018 after being unable to reach Mr. Oehmke at this Florida residence; and 3) the coverage of the tip by the local paper and subsequent inquiries from Northport area residents. It could be argued that the 3rd was a result of Petitioners adding this FBI tip its civil lawsuit, deciding not to seek a protective order from the court and the unlucky appearance of the paper's reporter staying in the courtroom during a motion hearing regarding the civil suit. Still, there is a nexus to the posting of the message, whether direct

or indirect.

The Court finds that the Petitioners both established shed that they were frightened and felt threatened and harassed by the tip and the subsequent investigatory steps taken by the FBI. They were clearly embarrassed by the local newspaper coverage and their Florida neighbors knowing of the allegation. "Severe emotional distress" is a necessary element in a tort action for intentional infliction of emotional distress.. M Civ JI 119.01 "Severe" differs from "significant"; hence, this Court is not bound by the court in the civil suit granting summary judgement against Petitioners for lack of severe emotional distress.

When preceding acts unrelated to the posted message are in the mix as they are here, it is difficult to parse out the exact cause of the emotional distress. However, factor 1(d) speaks to the emotional reaction of the Petitioners. The "egg-shell" skull hypothetical applies and Respondent must take Petitioners as he finds them. See Wilkinson v Lee, 463 Mich. 388 (2000); Kostamo v. Marquette Iron Min. Co., 405 Mich 105 (1979). The Petitioners were already wary of Respondent and Dr. Boyd's evaluation noted that both Petitioners were clear that their fear was not of a dog attack. The Court concludes that the events following the October 25, 2018 FBI tip did cause Petitioners to suffer emotional distress as defined by MCL 750.411s (8) (g). Although not required, the only professional consultation entered into evidence was a psychological evaluation of the Petitioners ordered in the civil suit. Hence, there has been no medical or other professional treatment or counseling. The Court bases its finding upon an evaluation of the testimony of the Petitioners.

Petitioners Brovins and Oehmke both testified that their hands were shaking after the visit by the FBI to their Northport home. Brovins testified that she is still upset to this day, feels humiliated and embarrassed as to what her community thinks of her. She described herself as being on-guard and having a state of mind of "what will happen next?" She was tearful in court and at times during her evaluation with Dr. Boyd. She indicated to Dr. Boyd that "this is not way to live" and that her "sense of place has been stolen from her." Dr. Boyd's diagnosis was adjustment disorder with anxiety. He further concluded that Brovins adjustment disorder with anxiety is situational and notes "[a]djustment disorders indeed can have anticipatory anxiety and substantial emotional distress that is usually related to a specific cause and setting. This is consistent with both her objection testing and her history provided." The Court concludes that the ongoing nature of Brovins feelings and her loss of a sense of security are significant and meet the statutory definition under MCL 750.411s (8) (g).

Oehmke testified that life has changed for him. He also said he feels there is "no safe place" and he is now hyper-vigilant. He no longer casually walks down his road but carries weights and is armed. He feels his heart race at times. Dr. Boyd's diagnosis was adjustment disorder with anxiety, acute and ongoing. Dr. Boyd further noted, "chronic stress can be particularly anxiety provoking." The Court concludes that the ongoing nature of Oehmke's feelings and his loss of a sense of security are significant and meet the statutory definition under MCL 750.411s (8) (g). The requirements of factor 1 d have been met with clear and convincing evidence.

CONCLUSION REGARDING A VIOLATION OF MCL 750.411s

All requirements of MCL 750.411s (1) and (a) through (d) must be met to be a violation of the PPR. For reasons stated above, the Court finds that neither Petitioner has established all the requisite factors.

As the Court concludes that Respondent has not violated the statutory terms of MCL 750.411s, it need not determine whether Respondent was engaged in constitutionally protected speech involving a matter of public concern that may not be prohibited under MCL 750.411s(6). Buchanan v Crisler, Mich App , 922 N. W. 2nd 866 (2018). However, the Court does not read Buchanan v Crisler, supra necessarily answering whether Respondent's tip was protected speech. Rather Buchanan provides the following guidance:

> While the government has an interest in preventing the harassment of private individuals in relation to private matters, MCL 750.411s may not be employed to prevent speech relating to public figures on matters of public concern. Consequently, when it is asserted that the postings involve a matter of public concern, the court must consider the content, form, and context of the online postings to determine whether they involve constitutionally protected speech on a matter of public concern. If the court determines that constitutionally protected speech will not be inhibited, posting a message in violation of MCL 750.411s may be

enjoined under MCL 600.2950a(1).

The final issues are whether there are sufficient grounds to modify the existing PPO and/or whether exiting PPO is no longer necessary and should be terminated.

Petitioners ask that the PPO be extended to exclude Respondent from Leelanau County or Leelanau Township and extended until 2045. The Court declines to do either.

The exiting PPO is set to expire on December 31, 2021. Among the prohibitions contained in the July 2, 2018 Amended PPO, Respondent is also prohibited from being at his father's house at 8576 N. Bayview Ave, Northport, Michigan pursuant to the September 9, 2019 order.

Exclusion, although perhaps lawful under certain circumstances, is an extreme remedy. A sentence banning a person from the entire state is outside the authority of the circuit court and has been accepted law since 1930. People v Baum, 251 Mich 187 (1930).

> The American states are not supreme, independent, sovereign states in relation to those things delegated by the people to the federal government, though the states are all in the Union on the basis of equality of political rights. Independent national states have a right to protect their political institutions, their people, and their independent existence by excluding legally and forcibly undesirable

> foreigners. This is the basis of the laws of the United States restricting immigration. To permit one state to dump its convict criminals into another would entitle the state believing itself injured thereby to exercise its police and military power, in the interest of its own peace, safety, and welfare, to repel such an invasion. It would tend to incite dissension, provoke retaliation, and disturb that fundamental equality of political rights among the several states which is the basis of the Union itself. Such a method of punishment is not authorized by statute, and is impliedly prohibited by public policy. Id at 189.

Substitute the word "county" for "state" and the same public policy argument is valid. The cited Grand Traverse Band's authority to exclude a person has the additional safeguard of requiring the approval of at least 5 members of Counsel. Respondent admittedly does not live in Leelanau County nor visits his father or other relatives in Leelanau County on a regular basis. Leelanau County is a peninsula so unless Petitioners never intend to travel to Traverse City in the adjacent county, a single county bar offers minimal assurance to Petitioners. However, the Court does find the prohibition at Respondent's father's house to be justified and should continue and expanded. The plat maps introduced into evidence and the description of the long driveway, the forests and the remote location present safety concerns for Petitioners. There are also challenges to Respondent that he not violate the PPO

by unwittingly encountering Petitioners on this track of land. A more appropriate prohibition is that Respondent not be at his father's house at 8576 N. Bayview Ave, Northport, Michigan or travel down any road that leads to that house off M-22 or any trail that leads to the house. If still warranted, Petitioners may file a Motion to Extend this Order 3 days before its expiration date on or before December 28, 2021.

Respondent seeks to terminate the PPO. He did not object to the entry of the 1st or Amended Ex Parte PPO within the 14 days after service. That does not prohibit a request to terminate, but does require a showing by Petitioners that the PPO is still warranted or a showing by Respondent that circumstances have changed that would no longer warrant the PPO. It is unfortunate that unpleasant encounters with a dog in 2017 could not have been resolved without the contentiousness and rancor that continues to be embodied in the neighborhood dispute. The dog is long gone, but the conduct displayed by Respondent as noted in his deposition transcript admitted in evidence and his behavior while testifying is this matter, suggests that Respondent has not abandoned his unfounded claims that Petitioner Oehmke is a despicable, evil human being. See pgs, 10, 14, 17, 19, 24, 27, 28, 32, 33, 35, 51 for examples of non-responsive ad-hominem offensive statements made to Petitioner Oehmke who was conducting the deposition. Respondent testified on the 1 st day of trial, September 18, 2019. Respondent was called as a witness by Petitioner. Respondent insulted Petitioner and was argumentative. The Court had to re-direct Respondent several times and caution him regarding his behavior. Respondent also had to be admonished

not to speak out of turn while others were testifying. On the 2"d and 3rd days of trial, Respondent participated by telephone. Again, he was disruptive and made disparaging remarks about Petitioner Oehmke.

His own counsel directed Respondent to mute his phone. On the last day of trial following disruptions by Respondent and after a private consultation with his attorneys, his attorneys waived their client's appearance (by telephone) at the hearing.

Respondent provided no credible support that Tom Oehmke is "deranged," has a "history of making threats," has ever represented "mafia and drug smugglers," or ever bragged of such and no details of Oehmke's "numerous violent criminal plots." It is inconceivable that the FBI would have investigated any one based on a tip that said only "my father received a similar package in the mail." (Ex 19) Petitioners denied each adverse allegation made by Respondent and rebutted the allegations through the testimony of 7 character witnesses from in and around Northport. The Court found the content of their testimony and their demeanor to provide more than credible support that neither Petitioner meet the description provided by Respondent.

Respondent's sweeping, unfounded allegations in the FBI tip, his responses at depositions and his testimony and behavior in court go beyond the bounds of decency, and are intolerable in a civilized community. It is not acceptable to assert that Tom Oehmke is a pipe bomber because his father was a bombardier in WWII. Nor is it acceptable to spout the equation that because Tom Oehmke (A) is evil and pipe bombers (B) are evil that A=B. Whether these

repeated unsubstantiated comments are due to some undiagnosed mental health condition or the product of an angry man, they are not ones that a person is commonly expected to endure in the normal course of life.

For reasons stated, the Court enters the following Order:

IT IS HEREBY ORDERED that no violation of MCL 750.411s has been established and the Order to Show Cause is dismissed.

IT IS FURTHER ORDERED that Petitioners' Motion to Modify the PPO is granted in part and denied in part.

IT IS FURTHER ORDERED that Respondent's Motion to Terminate the PPO is denied.

IT IS FURTHER ORDERED that the attached Personal Protection Order shall be entered.

11/15/2019 @ 03:06PM
/S/ HON. MARIAN KROMKOWSKI
Family Division Judge

Appendix E
Summary Disposition Transcript (06/17/2019)

Appellant's Michigan Court of Appeals Appendix Vol. 3, p. 313.

State of Michigan
13th Judicial Circuit -- Leelanau County

Joan M. Brovins and Thomas H. Oehmke, Plaintiffs	Case 2018-010099-NO
vs.	Hon. Thomas G. Power Circuit Court Judge
Patrick Cantwell Guinan (a/k/a Guinan Sr.) and Patrick Andrew Guinan (a/k/a Guinan Jr.), Defendants	

[1] Transcript of Proceedings
[On Defendants' Motions
For Summary Disposition]

before the Honorable Thomas G. Power, Circuit Court Judge, presiding on Monday, June 17, 2019 in Traverse City, Michigan.

THOMAS H. OEHMKE for Plaintiffs
BRYAN T. MCGORISK for Guinan JR
THOMAS G. HACKNEY for Guinan SR

*** [12]
THE COURT: That was before the [FBI] report. Have you amended [the Complaint] to include this false report to the FBI?

MR. OEHMKE: We have, Judge. The Court gave us

leave to amend our complaints and we added the two FBI tips and the subsequent raids which are part of intentional infliction of mental and emotional distress. ***

[15]
THE COURT: (INTERPOSING) The last published opinion I see on this privileged report of criminal activity or be a witness is this Eddington v Torrez, 2015. That's the last published thing we have, am I correct?

MR. OEHMKE: I believe that's the latest in date. We have two after Pizza Hut which suggests that **there may not be an absolute privilege.**

THE COURT: Here's what Eddington says about [16] Pizza Hut. **Pizza Hut raised a hypothetical possibility that there would remain a qualified privilege. If no absolute privilege exists, it has no bearing on the actual law. That is what this panel of the Court of Appeals thought.**

MR. OEHMKE: We distinguished all of the cases. You saw in our brief our extensive footnote showed that **all of the cases that have involved absolute privilege have had to do with victims making a complaint or a witness making a complaint. This case here is a person who was neither a victim, Guinan, Jr., nor is he a witness. He is simply a speculator and therefore no absolute privilege should apply to him** and no case law applies to the facts of this situation.

THE COURT: All right.

MR. OEHMKE: I think those are my arguments, Judge. ***

[19]
THE COURT: Mr. Guinan, Jr. apparently during the pendency of the early stages of this lawsuit apparently provided tips to the Federal Bureau of Investigation suggesting that Mr. Oehmke was the individual who sent out the mail bombs to various political figures and journalists prior to the 2016 -- 2018 election -- pardon me. It was '18, wasn't it? Yeah, it was 2018 and he reported Mr. Oehmke was a likely suspect that made various claims about Oehmke having sent a similar package to his father.

We do know that Mr. Guinan, Jr. ... that's what he did and that, of course, was false and I think taking the version most favorable to the Plaintiffs we would say that there is no -- that Guinan, Jr. knew it was false and did it for malicious reasons.

The defense argues that there is an absolute privilege to report things to the police and that would include even things that are done untruthfully and maliciously and there appears to be some disagreement in the Appellate Court. **There's one published opinion that appear [20] to claim that it is more of a limited privilege,** but unpublished decisions, of course, are not binding.

We have a published decision, the last word on the subject, so to speak. Eddington v Torrez, 311 Mich App 198, 2015 and it actually involves a defamation action against a gasoline company for reporting that the Plaintiffs had stolen gasoline on four occasions from them. So this was a victim of a gasoline theft reporting who they say did it, but the

language of the Eddington v Torrez case -- I am looking starting on Page 202 they read the initial **Shinglemeyer case, a case from a hundred and some years ago as creating an absolute privilege, not a limited privilege** and they then -- the Court of Appeals then states referring to Simpson vs Burton, 328 Mich 557, a 1950 Supreme Court case that said, "In the latter case our Supreme Court additionally emphasized that **the privilege attached even if the reporting party made the report maliciously." So the latest published decision which deals with this says it is a complete privilege even if the report is made maliciously.**

Now, it goes on to state that the remedy is it is a crime to lie to a police officer or falsely report a crime and I have seen charges of false report of a felony and we have seen several of those over the years. So it says, "Consequently, false reports may not be made with impunity" and the Court of Appeals implies that that is the [21] only remedy and whatever reason the law enforcement authorities may have for choosing not to prosecute in this case, of course, I am not privy to their thinking, but prosecutors have a lot of discretion as they must in a fair system, but in any event that is what that case holds.

Mr. Oehmke suggests that **there's a difference between a false report by a witness or a victim which should be entitled maybe to this complete privilege and false report by somebody who is not a witness or a victim,** but that is a false distinction because anyone who makes a report and actually that includes Guinan, Jr. reported some facts, some alleged facts in support of

his thoughts that Mr. Oehmke was the election bomber.

So I think **the privilege attaches and I am not saying it is a good idea. I kind of like having a more limited proof. When you intentionally lie to the police to injure somebody I think it ought to be actionable, but that's not what the state of the law is in Michigan** at this time. So **the claim for defamation based upon the false report to the FBI is barred by that privilege.**

***

It might be argued that **the false reporting to [22] the FBI of a serious and indeed heinous crime that that might be extreme and outrageous, but we have this privilege that the Michigan courts have adopted for reporting of criminal activity and consequently that can't be used to prove severe emotional distress or the intentional infliction of emotional distress.** ***

[40]

Dated this 8th day of July, 2019.
/S/ JAMES M. LINDSAY, RMR, CSR 301
Acting Official Court Reporter

Appendix F
20 State Digests on Qualified Immunity

2020 - Idaho Supreme Court cited *New York Times v. Sullivan*[1] holding that defamatory statements by private individuals to a LEO before instituting criminal charges are not entitled to an absolute privilege but only a qualified privilege that does not apply when the defamatory statements are made with malice.[2]

2013 - Kentucky Supreme Court held that qualified privilege attaches to allegedly defamatory reports made to law enforcement authorities for investigation and the speaker is afforded immunity unless the defamatory statement was malicious.[3]

2009 - Indiana Supreme Court held that, to defeat qualified privilege, reports of criminal activity to a LEO must be made knowing the statement was false or so obviously mistaken as to support a reasonable inference that the relator had lied.[4]

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[1] *New York Times Co. v. Sullivan,* 376 U.S. 254 (1964).

[2] *Berian v. Berberian,* 168 Idaho 394, 483 P.3d 937, 948 (2020).

[3] *Stilger v. Flint,* 391 S.W.3d 751 (Ky. 2013), as corrected (Mar. 12, 2013).

[4] *Williams v. Tharp,* 914 N.E.2d 756, 763 (Ind. 2009).

2007 - Connecticut Supreme Court held that false and malicious statements made by witnesses to a LEO were qualifiedly, rather than absolutely, privileged.[5]

2005 - Nevada Supreme Court held that the qualified privilege of communications to police regarding criminal wrongdoing can be defeated when an informant acted with reckless disregard for their veracity or with knowledge of their falsity.[6]

2002 - Oregon Supreme Court held that the report of an alleged crime to police was subject to defense of qualified privilege.[7]

1996 - North Dakota Supreme Court held that defamatory statements voluntarily made to a LEO during an investigation of criminal activity are qualifiedly privileged provided defendants did not act with malice to abuse their qualified privilege.[8]

1995 - District of Columbia Court of Appeals (the District's court of last resort) held that a qualified privilege exists when a statement about suspected wrongdoing is made in good faith to a LEO.[9]

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[5] *Gallo v. Barile,* 284 Conn. 459, 935 A.2d 103 (2007).

[6] *Pope v. Motel 6,* 121 Nev. 307, 114 P.3d 277 (2005).

[7] *DeLong v. Yu Enterprises, Inc.,* 334 Or. 166, 47 P.3d 8 (2002).

[8] *Richmond v. Nodland,* 552 N.W.2d 586 (N.D. 1996).

[9] *Columbia First Bank v. Ferguson,* 665 A.2d 650 (D.C. 1995).

1993 - Maryland Supreme Court held that communications made to police before any official investigation are afforded no absolute immunity in a defamation action.[10]

1992 - Florida Supreme Court held that defamatory statements voluntarily made by private individuals to the police prior to the institution of criminal charges are presumptively qualifiedly privileged, not absolutely privileged.[11]

1984 - Maine Supreme Court held that statements made to the sheriff's department for the purpose of aiding in the detection of crime were entitled to qualified privilege.[12]

1972 - Mississippi Supreme Court held that a conditionally privileged statement to a LEO was abused and that the slanderous statements charging plaintiff with being a thief were false and made out of ill will, spite, and in bad faith.[13]

1974 - Wisconsin Supreme Court held that statements made by citizens to a LEO have been given conditional, not absolute, privilege provided the damaging remarks are made in good faith without malice.[14]

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[10] *Caldor, Inc. v. Bowden,* 330 Md. 632, 653–54, 625 A.2d 959, 969 (1993).

[11] *Fridovich v. Fridovich,* 598 So. 2d 65, 67 (Fla. 1992).

[12] *Packard v. Central Maine Power Co.,* 477 A.2d 264, 268 (Me.1984).

[13] *Arnold v. Quillian,* 262 So. 2d 414, 416 (Miss. 1972).

[14] *Bergman v. Hupy,* 64 Wis. 2d 747, 751, 221 N.W.2d 898, (continued...)

1959 - Supreme Court of Oklahoma held that a libelous statement made to the Attorney General (as the chief LEO of the state) is not a privileged communication.[15]

1958 - Delaware Supreme Court held that a statement to a police officer using an offensive epithet (i.e., *witch* spelled the familiar way coupled with accusing the referenced woman of having forged checks) was evidence of malice and an abuse of the qualified privilege.[16]

1947 - Rhode Island Supreme Court held that a communication to a LEO is qualifiedly privileged if made in good faith and to bring a criminal to justice, but the rule has its limitations.[17]

1906 - Massachusetts Supreme Court held that a person who, in the presence of a police officer makes wanton and malicious charges of larceny, cannot claim the protection of a privilege had the charges been made in good faith and without malice.[18]

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[14](...continued)
901 (1974).

[15] *Magness v. Pledger,* 1959 OK 1, 334 P.2d 792 (1959).

[16] *Newark Tr. Co. v. Bruwer,* 51 Del. 188, 141 A.2d 615 (1958).

[17] *Sylvester v. D'Ambra,* 73 R.I. 203, 54 A.2d 418 (1947).

[18] *Robinson v. Van Auken,* 190 Mass. 161, 76 N.E. 601 (1906).

1905 - Arkansas Supreme Court held that a written statement made to a peace officer about a rumor (i.e., that an unmarried woman's fornicated – then a crime – giving birth to a child who was secretly buried) is privileged if made in good faith with an honest desire to promote justice; but if malicious and without probable cause to believe it true, it is not privileged.[19]

1897 - Missouri Supreme Court held a report about a plaintiff made to the marshal (i.e., "everywhere she [plaintiff] goes, money disappears. She is an adventuress of the first water, and destined to become a noted crook") was not privileged. The defendant was not prosecuting his own rights or interest, and personally knew nothing of the facts connected with a certain larceny that had occurred. These utterances were volunteered and not privileged.[20]

1888 - Nebraska Supreme Court held that every person who believes a crime has been committed has the right to communicate their suspicion, but the existence of a reasonable and probable cause for the suspicion is essential to make the communication privileged.[21]

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[19] *Miller v. Nuckolls,* 77 Ark. 64, 91 S.W. 759, 760 (1905).

[20] *Hancock v. Blackwell,* 139 Mo. 440, 41 S.W. 205 (1897); see, also, *Davenport v. Armstead,* 255 S.W.2d 132, 134–36 (Mo.App.1952) (qualified not absolute privilege for reports of criminal activity made to police officers).

[21] *Pierce v. Oard,* 23 Neb. 828, 37 N.W. 677 (1888).