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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Bentley D. Price, Judge

Appellate Case No. 2022-00141

Jacob Murdaugh.....Appellant,

v.

Walmart Stores East, LP, Jan Lunsford, and John Doe, Defendants,
Of Whom Walmart Stores East, LP and Jan Lunsford are theRespondents,

**RESPONDENTS’ REPLY TO APPELLANT’S RESPONSE TO RESPONDENTS’
MOTION TO STRIKE MATTERS FROM APPELLANT’S DESIGNATION OF
MATTER**

AND

**RESPONDENTS’ RESPONSE TO APPELLANT’S MOTION FOR LIMITED REMAND
TO ALLOW THE LOWER COURT TO HEAR APPELLANT’S MOTION FOR RELIEF
FROM JUDGMENT AND/OR CLARIFICATION**

Respondents disagree with numerous factual assertions in Appellant’s factual section, titled “Background.” However, such disagreement does not have any bearing upon the present issues before this Court. Procedurally, Respondents filed a Motion for Summary Judgment on July 8, 2021, in the trial court. *See* Exhibit A, Motion for Summary Judgment. On September 14, 2021, Respondents filed a Memorandum in Support of their Motion for Summary Judgment. *See* Exhibit B, Memorandum in Support of Summary Judgment. The parties deposed law enforcement

officer Sergeant Belanger on October 14, 2021. *See* Exhibit C, Cover page of deposition of Sergeant Belanger. On November 3, 2021, nearly one month after the deposition of Sergeant Belanger, the trial court held a hearing on Respondents' Motion for Summary Judgment. *See* Exhibit D, Cover page of Motion for Summary Judgment hearing transcript. The trial court then issued an Order dated December 3, 2021, granting Respondents' Motion for Summary Judgment in full. *See* Exhibit E, Order dated December 3, 2021. Appellant filed a Motion for Reconsideration on December 14, 2021, two months after the deposition of Sergeant Belanger. *See* Exhibit F, Notice of Motion and Motion to Reconsider. The trial court denied Appellant's Motion for Reconsideration in an Order dated January 11, 2022. *See* Exhibit G, Order dated January 11, 2022. Thereafter, Appellant filed a Notice of Appeal on February 9, 2022. *See* Exhibit H, Notice of Appeal.

Appellant requests that this Court allow: (1) a limited remand to ask the trial court to clarify whether Sergeant Belanger's deposition transcript was part of the record at its hearing on Respondents' Motion for Summary Judgment; and/or (2) a limited remand for the lower court to hear a Rule 60(b), SCRCF, motion and allow for a rehearing of summary judgment to consider inclusion of the deposition transcript of Sergeant Belanger in the record.

I. Appellant concedes that certain portions of Appellant's deposition transcript and Respondent Jan Lunsford's deposition transcript were not included in the record before the trial court; thus, this Court should grant Respondents' Motion to Strike those portions of the deposition transcripts from the Designation of Matter.

As a threshold matter, Appellant concedes that identified portions of Appellant's deposition transcript and Respondent Jan Lunsford's deposition transcript were improperly included in the Designation of Matter; thus, this Court should grant Respondents' Motion to Strike those portions of the deposition transcripts from the Designation of Matter.

II. Appellant fails to identify any authority that allows for a limited remand to provide evidence to the lower court that was accessible and/or available to Appellant at the time of the hearing on Respondents' Motion for Summary Judgment; thus, the Court should deny Appellant's request for a limited remand.

Rule 210(c) of the South Carolina Appellate Rules clearly states, "The Record [on Appeal] shall not, however, include matter which was not presented to the lower court or tribunal." Neither the South Carolina Appellate Rules nor the South Carolina Rules of Civil Procedure permit an Appellant a limited remand for the purpose of including matters in the record before the trial court that could have been presented at the appropriate time simply because the Appellant, after the fact, decided that those matters are vital to the case.

As acknowledged by Appellant, the deposition of Sergeant Belanger was taken nearly a month before the hearing on Respondents' Motion for Summary Judgment. Thus, to the extent that Appellant determined said transcript was vital to his case, he should have included the deposition transcript as an exhibit for the trial court's consideration during the pertinent hearing. However, Appellant chose to not file a memorandum in opposition to summary judgment, did not submit the deposition transcript as an exhibit at the hearing on summary judgment, and further did not include the deposition transcript as an exhibit to Appellant's Motion for Reconsideration of summary judgment (although Respondents note that at the time of reconsideration, it is not permissible to raise evidence that was available and known to the parties at the time of the initial hearing and ruling). Thus, beyond the jurisdictional issues that Plaintiff faces in filing a Rule 60(b), SCRCR motion with the trial following his appeal to this Court, Plaintiff's Rule 60(b) Motion is meritless. *See* Rule 60(b) (allowing a court to relieve a party from a final judgment only for (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct by an adverse party; (4) a void judgment; or (5)

satisfaction, release, or discharge, or vacation of the judgment or when the judgment is no longer equitable).

Appellant cannot direct this Court to any entry of the deposition transcript of Sergeant Belanger into the record before the trial court. By filing the Rule 60(b) Motion with the lower court, Appellant is, in effect, conceding that he did not include the deposition transcript of Sergeant Belanger into the record for the lower court's consideration. Accordingly, this Court should deny Appellant's requests for limited remand and grant Respondents' Motion to Strike the deposition transcript of Sergeant Ballenger from the Designation of Matter pursuant to Rules 209 and 210, SCAR.

Based on the foregoing, Respondents hereby move this Honorable Court for an Order striking all improper matters as set forth above from Appellant's Designation and compelling Appellant to amend his Initial Brief to remove all improper matters.

Respectfully submitted,

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June 20, 2022

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jacob Murdaugh,

Plaintiff,

vs.

Wal-Mart Stores East, LP, Jan Lunsford, and
John Doe,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2019-CP-15-00949

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Defendants Walmart Stores East, LP, Jan Lunsford, and John Doe (collectively, "Defendants"), by and through their undersigned counsel, hereby move this Court for an Order granting summary judgment in their favor on Plaintiff's claims against Defendants. Defendants bring this Motion pursuant to Rule 56, SCRPC, on the grounds that there are no genuine issues of material fact at to Plaintiff's claims, and, therefore, Defendants are entitled to judgment as a matter of law.

This Motion is based on the pleadings, discovery, deposition testimony, surveillance video, the controlling law, a supporting memorandum to be filed before any hearing on this Motion, counsel's argument at any hearing on this Motion, and such further material as the Court may deem appropriate. Defendants will show they are entitled to summary judgment on Plaintiff's causes of action for false imprisonment, malicious prosecution, defamation/slander/libel, assault, battery, and negligence because reporting a suspected shoplifting incident to law enforcement is not grounds for tort liability. Therefore, Defendants respectfully request that the Court grant their Motion for Summary Judgment.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
C/A No. 2019-CP-15-00949

Respectfully Submitted,

s/Robert C. Blain

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July 8, 2021

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Jacob Murdaugh,

Plaintiff,

vs.

Walmart Stores East, LP, Jan Lunsford,
and John Doe,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2019-CP-15-00949

**WALMART DEFENDANTS’
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Defendants Walmart Stores East, LP and Jan Lunsford (collectively, “Defendants”), by and through their undersigned counsel, submit this Memorandum in Support of Defendants’ Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendants respectfully request this Court to grant the motion for summary judgment on all claims.

INTRODUCTION

This lawsuit arises out of Plaintiff’s allegations that he was arrested by the Walterboro Police Department after he was misidentified as a suspect from a shoplifting incident that occurred at Walmart months prior to the arrest. It is undisputed that Defendants reported a shoplifting incident at Walmart involving “four unknown suspects” to law enforcement. Plaintiff was not detained or questioned at Walmart. Months later, police arrested Plaintiff but the shoplifting charge was eventually dismissed.

There is no genuine issue as to any material fact from which this Court could reasonably infer Plaintiff is entitled to relief from Defendants under any theory of law. Defendants cannot be culpable for simply relaying information to law enforcement, and Defendants are not responsible for investigating and analyzing evidence in the same manner as law enforcement. A store manager reporting a theft to the police cannot be grounds for tort liability.

FACTUAL BACKGROUND

Plaintiff Jacob Murdaugh entered Walmart around 1:52 AM in the morning on July 24, 2018, with Teresa Fletcher and Heyward Harrison. (Plaintiff's Dep. 80, attached as Exhibit A). He shopped for about twenty-five minutes, during which he separated from Fletcher. (Pl.'s Dep. 81-82). None of them made a purchase. (Pl.'s Dep. 42-43). Plaintiff did not speak with any Walmart employee or otherwise identify himself to anyone in the store. (Pl.'s Dep. 44-47). Plaintiff was not identified, detained, touched, or threatened by any Walmart employee. (Id. at 47).

Plaintiff and his companions exited the store and met up with Ariel Avant at her car—a neon green hatchback. (Pl.'s Dep. 49-50). Avant and Fletcher left the parking lot in Avant's neon green vehicle, while Plaintiff drove Harrison in his vehicle. (Pl.'s Dep. 50). Plaintiff observed Avant and Fletcher's neon green vehicle get stopped by law enforcement at a gas station shortly after leaving Walmart. (Pl.'s Dep. 50). Plaintiff was not detained, questioned, or any other involvement until he was arrested by Waltherboro Police over two months later. (Pl.'s Dep. 53-54).

Walmart Manager Jan Lunsford contacted Waltherboro Police to report a shoplifting incident around 2:20 AM on July 24th. (Waltherboro Public Safety Report, attached as Exhibit B). Officer Keith Belanger spoke with Lunsford who reported “four unknown suspects” were suspected of shoplifting. (Ex. B-3). Belanger's Report describes that “[a]n unknown maintenance worker confronted the offenders who left the shopping cart [and left] the business in a neon green Ford Focus.” (Ex. B-3). Waltherboro officers stopped the Ford Focus. Fletcher and Avant were known to Waltherboro Police as having been put on Trespass Notice from this same Walmart store for previous shoplifting incidents in the two months preceding this incident. (See Colleton County Public Index Case Numbers 20182900003047, 20182900004084). Fletcher and Avant admitted to being on Walmart property and that Harrison had been with them. (Ex. B-3).

Walmart provided law enforcement with security camera footage and still photos of the shoplifting incident. (Ex. B-4). It is undisputed surveillance video shows an unknown male attempted to shoplift a shopping cart full of merchandise. Plaintiff agreed it was lawful for Walmart to report the incident to police. (Pl.'s Dep. 86). Walmart Manager Jan Lunsford does not recall this particular incident; however, she was adamant that she did not identify the suspected shoplifter by name to police. (Lunsford Dep. 16-17, attached as Exhibit C). Lunsford did not know who Plaintiff was at the time she reported a suspected shoplifting. (Lunsford Dep. 16-17; Pl.'s Dep. 46-47). Lunsford did not direct police to press charges against Plaintiff. (Lunsford Dep. 19). Plaintiff has no information about what investigation Walmart Defendants did or did not do. (Pl.'s Dep. 64). Plaintiff has no information about the investigation undertaken by Waltherboro Police or how officers obtained the arrest warrant. (Pl.'s Dep. 65).

Waltherboro Police obtained a warrant for Plaintiff's arrest. (Ex. B-5). Plaintiff was arrested at a routine traffic stop on October 8, 2018 for shoplifting. (Pl.'s Dep. 55). Over a year later, his criminal case was called before the Waltherboro Municipal Court on November 6, 2019. (Pl.'s Dep. 63-64). A representative of Walmart was present, along with the arresting officer and Plaintiff's criminal attorney. (Pl.'s Dep. 65-66). The charge was dismissed with no prosecution. (Pl.'s Dep. 69-70). Plaintiff's criminal record was expunged. (Pl.'s Dep. 70).

ARGUMENT

Summary judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56, SCRCP. Defendants are entitled to summary judgment on all of Plaintiff's causes of action—false imprisonment, malicious prosecution, defamation/slander/libel, assault, battery, and negligence—because reporting a suspected shoplifting incident to law enforcement is not grounds for liability. More

I. False Imprisonment.

There is no genuine issue of material fact as to Plaintiff's false imprisonment claim because he cannot show Defendants caused law enforcement to unlawfully arrest him. To prevail on a claim for false imprisonment, "the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006). It is undisputed Plaintiff was not restrained at Walmart or by Defendants on the night of the incident; police arrested him months later.

A witness or victim is not required "to conduct their own investigation into the offense committed in order to verify the information they provide [to law enforcement]. *Huffman v. Sunshine Recycling*, 426 S.C. 262, 274, 826 S.E.2d 609, 615 (2019). Imposing such a duty "would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability." *Id.* In *Huffman*, the South Carolina Supreme Court affirmed summary judgment on a false imprisonment claim in favor of Sunshine Recycling "because there is nothing in the record that provides a reasonable inference that Sunshine or any of its employees induced, caused, instigated, or procured [the plaintiff's] arrest simply by cooperating with law enforcement and relaying information Sunshine believed to be true at the time." *Id.* at 616-617.

A person cannot be held liable when the arrest is carried out by the police officer's own volition. *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 527-28, 30 S.E.2d 307, 310-11 (1944):

Where a person merely directs the attention of a police officer to what he supposes to be a [crime], or gives to such officer facts indicating such, and the officer, without other direction, arrests the offender on his own responsibility, the person who did nothing more than communicate the facts to the officer is not liable for causing the arrest....

"[N]o liability is incurred if a person merely gives information to an officer tending to show that a crime has been committed, even if the informer gives inaccurate, incorrect, or incomplete information as a result of a good faith mistake." 32 Am. Jur. 2d *False Imprisonment* § 41 (1995).

In this instant case, Plaintiff has failed to show any evidence that Defendants induced officers to unlawfully arrest him. Defendants made a good faith report of a suspected shoplifting involving “unknown suspects.” In his deposition, Plaintiff agreed that Walmart was within its rights to contact law enforcement. (Pl.’s Dep. 86). Much like the business in *Huffman v. Sunshine Recycling*, Defendants cooperated with law enforcement by providing security camera footage and still frames. Even if Plaintiff was mistakenly pictured, a victim is not required to conduct its own investigation in order to verify video it provided to police. *See Huffman*, 826 S.E.2d at 615. There is no evidence that Defendants induced Walterboro Police to arrest Plaintiff. In fact, Defendants would not and could not have identified Plaintiff since he was not stopped, detained, or questioned at the Walmart store.

Beyond Plaintiff’s speculation, there is simply no evidence that Defendants misidentified Plaintiff as the suspected shoplifter. The only persons who knew Plaintiff’s identity and who spoke with Walterboro Police that night were Ariel Avant and Teresa Fletcher. Avant and Fletcher were Plaintiff’s companions at Walmart and they were stopped by Walterboro Police in the neon green Ford Focus. Avant and Fletcher disclosed that Harrison was with them at Walmart. The only reasonable inference is Avant and Fletcher also disclosed Plaintiff’s identity to police.

Defendants providing video to law enforcement is not sufficient to cause an unlawful arrest. Plaintiff was arrested by the police officer’s own volition months after Defendants reported a crime. Defendants cannot be improperly subjected to civil liability simply by reporting reasonable suspicion of a crime and assisting law enforcement.¹

¹ Defendants are entitled to the statutory protections set forth in S.C. Code § 16-13-140, which provides a complete defense to *any action* relating to a shoplifting investigation because Defendants had reasonable cause to report the crime to law enforcement, which investigated and detained Plaintiff without further involvement from Defendants.

II. Malicious Prosecution.

There is no genuine issue of material fact as to Plaintiff's malicious prosecution claim where Defendants only reported a crime and provided information to law enforcement. To sustain an action for malicious prosecution, "a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Law*, 368 S.C. at 435, 629 S.E.2d at 648. "It is in the interest of good order that criminals be brought to justice, and malicious prosecution action are not encouraged." *Elletson v. Dixie Home Stores*, 231 S.C. 565, 571, 99 S.E.2d. 384, 387 (1957).

"Generally when an officer has discretion to make a decision as to whether to prosecute, that discretion renders the decision their own and the person who provided the information is not liable." *Richardson v. Rent-A-Ctr. E., Inc.*, 2012 U.S. Dist. LEXIS 6617, at *12-13 (D.S.C. Jan. 20, 2012). In *Richardson*, the S.C. District Court applied South Carolina law to grant summary judgment in favor of a retailer on a plaintiff's malicious prosecution claim after he was misidentified as a shoplifter. *Id.* at *10-15. The *Richardson* court concluded there was no evidence the retailer instituted the shoplifting charge or acted with malice when the retailer reported a crime and "merely provided the police with a name, and the police moved the investigation forward." *Id.* at *13. "[T]he court finds that the subsequent actions of the police render them the party responsible for instituting the proceedings—a key element in the cause of action. Because the police rather than Defendant instituted the proceedings, the court finds that Plaintiff's claim for malicious prosecution fails as a matter of law." *Richardson*, at *14-15.

In the instant case, Defendants are even less involved than the retailer in *Richardson*. Walmart did not even provide the Walterboro Police with Plaintiff's name. There is no evidence

in the record that Defendants acted with malice or instituted the proceedings against Plaintiff. Walmart had a reasonable belief that a shoplifting crime was committed based on an eyewitness report from an unknown maintenance worker that confronted the offenders who left the business in a neon green Ford Focus. Walmart's reasonable belief was supported by video surveillance of the suspected shoplifting. Walmart cooperated with law enforcement by making a good faith effort to provide this information to Waltherboro Police. From that point, Waltherboro Police moved the investigation forward by detaining Plaintiff's companions in the neon green Ford Focus and by obtaining a warrant for Plaintiff's arrest. Plaintiff's damages occurred at this point when Waltherboro Police sought out and arrested him.

"We find punishing an individual who mistakenly identifies a criminal suspect or unwittingly provides what is later discovered to be incorrect information in a criminal investigation serves no purpose." *Huffman v. Sunshine Recycling*, 826 S.E.2d at 616 (affirming summary judgment on malicious prosecution cause of action). The law must protect the victim who reported the crime and cooperated with law enforcement's investigation; otherwise, it would undoubtedly create a chilling effect on such cooperation. *See Id.*, 826 S.E.2d at 615-16.

Victims and witnesses are not held to the same standard as law enforcement. The law does not "require a witness or victim to conduct their own investigation into the offense committed in order to verify the information they provide" to law enforcement. *Id.*, 426 S.C. at 273, 826 S.E.2d at 615. Such a requirement "would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability." *Id.* Defendants did nothing more than report a crime and provide information to assist with law enforcement's criminal investigation. A store manager reporting a theft and cooperating with law enforcement cannot be grounds for the tort of malicious prosecution.

III. Defamation/Slander/Libel.

There is no genuine issue of material fact because Defendants' communications did not defame Plaintiff, and Defendants' statements to law enforcement are privileged. To prove defamation, "the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 559–60, 698 S.E.2d 845, 852 (Ct. App. 2010).

"In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege." *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Under a qualified privilege defense, "one who publishes defamatory matter concerning another is not liable" if there is a conditional privilege that is not abused. *Id.* It is the duty of the court to determine if the statement is privileged as a matter of law. *Murray v. Thornton*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001).

Communications made in a criminal investigation for the purpose of detecting the suspects are privileged. *Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946). "Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded." *Swinton Creek Nursery*, 334 S.C. at 484–85, 514 S.E.2d at 134.

Here, the only Walmart communications in evidence were to Walterboro Police to assist with their shoplifting investigation. Defendants' communications are privileged as a matter of law. Plaintiff has shown no evidence that Defendants abused or exceeded the scope of the privilege. Moreover, Plaintiff cannot show Defendants published any defamatory statement about

him since Defendants had no basis from which to identify Plaintiff on surveillance video at the time it reported the crime. Merely providing information to police cannot rise to the level of a defamatory publication.

IV. Assault and Battery.

There is no genuine issue of material fact as to Plaintiff's claims for assault or battery because it is undisputed that Defendants did not detain, touch, or threaten Plaintiff in any manner. The elements of assault are: (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm. *Mellen v. Lane*, 377 S.C. 261, 276, 659 S.E.2d 236, 244 (Ct. App. 2008). "A battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree; it is unnecessary that the contact be by a blow, as any forcible contact is sufficient." *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230, 317 S.E.2d 748, 754 (Ct. App. 1984). It is well established that mere words do not support a claim for assault or battery, unless the words are accompanied by an actual threat of physical violence. *Mellen*, 377 S.C. at 277-78, 659 S.E.2d at 245.

Defendants merely reported a shoplifting incident to law enforcement, which investigated the crime and arrested Plaintiff over two months later. It is nonsensical for Plaintiff to claim he was in fear of bodily harm since he testified that he did not even think about that night at Walmart until he was arrested months later. (Pl's Dep. 53-54). Moreover, the superseding and intervening acts of the police served to break any causal chain connecting any conduct of Defendants with any damages Plaintiff may have incurred when police arrested him months later. Plaintiff's claims fail because he cannot show that Defendants somehow induced police to undertake any unlawful conduct. Police arrested Plaintiff on their own volition and without any direction from Defendants. Therefore, Defendants are entitled to judgment as a matter of law on these claims.

V. Negligence.

There is no genuine issue of material fact as to Plaintiff's negligence claim because Defendants did not owe him a legally-recognized duty of care that was breached and that caused any damage. To establish a cause of action for negligence "a plaintiff must show ... three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 474, 377 S.E.2d 343, 348 (Ct. App. 1988).

No South Carolina authority has ever imposed a duty on a victim or a witness to perform its own investigation before assisting law enforcement with their criminal investigation. In fact, the South Carolina Supreme Court specifically rejected the creation of such "an unprecedented duty." *Huffman v Sunshine Recycling*, 426 S.C. at 273, 826 S.E.2d at 614-15 (The law does not "require a witness or victim to conduct their own investigation into the offense committed in order to verify the information they provide" to law enforcement.). Defendants are not responsible for investigating and analyzing evidence; that is the job of law enforcement.

Assuming, arguendo, this Court should find Defendants owed Plaintiff a duty, there is still no evidence of any breach that caused Plaintiff damage. The *Huffman* court explicitly stated that it "serves no purpose" and is against public policy to subject victims to liability for misidentifying a criminal suspect. *Id.*, 826 S.E.2d at 616. Moreover, subsequent police investigation and decision to arrest Plaintiff is the superseding and proximate cause of Plaintiff's alleged damage. *See Richardson*, at *14-15 (granting summary judgment and explaining police caused a plaintiff's arrest). "While Defendant's actions started the chain of events that led to Plaintiff's arrest, it cannot be said that Defendant was the proximate cause of Plaintiff's arrest." *Id.*

To the extent Plaintiff may attempt to rely on a 1929 case from Ohio that was cited in certain briefs submitted before an unpublished South Carolina opinion, such reliance is clearly misguided. In *Mouse v. The Central Savings & Trust Co.*, the Ohio court found a bank was responsible for the ordinary consequences from its refusal to pay a valid check. 167 N.E. 868 (1929 Ohio). A subsequent Ohio court clarified that *Mouse* was distinguishable where a plaintiff was pursuing a theory of negligent identification. *Darris v. Whitelov*, 2008 Ohio App. LEXIS 5261, at ¶ 15 (Ct. App.) (“If telephone harassment did occur, and Mrs. Whitelov was wrong about who was making the telephone calls, we see no viable claim for negligence.”).

There is no genuine issue as to any material fact from which this Court could reasonably infer Plaintiff is entitled to relief from Defendants under any theory of law. Defendants cannot be culpable for simply reporting a crime and relaying information to law enforcement. Defendants are not responsible for investigating and analyzing evidence in the same manner as law enforcement. A store manager reporting a theft to the police cannot be grounds for tort liability.

CONCLUSION

For the foregoing reasons, Defendants are entitled to judgment as a matter of law on all of Plaintiff’s claims. Accordingly, Defendants respectfully request that this Court grant this Motion for Summary Judgment and dismiss Plaintiff’s Complaint with prejudice.

Respectfully submitted,

September 14, 2021

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON) Civil Action No. 2019-CP-00949

Jacob Murdaugh,

Plaintiff,

vs.

Walmart Stores East, LP, Jan Lunsford, and
John Doe,

Defendants.

DEPOSITION TAKEN VIA VIDEOCONFERENCE OF
JACOB SEAL MURDAUGH
(Taken by Defendants)
Mt. Pleasant, South Carolina
Wednesday, October 28, 2020
10:01 a.m.

Reported stenographically by
V. Dario Stanziola, CCR (GA) (NJ), RPR, CRR
HUDSON COURT REPORTING & VIDEO 1-800-310-1769

1 Q. And y'all arrived -- y'all went into
2 Walmart about 1:50 a.m. on the morning of
3 July 24th, 2018; is that right?

4 A. As far as I know, that's correct, yes.

5 Q. And you went inside the store with
6 Teresa Fletcher and Heyward Harrison?

7 A. Yes.

8 Q. Once inside the store, what did the
9 three of y'all do?

10 A. I just remember going to the hardware
11 section.

12 Q. Did y'all -- all three stay together or
13 did you separate?

14 A. I know Bryan was walking with me and I
15 think Teresa separated from us and left the store
16 before we went to the checkout area.

17 Q. And at the hardware store, did you go
18 in the automotive department at all?

19 A. Not that I remember.

20 Q. Go in the lawn and garden center at
21 all?

22 A. Absolutely not.

23 Q. Do you know if Teresa made any
24 purchases?

25 A. I don't think she did.

1 Q. Do you know if Mr. -- if Mr. Harrison
2 made any purchases?

3 A. Mr. Harrison was next to me. So I'm
4 pretty sure he didn't, if I'm remembering
5 correctly.

6 Q. And just to clarify, that was he did
7 not?

8 A. He did not. Not that I recall.

9 Q. Did you make any purchases?

10 A. I attempted to make a purchase of an
11 item that I picked up off the hardware section in
12 the tool section. But if I'm remembering
13 correctly, when I got to the register, my card
14 was declined.

15 Q. What item was that in the hardware
16 section?

17 A. I don't recall.

18 Q. What card was declined?

19 A. I believe it was my bank card, my debit
20 card.

21 Q. What -- where do you bank?

22 A. It was a BB&T card.

23 Q. Do you still have that same card?

24 A. No, I do not.

25 Q. Do you still bank with BB&T?

1 A. No, I do not.

2 Q. When did you stop?

3 A. I would say about give or take a year
4 ago. I switched banks.

5 Q. Okay. Was your card declined due to
6 insufficient funds?

7 A. Yes.

8 Q. Did you talk with anyone at Walmart
9 about your card getting declined?

10 A. No, not that I remember.

11 Q. Were you using a self-checkout or was
12 there a cashier helping?

13 A. I believe there was a self-checkout.

14 Q. How long do you think you were in the
15 store?

16 A. I don't recall. It wasn't very long,
17 though.

18 Q. Did you leave with Mr. Harrison?

19 A. I think so. I think we walked out at
20 the same time.

21 Q. So no Walmart employees spoke to you at
22 all?

23 A. Not that I remember.

24 Q. Did you see any construction work or
25 construction workers?

1 A. I know that they were doing updates in
2 different parts of the store at that time.

3 Q. What -- what parts of the store did you
4 see them doing updates?

5 A. I just remember around -- not
6 particularly that night, but I remember in the
7 time frame around that, that area of time that
8 they were like -- like -- for instance, they
9 would have the one exit shut off to do
10 maintenance, like one area was closed to the
11 public and then another area would be opened for
12 you to go in and out. And I just remember them
13 doing updates.

14 Q. Do you know if any area of the store
15 was closed to the public early that morning on
16 July 24th?

17 A. I'm not sure if at that time the
18 right-hand entrance was closed off. Because at
19 that Walmart in particular they have the
20 left-hand side for the grocery store side that
21 you go in, and that's the entrance and exit that
22 we went in and out of that night. So the other
23 main entrance may have been closed for
24 maintenance.

25 Q. Okay. And when you say the other main

1 entrance, are you talking about the home -- Home
2 Goods side?

3 A. I guess you could describe it as that.
4 Because you've got -- on the left side you've got
5 the grocery area, in the middle you've got I
6 guess you would call that Home Goods. And then
7 the far right-hand side is where the garden
8 center was and the automotive is in the back. So
9 I'm talking about not the grocery, but the Home
10 Goods, the one in the middle that at some point,
11 if not -- it may not have been that night that it
12 was closed, but I remember around that, you know,
13 month or so or whatever they were doing updates
14 that that entrance location would be closed off.

15 Q. Did you observe anything that night
16 that suggested to you that you that or your
17 friends were under investigation by anyone?

18 A. No, I had no idea.

19 Q. And you didn't communicate with anybody
20 at Walmart that night, did you?

21 A. Not that I remember, no, sir.

22 Q. So there's no way anyone at Walmart
23 would have known who you were that night, right?

24 A. I have no idea.

25 Q. Can you think of any -- any reason or

1 any -- any way Walmart would have known who you
2 were if you didn't speak with anyone?

3 A. I haven't been able to figure out that
4 either, so... They definitely -- if I spoke to
5 somebody like within the store, it's not like
6 they carded me or asked for my investigation or
7 anything like that night either.

8 Q. Nobody at Walmart detained you or
9 stopped you for any reason, did they?

10 A. No, sir.

11 Q. Did anyone at Walmart touch you or
12 threaten to touch you?

13 A. No, sir.

14 Q. Do you have any knowledge about
15 Walmart's policies or procedures to investigate
16 shoplifting?

17 A. As far as loss prevention and how it
18 works, I'm not sure.

19 Q. How do you know the term loss
20 prevention?

21 A. I know people that have had that job
22 before in various stores.

23 Q. Do you know anyone whose worked in loss
24 prevention at Walmart?

25 A. Only recently did I meet somebody that

1 what happened to you that night or your arrest?

2 A. No, I haven't.

3 Q. After your card was declined at the
4 self-checkout, what did you and Heyward do next?

5 A. I believe we -- we immediately exited
6 the store after I wasn't able to make the
7 purchase, so...

8 Q. Once you guys exited the store, did you
9 walk to your car?

10 A. We did, we both got in my vehicle and
11 then drove from where I was parked to the Petco
12 parking lot where Ariel and Teresa were at.

13 Q. How did you know that Teresa was with
14 Ariel and not still in the store or somewhere
15 else?

16 A. I believe she was communicating with
17 Mr. Harrison.

18 Q. Text messages or something?

19 A. Yeah, something like that.

20 Q. Were you driving the -- your Dodge Ram
21 when y'all went to meet them?

22 A. Yes, sir.

23 Q. Was Ariel driving her car?

24 A. Yes, sir.

25 Q. What kind of car was she driving?

1 A. It's a different car than what she
2 drives now. I think it's like a -- it's like a
3 Honda of some type. It's kind of like a bright
4 green color.

5 Q. Okay. She doesn't drive that car
6 currently?

7 A. No.

8 Q. Is it like a neon green hatchback car?

9 A. Yeah, something like that.

10 Q. What happened next?

11 A. We went our separate ways after
12 leaving. And I took Bryan wherever he was
13 staying, I think off of Sydneys Road in
14 Walterboro. And I'm not sure where Ariel and
15 Teresa went. They went elsewhere.

16 Q. Do you know if Ariel and Teresa were
17 stopped by law enforcement that night?

18 A. They were stopped, yes, sir.

19 Q. What do you know about that?

20 A. Very little.

21 Q. How did you find out about that?

22 A. We drove passed them as they were
23 getting pulled into a -- into the parking lot of
24 a gas station.

25 Q. Did y'all -- was this as y'all were

1 paraphernalia charges as a result of that traffic
2 stop?

3 A. Not to my knowledge.

4 Q. Did you drop Mr. Harrison off after
5 that?

6 A. Yes.

7 Q. Did y'all have any open containers or
8 drug paraphernalia in your car?

9 A. No, sir.

10 Q. After you dropped them off, did you go
11 home?

12 A. Yes, sir.

13 Q. Do you think -- think at all about this
14 -- that whole incident, any reason that came
15 across your radar at any point between July 24th
16 until October of '18?

17 A. I'm sorry, what was the question?

18 Q. Yeah, that was a confusing one. Did
19 this whole shopping trip at Walmart or the
20 traffic stop with Ms. Avant and Ms. Fletcher, did
21 that cross your radar or come up in conversation
22 or was there any reason for you to think about
23 that again between July 24th, 2018 and October of
24 2018?

25 A. No, sir. I'd actually kind of

1 forgotten about it until the arrest warrant was
2 served.

3 Q. And did Bryan Harrison bring it up to
4 you on the job at all?

5 A. No.

6 Q. Did Bryan Harrison ever tell you he was
7 arrested as a result of that night?

8 A. No.

9 Q. Was there any point in time when he
10 couldn't show up to work because he was under
11 arrest?

12 A. Not to my knowledge.

13 Q. How often were y'all working together
14 in that summer?

15 A. It was mostly part time, maybe -- maybe
16 three, four days out of the week at the most.

17 Q. Okay. Mr. Murdaugh, we've been going
18 over an hour now. Next I want to move into
19 asking you about the traffic stop. But I do want
20 to offer now might be a good time for you to take
21 a break for any reason or we can power through.

22 MR. NELSON: I was just going to ask
23 for a restroom break. So can we take five?

24 MR. BLAIN: Yeah, sure. That would be
25 great.

1 (A BRIEF RECESS WAS TAKEN.)

2 MR. BLAIN: Okay. Let's go back on the
3 record.

4 BY MR. BLAIN:

5 Q. Mr. Murdaugh, before we took a brief
6 break I had told you I had wanted to move into
7 asking you about the traffic stop in October of
8 2018. Where were you when you were stopped by
9 police?

10 A. I was on Robertson Boulevard in
11 Walterboro.

12 Q. And were you driving your -- your Dodge
13 Ram truck?

14 A. Yes, sir. And I was pulling a trailer
15 behind it.

16 Q. On October 8th of 2018; is that right?

17 A. What is that? I'm sorry?

18 Q. It's my understanding that that
19 happened on October 8th of 2018; is that right?

20 A. Yes. As far as I know, yes, that's the
21 correct date.

22 Q. Why -- why did they pull you over?

23 A. The reason the officer gave me for
24 pulling me was because the trailer that I was
25 pulling didn't have functioning brake lights.

1 lawyer named Ashley Hudson-Scott; is that
2 correct?

3 A. Yes, that's correct.

4 Q. I'm not asking about conversations
5 you've had with Ms. Scott. But how did she come
6 to represent you?

7 A. She was appointed as the public
8 defender.

9 Q. Had you ever -- I apologize.
10 She was appointed as public defender.
11 What did you say next?

12 A. She was appointed as public defender on
13 my case is all I said.

14 Q. Had you ever met her before or heard
15 her for any reason?

16 A. I heard her name just because
17 Waltherboro is a small town, been -- passed by her
18 office and seen her sign before. But other than
19 that, no, no contact previous.

20 Q. Do you know if she ever represented
21 Ariel Avant or Bryan Harrison or Teresa Fletcher
22 for any reason?

23 A. I'm not sure.

24 Q. So your criminal hearing I understand
25 was on November 6th of 2019. That's over a year

1 later; is that right?

2 A. Yes, sir.

3 Q. Did you have to do anything at all to
4 prepare for that hearing beforehand?

5 A. I had to meet with Ashley Hudson-Scott
6 at least on two occasions before trial.

7 Q. Okay. Other than meeting with your
8 attorney, did you have to do anything else?

9 A. No, not that I can recall.

10 Q. Do you know if your attorney contacted
11 anyone at Walmart?

12 A. I am not sure if she had to do that as
13 part of her job or not. I don't know.

14 Q. Do you know what steps Ms. Lunsford,
15 Mr. Davis or anyone at Walmart took before
16 contacting the police on July 24, 2018?

17 A. I am not sure. I don't -- I don't
18 know.

19 Q. Do you know what steps Walmart took
20 after contacting the police?

21 A. No, sir.

22 Q. Other than the contacting police, do
23 you know if Ms. Lunsford, Mr. Davis or anyone
24 else at Walmart told anyone other than police
25 about what happened?

1 A. I'm unsure.

2 Q. Do you know if the Walterboro Police
3 Department did any investigation before your
4 arrest?

5 A. I'm not sure.

6 Q. Do you know how the arrest warrant was
7 created or issued?

8 A. No.

9 Q. Do you know if -- do you know what, if
10 anything, Officer Keith Belanger or Officer Brian
11 Duboise did to investigate to incident?

12 A. No.

13 Q. Do you know if Ms. Hudson-Scott talked
14 with Officer Belanger or Officer Duboise or
15 anyone at Walterboro Police Department before
16 your criminal hearing?

17 A. As far as I know, she didn't talk to
18 anybody before the hearing, no.

19 Q. Did you attend this --

20 A. Excuse me. I don't think she made any
21 contact with Brian Duboise at all.

22 Q. Did you attend the criminal hearing on
23 November 6th, 2019?

24 A. Yes.

25 Q. And that was at the Colleton County

1 Municipal Court, correct?

2 A. Yes, that's right.

3 Q. Who from the Waltherboro Police
4 Department was there?

5 A. Just pertaining to my case, just
6 Belanger.

7 Q. Was anyone from Walmart there?

8 A. Yes. I assume his name is the Mr.
9 Davis guy, I think.

10 Q. Could you describe him for me, please.

11 A. He was kind of a tall, slender,
12 African-American male.

13 Q. Had you ever seen him before?

14 A. No.

15 Q. Ms. Hudson-Scott was there to represent
16 you, correct?

17 A. Right.

18 Q. What did you have to pay for her to
19 represent you in the criminal matter?

20 A. Nothing.

21 Q. Do you recall the judge for that
22 criminal hearing?

23 A. I don't remember her name. I remember
24 she -- I think she was a female judge.

25 Q. Did the judge review any surveillance

1 of minutes at the bench. But it got dismissed,
2 so...

3 Q. Could you describe any of the body
4 language that your -- you're -- that you observed
5 from Mr. Davis?

6 A. Not really. Because he was -- he had
7 his back completely turned to me. So, I mean,
8 all I could really just see is, you know, him
9 kind of talking with his hand a little bit and
10 nodding his head and the reaction of the other --
11 the other two people besides the judge. I could
12 see their -- them going back and forth just a
13 little bit. But like I said, I never heard the
14 audio recording, so I can't say for sure what was
15 said and what wasn't. That's just the impression
16 that I got.

17 Q. How was the shoplifting charge against
18 you terminated?

19 A. I'm sorry, what was the first part?

20 Q. Sure.

21 How was the shoplifting charge against
22 you terminated?

23 A. It was dismissed at the -- at the bench
24 at that time that I'm talking about.

25 Q. So you were not -- not prosecuted?

1 A. No, it was -- it was dismissed before a
2 jury trial, if that's what you're asking.

3 Q. Did Mr. Davis or anyone from Walmart
4 say anything to you at that time?

5 A. No, sir.

6 Q. Do you agree that your criminal record
7 no longer shows this particular arrest?

8 A. It doesn't.

9 Q. Do you know if Ms. Avant's, Mr.
10 Harrison or Ms. Fletcher were arrested?

11 A. I don't know anything about their...

12 Q. They weren't at the same criminal
13 hearing that you were, for example?

14 A. Ariel was there, but I don't know in
15 what capacity or pertaining to what.

16 Q. Ariel was -- was at the criminal
17 hearing -- at your criminal hearing?

18 A. Yes.

19 Q. Did you speak with her at all?

20 A. Yes, briefly.

21 Q. Did you invite her to come to that
22 hearing?

23 A. No, not personally. I'm not sure if
24 she was there because she was subpoenaed to be
25 there or if she was there on something unrelated

1 of this exhibit which says, Digital Video
2 Snapshot Dated 7/24/2018 at 1:51:41 a.m. from
3 camera named Entry and Exit Grocery 05.

4 Do you see that?

5 A. Yes.

6 Q. Did I read all that correctly?

7 A. Yes.

8 Q. Have you ever seen this digital video
9 snapshot before?

10 A. Yes.

11 Q. When?

12 A. At Ashley Hudson-Scott's office and
13 also I've reviewed it here at Thomas's office as
14 well.

15 Q. Okay. Is that Heyward Bryan Harrison
16 and Teresa Faye Fletcher?

17 A. Yes.

18 Q. Looking at this digital video snapshot,
19 is it your understanding that they entered the
20 Walmart store at 1:51:41 a.m. on July 24, 2018?

21 A. Yes.

22 Q. Did you enter Walmart at roughly the
23 same time with them?

24 A. Yes.

25 Q. Okay.

1 A. Either right before or right after.

2 Q. But you're not pictured in this
3 particular digital video snapshot, correct?

4 A. No, sir.

5 Q. Okay. I'm now going to scroll down to
6 page 5 -- before I -- let me go back to page 4.
7 There's some blue handwriting on page 4 here that
8 says Bryan and Teresa; is that correct?

9 A. Correct. That's correct.

10 Q. Do you know whose handwriting that is?

11 A. I believe that's Thomas's handwriting.
12 Or that -- or is that Ashley?

13 MR. NELSON: I cannot speak.

14 THE DEPONENT: Oh.

15 A. I'm not sure.

16 Q. Okay. I'm going to scroll down to page
17 5 now. Page 5 of Defendant's Exhibit 1 says --
18 at the top says, Digital Video Snapshot From
19 Camera Entry and Exit Grocery 01 dated 7/24/2018
20 at 2:16:13 a.m.

21 Do you see that?

22 A. Yes.

23 Q. Did I read that all correctly?

24 A. Yes.

25 Q. Do you know who this is?

1 A. That's me.

2 Q. Okay. You were wearing a white hat?

3 A. Yes.

4 Q. You still have that hat?

5 A. Maybe somewhere. It's probably not
6 white anymore, though.

7 Q. Okay. And it looks like you're wearing
8 a -- a brace on your right wrist; is that right?

9 A. That is correct.

10 Q. Why is that?

11 A. I have carpel tunnel that acts up
12 sometimes and the wrist support kind of helps it.

13 Q. Can you tell if you have any Walmart
14 merchandise on you in this digital video
15 snapshot?

16 A. I definitely do not.

17 Q. Are you exiting the store in this
18 digital video snapshot?

19 A. Yes, sir.

20 Q. Is it fair to say that you exited the
21 store at roughly 2:16 a.m.?

22 A. That's correct.

23 Q. Blue handwriting down here at the
24 bottom.

25 A. That's got to be Ashley Hudson-Scott's

1 A. That's the same guy that was walking in
2 the store in the other picture, the guy that
3 nobody knows.

4 Q. The same guy who's walking in the store
5 on page 3 of --

6 A. Yes.

7 Q. Okay. Do you know what he was doing in
8 the garden center at 1:45 a.m.?

9 A. Well, looks like he's attempting to
10 push that shopping cart out of the store.

11 Q. Okay.

12 A. And I remember seeing the video he like
13 loads up a pool or something and puts it on top
14 the shopping cart before he pushes it out.

15 Q. If he -- if he were to push that
16 shopping cart out, would that be considered
17 shoplifting in your mind?

18 A. Yeah.

19 Q. Do you think Walmart is within its
20 rights to contact law enforcement if they
21 observed someone pushing out a shopping cart
22 without paying for merchandise?

23 A. Sure.

24 Q. Did you see this guy outside the store
25 at all?

EXHIBIT B
EXHIBIT B - 1

ELECTRONICALLY FILED - 2021 Sep 14 1:38 PM - COLLETON - COMMON PLEAS - CASE#2019CP1500949



**WALTERBORO PUBLIC
SAFETY**
WALTERBORO, SC
ORI: SC0150100



Case Status: Open

Case Number: 1801656

Case Status Date: 7/24/2018

Main Incident Information

Location: 2110 BELL'S HWY (WALMART), WALTERBORO, SC 29488

Start Date: 7/24/2018 **End Date:** 7/24/2018 **Disp Date:** 7/24/2018 **Time Arrived:** 02:25
Start Time: 02:20 **End Time:** 02:45 **Disp Time:** 02:20

NCIC INQ? False **NCIC INQ Date:** **NCIC ENTD?** False **NCIC ENTD Date:**
Subject Identified? True **Subject Located?** False
Patrol Zone: **Division Assignment:**
Officer Assigned:

Offenses

Offense Type: Shoplifting {23C}

Statute: SHOPLIFTING 1ST
OFFENSE \$2,000 OR
LESS {23C} CDR 528

Location Type: Department/Discount Store
Completed: True **Method of Entry:**
Type of Criminal Activity 1:
Type of Criminal Activity 2:
Type of Criminal Activity 3:
Location Type 2:
Special Circumstances 2:
Gang Activity:

Entered: **Bias Motivation:** None
Weapon Type 1:
Weapon Type 2:
Weapon Type 3:
Special Circumstances 1:
Special Circumstances 3:

Statute: TRESPASSING
AFTER NOTICE
{90J}

Offense Type: Trespass of Real Property {90J}

Location Type: Department/Discount Store
Completed: True **Method of Entry:**
Type of Criminal Activity 1:
Type of Criminal Activity 2:
Type of Criminal Activity 3:
Location Type 2:
Special Circumstances 2:
Gang Activity:

Entered: **Bias Motivation:** None
Weapon Type 1:
Weapon Type 2:
Weapon Type 3:
Special Circumstances 1:
Special Circumstances 3:

People

Offenders

OFFENDER: AVANT, ARIEL AMBERLY

Aliases:

Race: W	Sex: F	Height: 507	Weight: 220	Ethnicity: N
Hair: BLN	Eyes: BRO	Glasses: N	Complexion: FAR	Build:
Facial Hair: N	Skin:	Teeth:	Resident: State	
DOB: 2/13/1992	SSN:	FBI #:		
SID #:		License State: SC		
Driver's License #: 100766326		Place of Birth State: CA		
Place of Birth City:		Age Range From:	To:	
Special DOB:		Evening Phone:		
Day Phone: 843-898-1323				

Suspected of Use 1: None **Suspected of Use 2:** **Suspected of Use 3:**
Type 1: **Type 2:** **Type 3:**
Employer: UNEMPLOYED **Student:** **False**

7/26/2018 12:28:51 PM

EXHIBIT B
EXHIBIT B - 2

ELECTRONICALLY FILED - 2021 Sep 14 1:38 PM - COLLETON - COMMON PLEAS - CASE#2019CP1500949

School: Maiden Name:
Legacy Aliases:
Drug Activity: Drug Type:

Address Information

Address Type: Physical
Street 1: 3826 MOUNT CARMEL RD. Street 2:
City: WALTERBORO State: SC Zip: 29488
Location Number: Country:
Test1:

OFFENDER: *FLETCHER, TERESA FAYE*

Aliases:
Race: W Sex: F Height: 503 Weight: 100 Ethnicity: N
Hair: BLN Eyes: BRO Glasses: Complexion: Build:
Facial Hair: Skin: Teeth: Resident: State
DOB: 10/9/1977 SSN: ██████████
SID #: FBI #:
Driver's License #: 007301126 License State: SC
Place of Birth City: Place of Birth State:
Special DOB: Age Range From: To:
Day Phone: 843-599-0329 Evening Phone:

Suspected of Use 1: None Suspected of Use 2: Suspected of Use 3:
Type 1: Type 2: Type 3:
Employer: Student: False
School: Maiden Name:
Legacy Aliases:
Drug Activity: Drug Type:

Address Information

Address Type: Physical
Street 1: 148 TUPON LN Street 2:
City: WALTERBORO State: SC Zip: 29488
Location Number: Country:
Test1:

OFFENDER: *HARRISON, HEYWARD BRYAN*

Aliases:
Race: W Sex: M Height: 508 Weight: 145 Ethnicity: N
Hair: RED Eyes: HAZ Glasses: Complexion: Build:
Facial Hair: Skin: Teeth: Resident: State
DOB: 4/4/1985 SSN: ██████████
SID #: FBI #:
Driver's License #: 11400594 License State: SC
Place of Birth City: Place of Birth State:
Special DOB: Age Range From: To:
Day Phone: Evening Phone:

Suspected of Use 1: None Suspected of Use 2: Suspected of Use 3:
Type 1: Type 2: Type 3:
Employer: Student: False
School: Maiden Name:
Legacy Aliases:
Drug Activity: Drug Type:

OFFENDER: *MURDAUGH, JACOB SEAL*

Aliases:
Race: W Sex: M Height: 510 Weight: 165 Ethnicity: N
Hair: BRO Eyes: BRO Glasses: N Complexion: LGT Build:
Facial Hair: Skin: Teeth: Resident: State
DOB: 6/17/1983 SSN: ██████████
SID #: FBI #:
Driver's License #: 011161303 License State: SC
Place of Birth City: WALTERBORO Place of Birth State: SC
Special DOB: Age Range From: To:
Day Phone: 908-0290 Evening Phone:

Suspected of Use 1: None Suspected of Use 2: Suspected of Use 3:
Type 1: Type 2: Type 3:
Employer: CARPENTER Student: False
School: Maiden Name:
Legacy Aliases:

7/26/2018 12:28:51 PM

EXHIBIT B
EXHIBIT B - 3

ELECTRONICALLY FILED - 2021 Sep 14 1:38 PM - COLLETON - COMMON PLEAS - CASE#2019CP1500949

Property Item
Property Type: Merchandise Loss Type: Stolen/Etc. Quantity: 1
Value: \$64.00 Description: HI BOX
NIC #: Recovered?: True Date of Theft: 7/24/2018 Date of Recovery: 7/24/2018
Theft SC0150100 Recovery SC0150100 Recovery Value: \$64.00
Jurisdiction: Jurisdiction:
Descriptive Marks: Customizable Field:
Customizable Field2: Customizable Field3:

Narrative

I, SGT BELANGER, RESPONDED TO 2110 BELL'S HWY IN REFERENCE TO A POSSIBLE SHOPLIFTING INCIDENT. UPON ARRIVAL AND SPEAKING WITH THE COMPLAINANT (LUNSFORD) IT WAS DISCOVERED THAT FOUR UNKNOWN SUSPECTS ENTERED THE BUSINESS, SELECTED NUMEROUS ITEMS, PLACED THEM IN A SHOPPING CART AND ATTEMPTED TO LEAVE THE BUSINESS WITHOUT RENDERING PAYMENT FOR THE ITEMS. LUNSFORD STATES THE OFFENDERS (FLETCHER / AVANT / HARRISON / MURDAUGH ATTEMPTED TO WALK OUT OF THE LAWN AND GARDEN AREA OF THE BUSINESS, PASSING ALL POINTS WHERE PAYMENT COULD BE RENDERED, AND THRU AN OUTSIDE GATE THAT CONTRACT MAINTENANCE WORKERS WERE USING. AN UNKNOWN MAINTENANCE WORKER CONFRONTED THE OFFENDERS WHO LEFT THE SHOPPING CART FULL OF ITEMS. THE OFFENDERS WERE SEEN LEAVING THE BUSINESS IN A NEON GREEN FORD FOCUS. THE VEHICLE WAS SEEN BY RESPONDING OFFICERS AT 1539 BELL'S HWY (EZ SHOP #15) AND CONTACT WAS MADE WITH THE OFFENDERS. BOTH FLETCHER AND AVANT ADMITTED TO BEING ON THE BUSINESS' PROPERTY, BUT NOT INSIDE THE BUSINESS. THEY ALSO STATED THE THIRD OFFENDER (HARRISON) WAS WITH THEM AT THE TIME OF THIS INCIDENT BUT WERE UNAWARE OF HIS CURRENT LOCATION. ALL THREE OFFENDERS ARE CURRENTLY TRESPASSED FROM 2110 BELL'S HWY. LUNSFORD WAS UNABLE TO ACCESS THE SECURITY CAMERA FOOTAGE, AND WAS NOT SURE OF THE MONETARY VALUE OF THE ITEMS TAKEN AND RECOVERED AT THE TIME OF THIS REPORT. ONCE THAT INFORMATION IS AVAILABLE, WARRANTS WILL BE FORTHCOMING IF NECESSARY AND THIS REPORT WILL BE AMENDED.

Signatures

Reporting Officer: BELANGER, KEITH L

Assisting Officer:

Follow-Up Officer:

Follow-Up Assisting Officer:

Approving Officer:

Validating Officer:



WALTERBORO PUBLIC
SAFETY
WALTERBORO, SC
ORI: SC0150100



SUPPLEMENTAL REPORT

Case Status: Open

Case Number: 1801656

Case Status Date: 7/24/2018

Main Incident Information

Location: 2110 BELL'S HWY (WALMART), WALTERBORO, SC 29488

Start Date: 7/24/2018 End Date: 7/24/2018 Disp Date: 7/24/2018 Time Arrived: 02:25
Start Time: 02:20 End Time: 02:45 Disp Time: 02:20

NCIC INQ? False NCIC INQ Date: NCIC ENTD? False NCIC ENTD Date:
Subject Identified? True Subject Located? False

Supplemental Information

Filing Date: 7/24/2018

ON TODAY'S DATE 07/24/2018, I, SGT BELANGER, WAS PROVIDED WITH STILL PHOTOS AND A COPY OF THE SECURITY CAMERA FOOTAGE OF THIS INCIDENT. THE STILL PHOTOS SHOW FLETCHER AND HARRISON ENTERING THE BUSINESS TOGETHER BUT LATER SEPARATELY INSIDE THE BUSINESS. AVANT WAS NOT SEEN ON ANY OF THE SECURITY CAMERA CLIPS OR STILL PHOTO, BUT DID ADMIT TO OFFICES SHE WAS ON THE PROPERTY WITH FLETCHER AND HARRISON. MURGAUGH IS SEEN ON SECURITY CAMERA FOOTAGE SELECTING SEVERAL ITEMS AND PLACING THEM INTO A SHOPPING CART AND A BLACK STORAGE BIN INSIDE OF THE CART. HE THEN WALKS TO AN OPEN LAWN AND GARDEN CENTER GATE, PUSHES THE CART OUTSIDE, AND PEEKS BACK INSIDE THE LAWN AND GARDEN CENTER TO APPARENTLY SEE IF ANYONE SAW HIM. HE THEN EXITS THRU THE SAME GATE. THE COST OF THE ITEMS, WHICH WERE RECOVERED WHEN MURDAUGH WAS SEEN AND CHALLENGED BY CONTRACT MAINTENANCE WORKERS REPLACING LIGHTS AND LIGHT FIXTURES AT WALMART, WAS \$1,349.00. WARRANTS WERE ISSUED FOR ALL OFFENDERS.

Signatures

Filing Officer: BELANGER, KEITH; Sergeant;

Entered By: BELANGER, KEITH; Sergeant;

EXHIBIT B - 5

ARREST WARRANT

2018A1520300340

STATE OF SOUTH CAROLINA

County/ Municipality of

Walterboro

THE STATE against

1801656

Jacob Seal Murdaugh

Address: 202 Sierra Ln

Walterboro, SC 29488-5005

Sex: M Race: W Height: 5 9 Weight: 150

DL State: SC DL #: 011161303

DOB: 6/17/1983 Agency ORI #: SC0150100

Prosecuting Agency: Walterboro Police Department

Prosecuting Officer: Keith L Belanger - S00010

Offense: Shoplifting / Shoplifting, value \$2,000 or less

Offense Code: 0528

Code/Ordinance Sec: 16-13-0110(A)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on Jacob Murdaugh 1500 10-8-18

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Walterboro Municipal Court 300 Hampton Street Walterboro, SC 29488

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Walterboro

AFFIDAVIT

18-PD-074 ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Keith L Belanger who being duly sworn deposes and says that defendant Jacob Seal Murdaugh did within this county and state on or about 7/24/2018 State of South Carolina (or ordinance of County/ Municipality of Walterboro) violate the criminal laws of the in the following particulars:

DESCRIPTION OF OFFENSE: Shoplifting / Shoplifting, value \$2,000 or less

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On July 24th, 2018, at or about 0145 Hrs. the Defendant (Jacob Seal Murdaugh) was captured by security camera footage from 2110 Bell's Hwy (Walmart) selecting and placing merchandise items in a shopping cart then exit the business with the cart and items through an open outside Garden Center gate and passing all points where payment could be rendered for the merchandise items. The Defendant's actions were perpetrated to deprive the business of the total cost of the goods.

Signature of Affiant

Keith L Belanger

STATE OF SOUTH CAROLINA

County/ Municipality of

Walterboro

Affiant's Address 242 Hampton Street

Walterboro, SC 29488-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 7/24/2018 defendant Jacob Seal Murdaugh did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Walterboro) as set forth below:

DESCRIPTION OF OFFENSE: Shoplifting / Shoplifting, value \$2,000 or less

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 7/25/2018

Signature of Issuing Judge Deborah B Kane O'Quinn (L.S.)

Deborah Bridget Kane-O'Quinn

Judge Code: 8098

Judge's Address P O Box 709

Walterboro, SC 29488-

Judge's Telephone (843)782-1057

Issuing Court: Magistrate Municipal Circuit

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON) Civil Action No. 2019-CP-00949

Jacob Murdaugh,

Plaintiff,

vs.

Walmart Stores East, LP, Jan Lunsford, and
John Doe,

Defendants.

DEPOSITION TAKEN VIA VIDEOCONFERENCE OF
JAN LUNSFORD
(Taken by Plaintiff)
St. George, South Carolina
Wednesday, October 28, 2020
2:02 p.m.

Reported stenographically by
V. Dario Stanziola, CCR (GA) (NJ), RPR, CRR
HUDSON COURT REPORTING & VIDEO 1-800-310-1769

1 shopping cart full of items. The offenders were
2 scene leaving the business in a neon green Ford
3 Focus. The vehicle was seen by responding
4 officers at 1539 Bells Highway, parentheses, E-Z
5 Shop Number 15, and contact was made with the
6 offenders.

7 Do you remember anything about that
8 incident?

9 A. If the construction workers had
10 communicated that information to me, absolutely I
11 would have called the police for any suspicious
12 activity.

13 Q. Okay. But that's -- that's what you
14 believe you would have done. Do you remember
15 specifically this incident at all?

16 A. Not really, no, sir.

17 Q. Okay. So if Officer Belanger has any
18 information on this, you would have to defer to
19 whatever he has to say?

20 A. Not with me giving names because I've
21 never given any names because I wasn't aware of
22 any names.

23 Q. Okay. So you might be able to dispute
24 what Belanger has to say regarding this incident?

25 A. Yes, sir, it says that I'd stated names

1 in parentheses. No, sir, if I made a call to
2 Belanger, I would not have those names.

3 Q. But do you remember this specific
4 incident? You're telling me you would have been.

5 A. I remember the construction workers
6 there changing out the lighting system.

7 Q. Okay. But you don't remember the four
8 individuals, regardless of whether you know their
9 names or not?

10 A. No, I can't say four individuals, no,
11 sir, I cannot.

12 Q. Okay. And do you believe that you had
13 a conversation with Sergeant Belanger on
14 July 24th, 2018, give or take a day?

15 A. Yes, yes. If I would have called the
16 police and any incident, whether it's anything, I
17 would have had a follow-up conversation, yes.

18 Q. Not what you would have done. Do you
19 -- do you specifically recall talking to
20 Belanger?

21 A. Yes, I have had several conversations
22 with Belanger.

23 Q. Okay. Do you recall having any
24 conversations with Belanger on July 24th, 2018?

25 A. No. Don't know the date of when I've

1 A. No, sir.

2 Q. After someone is arrested for
3 shoplifting, did you have anything to do with the
4 case at that point or is it turned over to
5 somebody else in Walmart or how does it work from
6 there?

7 A. I've never personally told police or
8 anybody to pursue or prosecute a shoplifter.
9 I've never given that word, if you will, by
10 saying Jan Lunsford, press charges on her for
11 shoplifting. No, sir. And I'm using my name is
12 as an example.

13 Q. Okay. Okay. And while you've never
14 directed them to actually pursue charges, have
15 you provided information to police before that
16 regards anybody shoplifting?

17 A. Yes, sir.

18 Q. Do you know how many times you've done
19 that?

20 A. I cannot recall. No, sir, I cannot.

21 Q. And do you -- could you say if it was
22 more or less than a hundred?

23 A. As far as shoplifters? No.
24 Trespassing? Yes. I don't know exactly exact
25 number where I've had to trespass people -- I'm



Deposition of:
Keith Belanger

October 14, 2021

In the Matter of:

**Murdaugh, Jacob Vs. Wal-Mart Stores
East LP**

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www.veritext.com

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF COLLETON

4 Jacob Murdaugh,
5 Plaintiff,

6 vs. Transcript of Record
7 2019-CP-15-00949

8 Walmart Stores East, LP,
9 Jan Lunsford, and John Doe,
10 Defendant.

11 November 03, 2021
12 Walterboro, South Carolina

13 B E F O R E:

14 The HONORABLE BENTLEY PRICE

15 A P P E A R A N C E S:

16 Thomas T. Nelson, Representing the plaintiff
17 Robert C. Blain, Representing the defendant
18

19

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22

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24

25

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jacob Murdaugh,

Plaintiff,

vs.

Walmart Stores East, LP, Jan Lunsford,
and John Doe,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2019-CP-15-00949

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on November 3, 2021, for a hearing on Defendants Walmart Stores East, LP, Jan Lunsford, and John Doe (“Defendants”) Motion for Summary Judgment pursuant to Rule 56, SCRPC. Thomas Nelson was present as counsel for Plaintiff, and Robert Blain was present as counsel for Defendants. Having duly considered the Motion, the accompanying memorandum of law and exhibits, as well as the oral arguments presented by counsel at the hearing, the Court hereby grants Defendants’ Motion for Summary Judgment.

FACTUAL BACKGROUND

This lawsuit arises out of Plaintiff’s allegations that he was arrested by the Walterboro Police Department after he was misidentified as a suspect from a shoplifting incident that occurred at Walmart located at 2110 Bells Highway. On July 24, 2018, at approximately 1:52 AM, Plaintiff Jacob Murdaugh entered the Walmart with Teresa Fletcher and Heyward Harrison. They were inside the store for around twenty-five minutes, but never made a purchase. Plaintiff never spoke with any Walmart employee, and he was not detained, touched, or threatened by any Walmart employee. Plaintiff and his companions exited the store and met with Ariel Avant at her vehicle—a neon green hatchback. Avant and Fletcher left the parking lot in the neon green hatchback, while Plaintiff left the premises in his own vehicle with Harrison.

At approximately 2:20 AM on July 24, 2018, Walmart Manager Jan Lunsford contacted Waltherboro Police to report a shoplifting incident. Officer Keith Belanger responded to the call and upon arrival was informed that four unknown suspects were suspected of shoplifting. In his Report, Officer Belanger described that, “[a]n unknown maintenance worker confronted the offenders who left ... the business in a neon green Ford Focus.”

Officer Belanger promptly located and stopped Avant’s neon green vehicle nearby. Fletcher and Avant admitted to being on Walmart property with Harrison. Harrison, Fletcher, and Avant were known to Waltherboro Police as having been put on trespass notice from the same Walmart store for previous shoplifting incidents in the months preceding this incident. All three were charged with trespassing.

Officer Belanger returned to Walmart to continue his investigation into the shoplifting incident. Walmart Manager Jan Lunsford provided him with security camera footage and still frames of the shoplifting incident. Lunsford allegedly identified Plaintiff to Officer Belanger as the suspected shoplifter shown on surveillance video. Plaintiff was not detained, questioned, or involved any further until Waltherboro Police arrested him over two months later.

Based on information provided by Walmart, Waltherboro Police decided to obtain a warrant for Plaintiff’s arrest. Plaintiff was arrested on October 8, 2018 for shoplifting. Over a year later, his criminal case was called before the Waltherboro Municipal Court on November 6, 2019. The charge was dismissed with no prosecution and Plaintiff’s criminal record was expunged. Plaintiff filed this lawsuit against Defendants on December 4, 2019 asserting causes of action for false imprisonment, malicious prosecution, defamation, slander, libel, assault and battery, and negligence.

DISCUSSION

I. Standard of Review

Summary judgment is appropriate where “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “[T]he inferences to be drawn from the underlying facts contained in the record must be viewed in the light most favorable to the party opposing the motion.” *Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 69 (Ct. App. 1985). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

II. False Imprisonment

Plaintiff asserts a cause of action for false imprisonment against Defendants. To prevail on a claim for false imprisonment, “the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.” *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006). A witness or victim is not required “to conduct their own investigation into the offense committed in order to verify the information they provide [to law enforcement].” *Huffman v. Sunshine Recycling*, 426 S.C. 262, 274, 826 S.E.2d 609, 615 (2019) (affirming trial court’s decision to grant summary judgment in favor of similarly-situated defendant on claims for false imprisonment and malicious prosecution). Imposing such a duty “would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability.” *Id.* A person cannot be held liable when the arrest is carried out by the police officer’s own volition. *See Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 527-28, 30 S.E.2d 307, 310-11 (1944). “[N]o liability is incurred if a person merely gives information to an officer tending to show that a crime has been committed, even if the informer gives

inaccurate, incorrect, or incomplete information as a result of a good faith mistake.” 32 Am. Jur. 2d *False Imprisonment* § 41 (1995).

In this instant case, it is undisputed Plaintiff was not stopped or detained at Walmart or by Defendants on the night of the incident; police arrested him months later. Defendants made a good faith report of a suspected shoplifting incident and cooperated with law enforcement by providing security camera footage and still frames. Even if Plaintiff was mistakenly identified by Defendants, a victim is not required to conduct its own investigation in order to verify information it provided to police. Defendants providing information to law enforcement is not sufficient to cause an unlawful arrest. Plaintiff was arrested by the police officer’s own volition months after Defendants reported a crime. Defendants cannot be subjected to civil liability simply by reporting reasonable suspicion of a crime and assisting law enforcement. Accordingly, this Court finds that summary judgment is warranted on the Plaintiff’s claim of false imprisonment.

III. Malicious Prosecution

Plaintiff asserts a cause of action for malicious prosecution against Defendants. To sustain an action for malicious prosecution, “a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Law*, 368 S.C. at 435, 629 S.E.2d at 648. “It is in the interest of good order that criminals be brought to justice, and malicious prosecution action are not encouraged.” *Elletson v. Dixie Home Stores*, 231S.C. 565, 571, 99 S.E.2d. 384, 387 (1957). “[P]unishing an individual who mistakenly identifies a criminal suspect or unwittingly provides what is later discovered to be incorrect information in a criminal investigation serves no purpose.” *Huffman*, 426 S.C. at 274, 826 S.E.2d at 616. The law must protect the victim who reported the

crime and cooperated with law enforcement's investigation; otherwise, it would undoubtedly create a chilling effect on such cooperation. *See Id.*, 426 S.C. at 274, 826 S.E.2d at 615-16.

In the instant case, Defendants merely reported a crime and provided information to assist with Walterboro Police's criminal investigation. Walmart had a reasonable belief that a shoplifting crime was committed based on an eyewitness report from an unknown maintenance worker that confronted the offenders who left the business in a neon green Ford Focus. Walmart's reasonable belief was supported by video surveillance of the incident. Walmart cooperated with law enforcement. From that point, Walterboro Police moved the investigation forward by detaining Plaintiff's companions in the neon green Ford Focus and by obtaining a warrant for Plaintiff's arrest. There is no evidence in the record that Defendants acted with malice or instituted the proceedings against Plaintiff. A store manager reporting a theft and cooperating with law enforcement cannot be grounds for the tort of malicious prosecution. Accordingly, this Court finds that summary judgment is warranted on the plaintiff's claim of malicious prosecution.

IV. Defamation/Slander/Libel

Plaintiff asserts a cause of action for defamation, slander, and libel against Defendants. To prove defamation, "the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 559-60, 698 S.E.2d 845, 852 (Ct. App. 2010). "In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege." *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Under a qualified privilege defense, "one who publishes defamatory matter concerning another is not liable" if there is a conditional privilege

that is not abused. *Id.* It is the duty of the court to determine if the statement is privileged as a matter of law. *Murray v. Thornton*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001).

Communications made in a criminal investigation for the purpose of detecting the suspects are privileged. *Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946). “Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded.” *Swinton Creek Nursery*, 334 S.C. at 484–85, 514 S.E.2d at 134.

Here, the only Walmart communications in evidence were to Walterboro Police to assist with their shoplifting investigation. Defendants’ communications are privileged as a matter of law. Plaintiff has shown no evidence that Defendants abused or exceeded the scope of the privilege. Merely providing information to police in a good faith report of reasonable suspicion of a crime cannot rise to the level of a defamatory publication. As such, this Court finds that summary judgment is warranted on the Plaintiff’s claim of defamation, slander, and libel.

V. Assault and Battery

Plaintiff asserts a cause of action for assault and battery against Defendants. The elements of assault are: (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm. *Mellen v. Lane*, 377 S.C. 261, 276, 659 S.E.2d 236, 244 (Ct. App. 2008). “A battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree; it is unnecessary that the contact be by a blow, as any forcible contact is sufficient.” *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230, 317 S.E.2d 748, 754 (Ct. App. 1984).

Defendants merely reported a shoplifting incident to law enforcement, which investigated the crime and arrested Plaintiff over two months later. Defendants’ conduct did not place Plaintiff

in reasonable fear of bodily harm since Defendants did not detain, touch, threaten, or otherwise interact with Plaintiff at any time while he was in the Walmart store or thereafter. Moreover, Plaintiff's claim fails because there is no evidence to show Defendants induced police to undertake any unlawful conduct. Police arrested Plaintiff two months later on their own volition and without direction from Defendants. Therefore, this Court finds that summary judgment is appropriate on the Plaintiff's claim of assault and battery.

VI. Negligence

Plaintiff asserts a cause of action for negligence against Defendants. To establish a cause of action for negligence "a plaintiff must show ... three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 474, 377 S.E.2d 343, 348 (Ct. App. 1988). South Carolina law does not impose a duty on a victim of a crime to perform its own investigation before assisting law enforcement with their criminal investigation. In fact, the South Carolina Supreme Court specifically rejected the creation of such "an unprecedented duty." *Huffman*, 426 S.C. at 273, 826 S.E.2d at 614-15 (The law does not "require a witness or victim to conduct their own investigation into the offense committed in order to verify the information they provide" to law enforcement.). The *Huffman* court explicitly stated that it "serves no purpose" and is against public policy to subject victims to liability for misidentifying a criminal suspect. *Id.*, 826 S.E.2d at 616. Therefore, as a matter of law, Defendants did not owe Plaintiff a duty to investigate and analyze the information Defendants provided to law enforcement. As such, this Court finds that summary judgment is warranted on the Plaintiff's claim of negligence.

CONCLUSION

There is no genuine issue as to any material fact from which this Court could reasonably infer Plaintiff is entitled to relief from Defendants under any theory of law. Defendants are not culpable for reporting a crime and relaying information to law enforcement. Defendants are not responsible for investigating and analyzing evidence in the same manner as law enforcement. A store manager reporting a reasonable suspicion of theft to the police cannot be grounds for tort liability.

Based upon the foregoing, it is hereby ordered that the Plaintiff's Complaint and all causes of action against Defendants are dismissed with prejudice pursuant to Rule 56, SCRCP, and Defendants' Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.

The Honorable Bentley D. Price
Presiding Judge, 14th Judicial Circuit

_____, 2021



Colleton Common Pleas

Case Caption: Jacob Murdaugh VS Walmart Stores East Lp , defendant, et al
Case Number: 2019CP1500949
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

JACOB MURDAUGH,

Plaintiff,

vs.

WALMART STORES EAST, LP, JAN
LUNSFORD, AND JOHN DOE,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 19-CP-10-00949

**NOTICE OF MOTION AND MOTION
TO RECONSIDER**

TO THE HONORABLE BENTLEY D. PRICE and ROBERT BLAIN, ESQUIRE:

PLEASE TAKE NOTICE that Plaintiff hereby moves this Honorable Court for an Order, pursuant to Rule 59, SCRPC, reconsidering the Order Granting Defendants’ Motion for Summary Judgment and altering or amending its judgment. The grounds for this Motion are that a genuine issue of material fact exists with regard to the causes of action for false imprisonment, malicious prosecution, and defamation/libel/slander. Specifically, viewing the evidence in the light most favorable to Plaintiff, the evidence shows that the arresting officer, Sgt. Keith Belanger, made his decision to arrest Plaintiff for shoplifting based solely on information that was provided to him the agent of Walmart, and that Jacob Murdaugh never shoplifted as alleged by Walmart. These facts support claims for false imprisonment, malicious prosecution, and defamation/libel/slander.

FUTERAL & NELSON, LLC

/s/ Thomas C. Nelson
Thomas C. Nelson, Esquire
S.C. Bar ID 71178
1004 Anna Knapp Blvd., Suite 3
Mt. Pleasant, South Carolina 29464
Telephone (843) 284-5500
email to: tnelson@charlestonlaw.net
Attorney for Defendant

Dated: December 13, 2021

STATE OF SOUTH CAROLINA
 COUNTY OF COLLETON

Jacob Murdaugh
 Plaintiff,

vs.

Walmart Stores East, LP, Jan Lunsford, and
 John Doe,
 Defendants.

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2019-CP-15-0949

**ORDER DENYING PLAINTIFF'S
 MOTION TO RECONSIDER**

The Plaintiff Jacob Murdaugh filed a motion asking this Court to reconsider its Order. This matter came before the Court on November 3, 2021 in Colleton county.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Plaintiff’s motion, the Court hereby DENIES Plaintiff Jacob Murdaugh’s Motion for Reconsideration.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Colleton Common Pleas

Case Caption: Jacob Murdaugh VS Walmart Stores East Lp , defendant, et al
Case Number: 2019CP1500949
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
In the Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Case No. 2019-CP-15-0949

Jacob Murdaugh,Appellant,

v.

Walmart Stores East, LP, Jan Lunsford, and John Doe,
of whom Walmart Stores East, LP and Jan Lunsford are the Respondents.

NOTICE OF APPEAL

Appellant, Jacob Murdaugh, by and through his undersigned counsel, hereby appeals the Orders of the Honorable Bentley Price captioned as Order Granting Defendants' Motion for Summary Judgment, filed December 3, 2021 and Order Denying Plaintiff's Motion to Reconsider, filed January 11, 2021.

FUTERAL & NELSON, LLC

/s/ Thomas C. Nelson
Thomas C. Nelson
S.C. Bar ID 71178
1004 Anna Knapp Blvd., Ste. 3
Mount Pleasant, South Carolina 29464
Telephone (843) 284-5500
Facsimile (843) 284-5501
email to: tnelson@charlestonlaw.net

Dated: February 9, 2022

Attorney for Plaintiff

Other Counsel of Record:

Robert C. Blain
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
(803) 790-8838
rblain@gaffneylewis.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Jun 20 2022

SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Bentley D. Price, Judge

Appellate Case No. 2022-00141

Jacob Murdaugh.....Appellant,

v.

Walmart Stores East, LP, Jan Lunsford, and John Doe, Defendants,
Of Whom Walmart Stores East, LP and Jan Lunsford are theRespondents,

CERTIFICATE OF SERVICE

I do hereby certify, on this 20th day of June 2022, that a copy of the foregoing **Respondents' Reply to Appellant's Response to Respondents' Motion to Strike Matters from Appellant's Designation of Matter and Respondents' Response to Appellant's Motion For Limited Remand to Allow the Lower Court to Hear Appellant's Motion for Relief From Judgment and/or Clarification** was served by electronic mail, addressed to counsel of record as follows:

Thomas C. Nelson, Esq.
Futeral & Nelson, LLC
tnelson@charlestonlaw.net
Attorney for Appellant

/s/Robert C. Blain
Robert C. Blain, SC Bar No. 100024
GAFFNEYLEWIS, LLC
3700 Forest Drive, Suite 400
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(803) 790-8838
rblain@gaffneylewis.com

Attorney for Respondents