

Circuit Court for Harford County
Case No. C-12-CV-22-000721

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0888

September Term, 2024

MICHAEL A. EULER, SR.

v.

ALBERT J. PEISINGER, JR.

Leahy,
Kehoe, S.,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: October 21, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises out of a defamation case in the Circuit Court for Harford County filed by Appellant, Michael A. Euler, Sr. (“Mr. Euler”), against Appellee, Albert A. Peisinger, Jr. (“Mr. Peisinger”). *See Euler v. Peisinger*, No. C-12-CV-22-000721 (Cir. Ct. for Harford Cnty., June 13, 2024). The circuit court held a trial on the merits from June 11, 2024 to June 13, 2024. *Id.* At the close of Mr. Euler’s case-in-chief, but prior to submitting the case to the jury, Mr. Peisinger moved for a directed verdict and judgment in his favor. *Id.* The circuit court granted Mr. Peisinger’s motion and dismissed Mr. Euler’s case. This appeal followed.

I. QUESTIONS PRESENTED

Mr. Euler presented two questions for our review:

1. Did the Circuit Court err in finding, as a matter of law, that the two statements at issue were incapable of a defamatory meaning?
2. Did the Circuit Court err in determining that evidence of malice was required to establish defamation against a private individual?

For the reasons we outline below, we affirm the judgment of the Circuit Court for Harford County.

II. BACKGROUND

Mr. Euler is a land developer and businessman who has resided and worked in Harford County, Maryland, for many years. When Mr. Euler filed his Complaint, Mr. Peisinger was the incumbent State’s Attorney for Harford County, campaigning in the Republican Primary against Alison M. Healey (“Ms. Healey”). Mr. Euler was a member of Ms. Healey’s campaign committee and, through several of his LLCs, was Ms. Healey’s

top donor. Mr. Euler also furnished a trailer on his property for Ms. Healey to use as her campaign headquarters, which included Ms. Healey's campaign slogan, "Make Crime Illegal Again." As the election neared, Mr. Peisinger hired political strategist Leonard Foxwell ("Mr. Foxwell") and granted him administrative rights to his campaign Facebook page titled, "Peisinger for Harford County State's Attorney." After two phone calls and an email exchange between Mr. Foxwell, Mr. Peisinger, and Mr. Peisinger's attorney, Eric McLaughlin ("Mr. McLaughlin"), the team decided to make Mr. Euler's support of Ms. Healey a major issue in the final weeks leading up to the election.

Mr. Euler bases his defamation claim on statements in two posts from Mr. Peisinger's campaign Facebook page. First, the July 9, 2021 post reads in its entirety:

This is Alison Healey's campaign headquarters. Aside from the fact that it's the worst kind of visual blight on our beautiful county, I have two problems with this.

First, her clear insinuation that our State's Attorney's Office is soft on crime is a lie. According to the data provided by our own Sheriff's Office, crime has gone down in the last three years. The data *[sic]* is clear – working in partnership with Sheriff Gahler and his team, my office has made the people of Harford County safer and more secure.

Second, this glorified cargo container has been donated to Ms. Healey by none other than Mike Euler – the notorious Fallston developer and her chief political patron. A review of Ms. Healey's finance reports confirms that Euler has donated thousands of dollars to her campaign through his various business entities.

Let me be very clear. *There is only one reason why a private land developer would be interested in, essentially, buying his own state's attorney. It has nothing to do with making us safer. It has everything to do with making himself wealthier.* The consequences of having Harford County's chief legal officer in Mike Euler's *back pocket* cannot be overstated.

Harford County Republicans have a very clear choice to make on July 19. We can go to the polls and vote for a candidate who lies for votes and is beholden to a developer who bulldozes our farms for profit. In other words, Harford's own Marilyn Mosby.

Or we can vote for a true conservative who will continue to put violent criminals away, enforce the law fairly and without favor, and will answer only to the working people of Harford County. In other words, a proven leader.

On July 19, let's send a message that Harford County is truly special and that it isn't for sale to the highest bidder.¹

Second, the July 13, 2021 post reads in its entirety:

Over the past few days, I've received several dozen texts and messages from Harford Countians who want to know why *a major land developer like Mike Euler literally wants to buy his own State's Attorney*.

The answer is really simple – I had the audacity to stand up to Mike Euler. I'm happy to explain.

In 2019, Mike was arrested for stealing the keys out of a truck that someone parked on the grass at his business. Instead of, just once, accepting responsibility for his actions, Mike demanded that the police arrest the driver of the truck for destruction of property or he would not return the keys. Naturally, the officers refused his demands.

Within five days after his arrest, Mr. Euler's lawyer threatened the State Police and the individual troopers with lawsuits as a result of his arrest. So, for those of you keeping score, Mike Euler has, by this point, stolen the keys to another person's vehicle, demanded that they be arrested, and threatened to sue members of our law enforcement community simply for doing their jobs.

Needless to say, Mike and his legal counsel tried to "encourage" me to put his case in a drawer and move on. And needless to say, *I decided to treat*

¹ Two images were included at the bottom of this post: one image depicts Ms. Healey's campaign slogan, "Make Crime Illegal Again," and the other image, though difficult to view, depicts the trailer Ms. Healey used as her campaign headquarters.

Mike Euler like I would any other thief and moved forward with prosecuting the case. Ultimately, Mike entered a plea and accepted probation.

It wasn't long after the resolution of his criminal case that he became a max donor to Alison Healey's campaign. Imagine, if you will, how differently Mike Euler's case would be handled if Ms. Healey was to be elected State's Attorney.

We have a very clear choice on July 19. We can re-elect a State's Attorney who has proven that he uphold[s] the law without fear or favor. Or we can take our chances with a failed prosecutor who has been bought and paid for by one of Harford County's most notorious and ruthless bullies.

I respectfully ask for your vote on July 19.²

The two Facebook posts refer to an incident that occurred in early December 2019.

On December 5, 2019, Mr. Euler entered a white freightliner truck parked on the lawn of a shopping center that he owned. At the time, Mr. Euler was concerned that the truck was leaking hydraulic fluid, causing damage to his property. Mr. Euler proceeded to climb into the truck, while its engine was running, take the keys out of the ignition, put them in his pocket, exit the truck, and enter his own car. Mr. Euler then drove to his office approximately 130 feet away with the keys to the truck in his pocket. The occupants of the truck approached Mr. Euler and said they were going to call the police. Maryland State Police were called, and Maryland State Trooper Matthew Dill, ("Trooper Dill") arrived on the scene. Trooper Dill asked Mr. Euler if he had the keys to the truck, and Mr. Euler answered in the affirmative. Trooper Dill then asked Mr. Euler several times to hand over

² Two images are included at the bottom of this post. The first image is a screenshot from the Maryland Judiciary Case Search website, listing *State of Maryland v. Michael Alan Euler, Sr.*, filed 08/19/2020, C-12-CR-20-000462. The second image is another Case Search screenshot, listing Mr. Euler's name, description and address, and Mr. Euler's prior counsel's name and address.

the keys because Mr. Euler did not initially comply. Mr. Euler stated that he would not hand over the keys until the owner of the truck agreed to repair the perceived damage to his property. After Mr. Euler handed the keys to Trooper Dill, Trooper Dill arrested Mr. Euler and issued a criminal citation for charges under Maryland Code, Criminal Law Article § 7-104: Theft Less than \$100 – From a Motor Vehicle. The criminal citation states that Mr. Euler “did steal property of DMS Sign Connection, having a value of less than \$100.00.”

Working under Mr. Peisinger, then-State’s Attorney for Harford County, Assistant State’s Attorney Megan Lintott (“Ms. Lintott”) was assigned to prosecute Mr. Euler. Ms. Lintott reviewed the case and entered a nolle prosequi on the theft charge against Mr. Euler, believing it to be inappropriate. However, prior to nolle prosequing the theft charge, Ms. Lintott filed a criminal information in the District Court of Maryland for Harford County with two charges: (i) violation of Maryland Code, Criminal Law Article § 6-206: Breaking and Entering Motor Vehicle – Rogue and Vagabond; and (ii) violation of Maryland Code, Transportation Article § 14-104: Willful Damage or Tampering of Vehicle Without Consent of Owner Prohibited. Mr. Euler prayed a jury trial, and the matter was transferred to the Circuit Court for Harford County. Ultimately, Mr. Euler entered an *Alford*³ plea and accepted probation before judgment on the Transportation Article § 14-104 charge after completing community service required by his plea agreement.

³ *North Carolina v. Alford*, 400 U.S. 25 (1970).

In his Complaint, Mr. Euler alleges that Mr. Peisinger referred to Mr. Euler as a thief and implied that Mr. Euler was trying to buy his own State's Attorney (Ms. Healey) to make himself wealthier. Mr. Euler alleges Mr. Peisinger made the statements in an attempt to defame Mr. Euler's character and credibility for supporting Mr. Peisinger's challenger. Mr. Euler maintains he did not commit theft, was never convicted of theft and did nothing wrong by supporting Ms. Healey's candidacy. Mr. Euler brought three claims under Maryland common law against Mr. Peisinger for defamation, false light, and invasion of privacy.

Before trial, the parties filed several motions *in limine* which were argued and held under consideration by the circuit court until the presentation of the evidence. At trial, Mr. Euler testified and called several witnesses, including Ms. Lintott, Mr. Peisinger, Ms. Healey, and Mr. Foxwell. At the conclusion of Mr. Euler's case-in-chief, Mr. Peisinger moved for a directed verdict and asked the court to dismiss Mr. Euler's case. The circuit court then recited the law and facts it relied on in ruling on the motion, including testimony from Mr. Foxwell, Mr. Euler, and Ms. Lintott. The circuit court first determined that the July 9 statement is not defamatory as a matter of law. The circuit court then explained that even if the July 13 statement is defamatory, Mr. Euler would not prevail since he failed to present sufficient evidence of actual malice. On this basis, the circuit court granted Mr. Peisinger's motion for a directed verdict and dismissed Mr. Euler's case. The circuit court also found that the July 13 statement was made by Mr. Foxwell and could not be attributed to Mr. Peisinger.

Mr. Euler timely noted his appeal. Both parties filed briefs to this Court. This Court held oral argument on the matter on September 5, 2025.⁴ This opinion follows.

Additional facts will be included in the discussion as they become relevant.

III. STANDARD OF REVIEW

An appellate court reviews the denial of a motion for judgment in a civil case de novo, applying the same standard as the circuit court. *Ayala v. Lee*, 215 Md. App. 457, 467 (2013). As such, we assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the non-moving party. *Mayor & City Council of Baltimore v. Stokes*, 217 Md. App. 471, 491 (2014). Consequently, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration. *Id.*

IV. DISCUSSION

The circuit court did not err in granting Mr. Peisinger’s motion for a directed verdict. The circuit court correctly found that the July 9 statement was not defamatory as a matter of law. A major purpose of the First Amendment is the free discussion of governmental affairs. *Mills v. State of Alabama*, 384 U.S. 214, 218 (1966). The discussion of governmental affairs includes discussion of elected officials, candidates for office, and matters related to the political process. *Id.* at 218–19. After the circuit court noted that the portion of the July 13 statement, “[a]nd needless to say, I decided to treat Mike Euler like I would any other thief and moved forward with prosecuting the case,” was “a little more

⁴ Neither Mr. Euler nor his counsel attended oral argument.

problematic,” the circuit court nonetheless correctly found that “looking at it in the totality of circumstances and in context,” the statement was not defamatory as a matter of law. The circuit court also pointed out how the evidence suggests that Mr. Foxwell was not an agent of Mr. Peisinger and correctly found there was insufficient evidence to demonstrate that if either or both of the statements were “authorized or consented or acquiesced to by Mr. Peisinger,” neither statement was made with the required level of malice. Thus, it was proper for the circuit court to rule in favor of Mr. Peisinger and dismiss the case.

We conclude that Mr. Euler failed to present sufficient evidence that the July 13 statement was false. When read in context, the statement is substantially correct and therefore not capable of defamatory meaning as a matter of law. Second, Mr. Euler failed to show that Mr. Peisinger acted with actual malice in publishing either the July 9 or July 13 statements. Whether a showing of actual malice was required to establish that Mr. Peisinger was legally at fault because the State’s Attorney election was a matter of public concern and Mr. Euler was a limited public figure, or, alternatively to establish that Mr. Peisinger abused his First Amendment conditional privilege, the end result is the same: Mr. Euler was required to demonstrate actual malice. Because Mr. Euler failed to do so, dismissal by the circuit court was not erroneous.

A. The July 13 Statement is Not False

1. Parties’ Contentions

Mr. Euler contends that the July 13 statement, “treated [Mr. Euler] like any other thief,” is defamatory because the “plain and ordinary meaning of someone having ‘stolen’

and that the State’s Attorney for Harford County was ‘treating someone just like any other thief’, is calling that person a thief.” In his reply⁵ brief, Mr. Euler further contends that the July 13 statement “grossly elevated [him] to the status of a thief instead of a landowner trying to prevent persons who had damaged his property from leaving the scene.” Mr. Euler argues that he was “neither convicted of theft nor has he committed an act of [a] thief.” Although Mr. Euler admits that he was “charged on criminal citation with stealing the keys,” he maintains that the statement made on [Mr. Peisinger’s] campaign page calling him a “thief” was false.

By contrast, Mr. Peisinger contends that the statement is literally true. Mr. Peisinger argues that the statement does not call Mr. Euler a thief, but rather, is a claim about Mr. Peisinger’s actions, not Mr. Euler’s status as a thief. Mr. Peisinger further asserts that even if the statement could be found to be provably false, it is true, given Mr. Euler’s actions on December 5, 2019 which led to Mr. Euler’s prosecution.

⁵ In a motion filed on March 7, 2025, Mr. Peisinger argues that Mr. Euler’s reply brief raises new issues and arguments not referenced in Mr. Euler’s initial brief nor Mr. Peisinger’s brief in violation of Rule 8-504(a)(3) and (6) and corresponding caselaw. Accordingly, Mr. Peisinger respectfully requests that we strike Mr. Euler’s reply brief in its entirety, or, in the alternative, disregard any arguments or issues raised for the first time. While we agree with Mr. Peisinger that some issues were not properly raised by Mr. Euler in his initial brief, we elect to consider Mr. Euler’s reply brief, and the arguments contained therein as a courtesy. *See Fearnow v. Chesapeake & Potomac Tel. Co.*, 342 Md. 363, 384 (1996) (explaining that appellate courts retain the discretion to consider arguments raised for the first time in a reply brief).

2. Applicable Law: Defamation

To present a prima facie case of defamation, the plaintiff must establish that: (1) the defendant made a defamatory statement to a third person, (2) the statement was false, (3) the defendant was legally at fault in making the statement, and (4) the plaintiff suffered harm. *Lindenmuth v. McCreer*, 233 Md. App. 343, 356–57 (2017) (citing *Offen v. Brenner*, 402 Md. 191, 198 (2007)). A defamatory statement is one “which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person.” *Id.* at 357. To determine whether a publication is defamatory, the publication must be read as a whole because “words have different meanings depending on the context in which they are used[,] and a meaning not warranted by the whole publication should not be imputed.” *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012) (quoting *Batson v. Shiflett*, 325 Md. 684, 726 (1992)). “A false statement is one that is not substantially correct.” *Id.* The plaintiff bears the burden of proving the statement is false. *Batson*, 325 Md. at 726.

As is true for defamation, for false light and invasion of privacy claims, the statement concerning the plaintiff must be false. *Bagwell v. Peninsula Regional Medical Center*, 106 Md. App. 470, 514 (1995) (“[A] defendant in a false light case is entitled to judgment as a matter of law, as in defamation claims, where the statement is true.”). Thus, if a plaintiff cannot establish a prima facie case of defamation because they cannot meet their burden of proving that the statement is false, any additional common law claims for false light and invasion of privacy must also fail. *See id.*

3. Analysis

Mr. Euler failed to show that the July 13 statement was false. In fact, the July 13 statement is true. The text of § 7-104 reads, in part, as follows:

(a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person . . . (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

Md. Code Ann., Crim. Law § 7-104(a)(3) (West 2017). In simplest form, on December 5, 2019, Mr. Euler entered a vehicle without permission, removed keys which did not belong to him, and drove away with those keys. When doing so, Mr. Euler’s actions constituted willful exertion of unauthorized control over property, knowing that the concealment of the keys in his pocket would deprive the owner of their property. Thus, Mr. Euler committed the predicate acts to be charged, prosecuted, and convicted of theft under § 7-104(a)(3) and may be truthfully regarded as a “thief” in the legal sense of the term.

The dictionary defines the noun “thief” as “[a] person who takes someone else’s property without the owner’s knowledge or consent, intending to keep or sell it; a person who steals.” *Thief*, *n.*, Oxford English Dictionary (2d ed. 1989) (revised June 2025). However, the legal definition of a thief is more expansive than the dictionary definition because the legal definition looks to depriving someone of possession of their property. Section 7-104(a) of the Criminal Law Article provides:

(a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:

- (1) intends to deprive the owner of the property;
- (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

Section 7-101(c) of the Criminal Law Article defines “deprive”:

(c) “Deprive” means to withhold property of another:

- (1) permanently;
- (2) for a period that results in the appropriation of a part of the property’s value;
- (3) with the purpose to restore it only on payment of a reward or other compensation; or
- (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it.

In this context, it is necessary to examine Mr. Euler’s conduct. On December 5, 2019, Mr. Euler removed the keys from someone else’s vehicle without their consent. This removal deprived the owner of the truck of the keys, themselves, and the use of the truck while Mr. Euler possessed the keys. When Trooper Dill asked him for the keys, Mr. Euler said, “I just would like to know how my property’s getting fixed, and this all can be done.” The owners of the truck never explained to Mr. Euler if and when they planned to repair the damage to his property, and without law enforcement intervention, we cannot know for certain whether Mr. Euler ever planned on returning the keys. By depriving the owner of the truck possession of the keys, Mr. Euler stole keys. Accordingly, it was truthful to say Mr. Euler was a “thief.”

At risk of belaboring the point, Mr. Peisinger’s office did treat Mr. Euler “like any other thief” in that once Mr. Euler was charged under § 7-104, Ms. Lintott—acting under Mr. Peisinger’s supervision—evaluated the sufficiency of the evidence to prosecute Mr. Euler, and ultimately substituted Criminal Law Article § 7-104 for what she believed to be

the more appropriate provisions under Criminal Law Article § 6-206 and Transportation Article § 14-104.

In sum, Mr. Peisinger's July 13 statement that he "treated [Mr. Euler] like any other thief" was substantially true, and therefore, not defamatory as a matter of law.

B. Neither Statement Was Published with Actual Malice

1. Parties' Contentions

Mr. Euler contends that proof of malice is not required in a defamation case concerning a private individual. Mr. Euler argues that "assuming the lower court may have been discussing the issue of damages, malice is not required when Plaintiff proves some actual damage" which Mr. Euler argues includes "injury to reputation, mental anguish and humiliation." Mr. Euler then explains that "a private individual may prove damages, which are presumed if the per se defamatory statements were made with a knowing falsehood or made with a reckless disregard for the truth or in the absence of that prove actual damage which includes injury to reputation, mental anguish and humiliation." If we understand Mr. Euler's argument correctly, Mr. Euler contends that he may recover (i) presumed damages if he proves actual malice, or (ii) actual damages if he cannot prove actual malice. Mr. Euler asserts there was evidence from which a reasonable jury could find that Mr. Peisinger made the defamatory statements with actual malice because,

[a]t the time he made these statements, Peisinger knew or should have known that his characterization of Euler as a "thief" and that he had "stolen" something was not accurate. He knew Euler was never convicted of theft. Euler never committed the crime of theft. Euler never stole anything. Peisinger knew that Euler had never admitted to theft, in his Alford plea or

otherwise. Moreover, Peisinger knew, or should have known, that the theft charge has been dismissed by his office.

With respect to the July 9 statement, in his statement of facts, Mr. Euler highlights how Mr. Peisinger said Mr. Euler had “bought and paid for” Ms. Healey for the purposes of “making himself wealthier.” Mr. Euler alleges “Peisinger made these statements outside his official duties as State’s Attorney for Harford County and in furtherance of his campaign against Healy (*sic*) but rather to bolster his campaign by damaging Euler’s character and reputation in the community with vindictive Facebook posts.” On the other hand, Mr. Peisinger contends that Mr. Euler did not meaningfully argue that the July 9 statement was defamatory or malicious in his briefing to this Court, and therefore it is not adequately preserved for our review. We generously view Mr. Euler’s use of the word “vindictive” to describe Mr. Peisinger as sufficient argument by Mr. Euler that Mr. Peisinger acted with actual malice in making the July 9 statement and will address it accordingly.

Mr. Peisinger avers that Mr. Euler failed to prove that Mr. Peisinger himself actually made the statements at issue, and thus cannot be found to have made them with actual malice. Mr. Peisinger asserts that Mr. Euler’s “hodgepodge of vicarious liability theories raised at trial were not raised in his brief and are therefore waived.” Mr. Peisinger continues with three arguments as to why Mr. Euler is required to prove actual malice. First, a private figure plaintiff must prove actual malice by clear and convincing evidence if the statement involves a matter of public concern. Second, a private figure plaintiff seeking only

presumed and punitive damages must prove actual malice by clear and convincing evidence. Third, actual malice is required because Mr. Euler is a limited public figure.

2. Applicable Law: Actual Malice

Actual malice is defined as a statement made “with knowledge that it was false or with reckless disregard of whether it was false.” *See Capital Gazette Newspapers, Inc. v. Stack*, 293 Md. 528, 538 (1982); *see also New York Times v. Sullivan*, 376 U.S. 254, 279–80 (1964). Our Court has previously explained that to establish actual malice, it is not enough to show that the alleged defamatory statement:

was erroneous, derogatory or untrue; the publisher acted out of ill will, hatred or a desire to injure . . . ; the publisher acted negligently; the publisher acted in reliance on the unverified statement of a third party without personal knowledge of the subject matter of the defamatory subject; or the publisher acted without undertaking the investigation that would have been made by a reasonably prudent person. . . . Malice is not established if there is evidence to show that the publisher acted on a reasonable belief that the defamatory material was “substantially correct” and “there was no evidence to impeach the [publisher’s] good faith.”

Lindenmuth, 233 Md. App. at 360 (citing *Bagwell*, 106 Md. App. at 512–13).

a. Legal Fault

The legal fault requirement in a defamation case differs depending on the status of the plaintiff.⁶ *See Samuels v. Tschechtelin*, 135 Md. App. 483, 544 (2000) (“The ‘fault’ element of the calculus may be based either on negligence or actual malice.”). Statements

⁶ The standard also differs depending on which type of damages are sought. *See Jacron Sales Co., Inc. v. Sindorf*, 276 Md. 580, 596–601 (1976), *overruled on other grounds by Le Marc’s Mgmt. Corp. v. Valentin*, 349 Md. 645, 651 (1998) (requiring actual malice in purely private matters only for claims seeking punitive and presumed damages).

pertaining to public officials and to public figures on matters of public concern require a showing of “actual malice.” *See New York Times*, 376 U.S. at 279–80 (setting forth “actual malice” standard for “public officials”); *see also Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 154–55 (1967) (extending standard enunciated in *New York Times* to “public figures”).

Speech is a matter of public concern “when it can be fairly considered as relating to any matter of political, social, or other concern to the community.” *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983)). Moreover, when “an individual voluntarily injects himself or is drawn into a particular public controversy, that individual thereby becomes a public figure for a limited range of issues.” *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). A court undertakes a two-part inquiry to determine whether a person is a limited public figure: “(1) was there a particular public controversy that gave rise to the alleged defamation; and, if so, (2) was the nature and extent of the plaintiff’s participation in that particular controversy sufficient to justify public figure status?” *Waicker v. Scranton Times, Ltd.*, 113 Md. App. 621, 630 (1997).

Five factors are considered:

- (1) whether the individual has access to channels of effective communications;
- (2) whether the individual voluntarily assumed a role of special prominence in public controversy;
- (3) whether the individual sought to influence the resolution or outcome of controversy;
- (4) whether controversy existed prior to the publication of the defamatory statements; and
- (5) whether the individual retained public figure status at the time of the alleged defamation.

Id. at 631 (citing *Fitzgerald v. Penthouse Intern., Ltd.*, 691 F.2d 666, 668 (4th Cir. 1982)).

b. First Amendment Conditional Privilege

“Where a plaintiff can establish a prima facie case of defamation, the defendant bears the burden of proving that a privilege existed at the time of the statement in order to escape liability.” *Lindenmuth*, 233 Md. App. at 357. Statements pertaining to public officials and to public figures on matters of public concern are subject to a qualified privilege, namely, the First Amendment conditional privilege, which is overcome only by actual malice. *See Seley-Radtke v. Hosmane*, 450 Md. 468, 473–74 (2016). The existence of a First Amendment conditional privilege is a question of law. *Id.* at 474.

Although the issue of abuse of a qualified privilege, e.g., the First Amendment conditional privilege, is typically reserved for the finder of fact, “the plaintiff must produce facts, admissible in evidence, demonstrating the defendant abused the privilege, in order to generate a triable issue for the fact-finder.” *Lindenmuth*, 233 Md. App. at 360–61 (citing *Piscatelli*, 424 Md. at 307). “In other words, the issue of malice ‘need not be submitted to the fact-finder when the plaintiff fails to allege or prove facts that would support a finding of malice.’” *Id.* at 361 (quoting *Piscatelli*, 424 Md. at 308).

Finally, a qualified privilege that would shield a defendant from liability for defamation applies equally to a claim of false light and invasion of privacy. *See Bagwell*, 106 Md. App. at 514 (citing *Steer v. Lexleon, Inc.*, 58 Md. App. 199 (1984)).

3. Analysis

Mr. Euler bore the burden of presenting sufficient evidence of actual malice either (i) under the legal fault prong because of Mr. Euler’s status as a limited public figure with

respect to a matter of public concern, or (ii) to show that Mr. Peisinger abused his First Amendment conditional privilege. In either case, actual malice was required. Correspondingly, in articulating its ruling on Mr. Peisinger's motion for a directed verdict, the circuit court did not err in reasoning that "where this case [fails] is in terms of malice." The circuit court continued: "There is insufficient evidence to demonstrate that if either one or both of these posts were authorized or consented to or acquiesced to by Mr. Peisinger, they in no way reached the level of malice that is required under the case law." Although the circuit court did not expand on why exactly actual malice was required or why it was lacking, we hold that the circuit court did not err in dismissing Mr. Euler's claims. This is true even when viewing the record in the light most favorable to Mr. Euler. Ultimately, Mr. Euler presented insufficient evidence supporting actual malice with respect to both statements, and thus, these issues need not have been presented to the jury.

a. The State's Attorney Election is a Matter of Public Concern and Mr. Euler is a Limited Public Figure.

Since the outcome of a State's Attorney election clearly relates to the political concerns of the Harford County community, we can fairly characterize the election as implicating a matter of public concern. As noted, both statements posted on the "Peisinger for Harford County State's Attorney" Facebook page were part of a political strategy to persuade voters to choose Mr. Peisinger over Ms. Healey at the ballot box. Particularly, the July 9 post was pure political speech addressing the matter of public concern: the election, and more specifically, the top financial supporter of the leading candidate. As explained by Mr. Peisinger, "[v]oters deserve to know who is funding political campaigns and

communications in order to evaluate the full context of the message and the candidate’s political stances.” As part of Ms. Healey’s campaign, she represented herself as being tough on crime. In our view, Ms. Healey’s acceptance of Mr. Euler’s financial support given his history was both ironic⁷ and relevant to Harford County voters. In conclusion, the State’s Attorney election was a local public controversy, in other words, a matter of public concern.

In undertaking the *Waicker* five-factor analysis, we agree with Mr. Peisinger that Mr. Euler voluntarily injected himself into the crossfires of the election and the nature and extent of Mr. Euler’s participation justifies limited public figure status.

Although Mr. Euler testified that he does not communicate via social media,⁸ the record reveals that Mr. Euler—on at least two occasions—posted large signs containing political messaging on his property that were visible to drivers in the community: (1) “Make Crime Illegal Again” on behalf of Ms. Healey, and (2) “Hey Al,⁹ Pack your Sh  t!

⁷ To be fair, the irony does not stop here. Mr. Peisinger’s Facebook post from July 13 claims *he* is the candidate who is tougher on crime, despite his office’s having chosen to exercise its prosecutorial discretion to *not* prosecute Mr. Euler to the full extent of the law under CR § 7-104.

⁸ [MR. EULER’S COUNSEL]: You don’t do any posting? You mean like on social media accounts?

[MR. EULER]: I do not.

⁹ “Al” presumably refers to Mr. Albert “Al” Peisinger, who ultimately lost the election to Ms. Healey.

Authority: Friends of Mike Euler”¹⁰ displayed publicly on Bond Street on Mr. Euler’s own behalf. Accordingly, Mr. Euler had access to channels of effective communication.

For many years, Mr. Euler also voluntarily assumed a role of special prominence in Harford County politics and often sought to influence the outcome of the elections by providing longstanding support to police organizations and various political candidates. Mr. Euler testified to the following at trial:

[MR. EULER’S COUNSEL]: So how would you describe your relationship with police and police-type organizations prior to this incident?

[MR. EULER]: Voluminous.

* * *

[MR. EULER]: I had given money to Dave Ryden, who ran against Mr. Peisinger in the first race.

* * *

[MR. EULER’S COUNSEL]: ...And the cargo container, is that something you would do for somebody you supported in the campaign?

[MR. EULER]: So *every* campaign, we end up using a space on that very same site when Norm Cochran ran for, I believe, it was sheriff....

* * *

[MR. EULER’S COUNSEL]: What was the purpose of the campaign trailer?

[MR. EULER]: I primarily use that for polling. *We hire* temporary people and make phone calls and *conduct a lot of polling...for a lot of candidates*.

[MR. EULER’S COUNSEL]: Okay, but were you were you active in Ms. Healey’s campaign at this point.

¹⁰ “Friends of...” a common naming convention for campaign committees, carries the implication that Mr. Euler was a candidate himself and had established an official campaign committee, which he had not.

[MR. EULER]: I attended [her] meetings.

When asked why he provided financial contributions only to Ms. Healey and not Mr. Peisinger, Mr. Euler stated: “I only wanted one side to win.” Ms. Healey and Mr. Peisinger’s political campaigns were also well underway prior to the publication of the statements, posted on July 9 and July 13 respectively.¹¹ The July 13 statement implicitly notes the election was just under a week away by asking for votes on July 19.

Lastly, Mr. Euler retained limited public figure status at the time of the alleged defamation. Indeed, Mr. Euler retained limited public figure status through the days following the election when he displayed the sign stating: “Hey Al, Pack Your Sh👉t! Authority: Friends of Mike Euler.” This sign was not ordered or approved by Ms. Healey. Merely donating to a political campaign does not render an individual a public figure.¹² Posting inflammatory signage and representing oneself as either a candidate or political figure with influence over the outcome of the election, however, may.¹³ Mr. Euler’s limited

¹¹ Early voting had already begun, when the statements were posted on Mr. Peisinger’s Facebook page.

¹² See, e.g., *Sellars v. Stauffer Communications, Inc.*, 684 P.2d 450, 454 (1984), *aff’d*, 695 P.2d 812 (1985) (persuasive) (“[A] person does not become a public figure solely by making a contribution to a political party or candidate.”).

¹³ Several jurisdictions have previously recognized limited public figure status for political campaigners, like Mr. Euler. See, e.g., *Buchanan v. Associated Press*, 398 F. Supp. 1196, 1203 (D. D.C. 1975) (persuasive) (finding limited public figure status after considering plaintiff’s extensive involvement and willingness to participate and assist a presidential candidate’s finance committee in any way it requested); *Romero v. Abbeville Broadcasting Service, Inc.*, 420 So.2d 1247, 1249 (La. App. 1982) (persuasive) (finding limited public figure status when plaintiff gave financial support to the sheriff’s campaign in a hotly contested election and conducted a barbecue on election day to encourage

public figure status combined with the fact that the election was a matter of public concern, alters the legal fault element to a higher standard of actual malice. It also subjects any defamatory statements made by Mr. Peisinger to the First Amendment conditional privilege, that may only be stripped by a showing of actual malice.

b. Mr. Euler Failed to Present Sufficient Evidence of Actual Malice

Whether we consider Mr. Foxwell or Mr. Peisinger to be the “publisher” of the posts, as noted above, “malice is not established if there is evidence to show that the publisher acted on a reasonable belief that the defamatory material was “substantially correct” and “there was no evidence to impeach the [publisher’s] good faith.” *See Lindenmuth*, 233 Md. App. at 360 (citing *Bagwell*, 106 Md. App. at 512–13).

First, Mr. Foxwell and Mr. Peisinger did not act in bad faith when publishing either the July 9 or July 13 statements. Mr. Foxwell testified that in drafting the Facebook posts on Mr. Peisinger’s behalf, he acted upon information given to him either by Mr. McLaughlin or Mr. Peisinger.¹⁴ Given Mr. Foxwell’s lack of personal knowledge

donations and to feed haulers and voters whom they hauled to the polls); *Burns v. Times Argus Ass’n, Inc.*, 430 A.2d 773, 775 (Vt. 1981) (persuasive) (finding limited public status when plaintiff campaigned for state governor candidate, passing out leaflets and posters on candidate’s behalf).

¹⁴ Mr. Foxwell could not recall whether the decision to mention Mr. Euler in the Facebook posts was a “strict directive” or a “collaborative thought process” between Mr. Peisinger, Mr. McLaughlin, and Mr. Foxwell. In relevant part, Mr. Foxwell testified as follows:

I can’t recall, honestly, whether it was a strict directive or whether it was a collaborative thought process between the three of us, but given the fact that

regarding the December 2019 incident or Mr. Euler's character.¹⁵ at all, it was reasonable for Mr. Foxwell to rely on the information given to him by Mr. Peisinger and Mr. McLaughlin. Mr. Foxwell further testified that the language used in the posts describing Mr. Euler and the decision to write the posts in the first person (as if Mr. Peisinger himself was speaking) was Mr. Foxwell's own, further negating any evidence of bad faith on the part of Mr. Peisinger. Mr. Peisinger also did not review the posts before they were published. Despite some evidence of "bad blood" between Mr. Peisinger and Mr. Euler, the countervailing motivation behind mentioning Mr. Euler in the Facebook posts was "to go after Ms. Healey" not Mr. Euler.

Besides, with respect to the July 13 statement specifically, Mr. Peisinger himself believed that classifying Mr. Euler as a "thief" was "substantially correct" given the December 5, 2019 incident and Mr. Euler's subsequent guilty plea to TR § 14-104 under Maryland's Antitheft Vehicle Laws. Even if we impute Mr. Foxwell's actions to Mr. Peisinger, the failure to attach the complete procedural history in the Maryland Judiciary Case Search screenshot below the July 13 post to ensure an infallible characterization of Mr. Euler does not rise to the level of falsity required under our case law. Referring to the

Harford County is, relative to many of its neighbors, a fast-growing jurisdiction with a relatively dense population, development is a major issue in any political race in this county. And so, given the fact that we have a private land developer supporting a state's attorney who would be in a position to perhaps, prospectively, render legal judgment on issues that affect his livelihood, we could make that a major issue in the campaign.

¹⁵ Mr. Foxwell testified that he had "[n]ever heard of [Mr. Euler]" before speaking with Mr. Peisinger and Mr. McLaughlin.

accurate case number—from a website accessible to the general public—was sufficient to meet the standard of substantial correctness, or truth. Because Mr. Foxwell and Mr. Peisinger acted on a reasonable belief that the July 13 statement referring to Mr. Euler as a “thief” was substantially correct and there was no evidence to impeach either Mr. Foxwell or Mr. Peisinger’s good faith, Mr. Euler failed to establish actual malice.

In addressing whether there was evidence of actual malice with respect to the July 9 statement, we primarily note the obvious: Mr. Peisinger was not running against Mr. Euler in the election. Mr. Peisinger’s ultimate opponent was Ms. Healey. Any negative implication attached to the sentence, “[t]he consequences of having [Ms. Healey] in [Mr. Euler’s] *back pocket* cannot be overstated,” goes to Ms. Healey’s susceptibility to corruption, not Mr. Euler’s ability or tendency to corrupt. The juxtaposition drawn between Ms. Healey and Mr. Peisinger in the following paragraphs confirms as much: “We can go to the polls and vote for a candidate who lies for votes and is beholden to a developer. . . . Or we can vote for a true conservative who will...enforce the law fairly and without favor. . . .” The record reflects that neither Mr. Peisinger nor Mr. Foxwell were acting out of hatred, or a desire to injure Mr. Euler when publishing the July 9 statement, but rather, were engaging in political speech designed to encourage Harford County voters to elect Mr. Peisinger over Ms. Healey. Hence, actual malice has not been established.

V. CONCLUSION

We conclude by holding that the circuit court did not err in determining that the July 13 statement was not defamatory. The July 13 statement was true and cannot form the basis

for any of Mr. Euler's defamation, false light, or invasion of privacy claims. Moreover, several theories supported the requirement that Mr. Euler present evidence that Mr. Peisinger acted with actual malice, i.e., knowledge that the statements were false or reckless disregard of whether they were false. On review of the whole record, we are not persuaded that Mr. Euler has done so. We hold that Mr. Peisinger did not act with actual malice in publishing either the July 9 or July 13 statements. In determining that the July 13 statement was not defamatory as a matter of law, and that Mr. Euler did not present sufficient evidence of actual malice, the circuit court did not err in granting Mr. Peisinger's motion for a directed verdict and dismissing the case.

**JUDGMENT OF THE CIRCUIT COURT FOR
HARFORD COUNTY IS AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**