

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Travis William Jacobs,

Plaintiff,

vs.

Wal-Mart Stores East, LP d/b/a Wal-Mart  
Supercenter #630, Emily Ek, Joey Barefoot,  
Ginny Wright,

Defendants.

COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-21-02572

**ORDER GRANTING SUMMARY  
JUDGMENT**

**RECEIVED**

**May 02 2023**

**SC Court of Appeals**

This matter came before the Court on Defendants Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, and Ginny Wright’s Motion for Summary Judgment pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure filed on August 9, 2022. On March 1, 2023, the Court held a hearing on the matter, at which John Clark was present as counsel for Plaintiff, and Randi Lynn Roberts was present as counsel for Defendants Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, and Ginny Wright (hereinafter, “Defendants”). Having duly considered the Motion, applicable case law, and the submissions and arguments presented by counsel, the Court hereby issues its Order granting Defendants’ Motion for Summary Judgment and dismissing Plaintiff’s Complaint with prejudice for the reasons set forth more fully below.

**FACTUAL BACKGROUND**

Belva McClellan (“McClellan”) filed a report with Florence Police Department on July 29, 2019, stating that her wallet had been stolen from her purse while she was working a shift at the subject Walmart, which she had discovered when she received a fraud alert via her telephone

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alerting her that her credit and/or debit cards had been used at various locations without her permission. McClellan also reported that she did not witness the theft of her wallet.

Florence Police Department assigned the investigation to Officer Glenda Oliver (hereinafter, "Oliver"), who went to the subject Walmart store and spoke with an employee, Ginny Wright, to obtain McClellan's contact number. Oliver also spoke with McClellan about the theft of her credit cards and requested additional information and documentation from her. Oliver returned to the subject Walmart on August 2, 2019, to secure surveillance video of the area where McClellan reported that she had left her purse during the theft. Oliver reviewed the surveillance video and testified that at least one of employee at Walmart stated that the suspect in the surveillance video, believed to be the person that took McClellan's financial cards, looked like a new employee with the subject store, who was later determined to be Plaintiff. Oliver acknowledged that she did not obtain a formal identification from Walmart employees, and she further acknowledged that none of the Walmart employees were eyewitnesses to the crime. Following her second visit to Walmart, Oliver continued with her criminal investigation, to include issuing subpoenas to McClellan's bank, Wish.com, and other places that McClellan's financial cards had been used without her permission. Oliver also visited a local Pilot, where one of McClellan's financial cards was used without her permission, and she spoke with the manager and secured surveillance video. In reviewing the Pilot surveillance video, Oliver determined that the same person was seen in both the Pilot surveillance video and Walmart surveillance video based on the clothing worn. Oliver then visited the Phoenix Mart and Youngs Grocery, additional places where McClellan's financial cards were used without her permission, but neither location was able to provide surveillance video, and thereafter returned to the subject Walmart for a third visit to retrieve additional surveillance video. Oliver later conducted a visual comparison of the suspect

on the surveillance videos with photographs of Plaintiff that Oliver obtained from Facebook and the DMV, and she determined that the suspect looked like Plaintiff based on similar physical characteristics and the similarity of earrings worn. Oliver's supervisor agreed that the person in the surveillance video looked like Plaintiff based on Plaintiff's photographs from Facebook and the DMV, and the supervisor directed Oliver to obtain an arrest warrant for Plaintiff. Oliver presented her investigation to the Magistrate Court, which found probable cause existed for an arrest warrant. After obtaining the arrest warrant, Oliver called the Walmart store and asked if Plaintiff was working, and the store answered in the affirmative. Oliver and another law enforcement officer, Officer Kelly, arrived at the store, and Officer Kelly handcuffed and detained Plaintiff. The law enforcement officers guided Plaintiff to a private area at the store, Mirandized him, and then began asking questions. After the interview with Plaintiff, Oliver decided to arrest Plaintiff. On a date after the arrest, Oliver received documents in response to a subpoena that included an email address indicating that the suspect was a person other than Plaintiff and Oliver abandoned the charge against Plaintiff. The investigative file produced by Florence Police Department for the theft of McClellan's financial cards totals 57 pages.

Plaintiff instituted the present action against Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, Ginny Wright and Florence Police Department on November 19, 2020, alleging causes of action of assault and battery, criminal conspiracy, defamation, false imprisonment, intentional infliction of emotional distress, malicious prosecution, gross negligence, and negligent supervision. The parties exchanged written discovery and conducted depositions; thus, the matter is ripe for the Court to rule upon Defendants' Motion for Summary Judgment.

### STANDARD OF REVIEW

The purpose of summary judgment is “to expedite disposition of cases which do not require the services of a factfinder.” *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Ellis v. Davidson*, 358 S.C. 509, 517-18, 595 S.E.2d 817, 821 (Ct. App. 2004); *Rumph v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 392, 593 S.E.2d 183, 186 (Ct. App. 2004).

In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006); *Rumpf*, 357 S.C. at 392, 593 S.E.2d at 186. Summary judgment is appropriate “where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Ellis*, 358 S.C. at 517-18, 595 S.E.2d at 821. All ambiguities, conclusions, and inferences arising from the evidence “must be construed most strongly against the moving party.” *Id.* at 518, 595 S.E.2d at 821. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Id.* at 518, 595 S.E.2d at 822; *Rumpf*, 357 S.C. at 393, 593 S.E.2d at 186.

Here, the Court finds that even taking the Plaintiff’s allegations as true, Plaintiff fails to establish a genuine issue of fact to support his argument that the Defendants knowingly provided false information to law enforcement during the course of Officer Oliver’s criminal investigation, and based upon established case law, this Court declines to impose a duty upon witnesses to

perform an investigation to verify information provided in good faith to law enforcement. Accordingly, the Walmart Defendants are entitled to summary judgment on all of Plaintiff's causes of action—assault and battery, criminal conspiracy, defamation, false imprisonment, intentional infliction of emotional distress, malicious prosecution, gross negligence, and negligent supervision.

### ANALYSIS

#### **I. The Court grants summary judgment as to Plaintiff's causes of action of false imprisonment and civil assault and battery as Plaintiff was arrested pursuant to a facially valid arrest warrant.**

False arrest in South Carolina is also known as false imprisonment. The elements of the tort are intentional restraint of another without lawful justification. *See Jones v. City of Columbia*, 301 S.C. 62, 64, 389 S.E.2d 662, 663 (1990); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995); Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* 455 (4th ed. 2011); *see also Wallace v. Kato*, 549 U.S. 384, 388, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007) ("False arrest and false imprisonment overlap; the former is a species of the latter."). The hallmark of the tort is an unlawful restraint deliberately applied, and it is grounded in the law of trespass. *See William L. Prosser & W. Page Keeton et al., Prosser and Keeton on Torts* § 11 (5th ed. 1984).

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).

In the present case, there is no dispute that Florence Police Department obtained a facially valid arrest warrant for Plaintiff; thus, Plaintiff does not have a viable claim in this matter for false arrest. *Carter v. Bryant*, 429 S.C. 298, 306, 838 S.E.2d 523, 528 (Ct. App. 2020) (“It has long been the law that one arrested pursuant to a facially valid warrant has no cause of action for false arrest.”); *see also Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 444, 853 S.E.2d 508, 510 (Ct. App. 2020). Therefore, because Plaintiff’s allegations of an assault and battery against Defendants are premised only upon law enforcement’s arrest of him pursuant to a facially valid arrest warrant, Plaintiff’s claim of assault and battery is similarly not viable. *Roberts v. City of Forest Acres*, 902 F. Supp. 662, 671 (D.S.C. 1995) (finding that a person uses reasonable force in effectuating a lawful arrest is not liable for assault or battery). Accordingly, this Court grants summary judgment to Defendants as to the claims of false imprisonment and civil assault and battery.

**II. The Court grants summary judgment in favor of Defendants as to Plaintiff’s claims of civil conspiracy, intentional infliction of emotional distress, malicious prosecution, and defamation as there is no evidence that the Defendants knowingly or intentionally provided false information to law enforcement.**

"[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston County Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

Under well-established South Carolina law, to recover for intentional infliction of emotional distress, Plaintiff must establish that:

- (1) the Walmart Defendants intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;

- (2) the Walmart Defendants' conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
- (3) the actions of the Walmart Defendants caused Plaintiff's emotional distress; and
- (4) the emotional distress suffered by Plaintiff was severe such that no reasonable man could be expected to endure it.

*Hansson v. Scalise Builders of S.C.*, 650 S.E.2d 68, 70-71 (2007) (quoting *Ford v. Hutson*, 276 S.E.2d 776, 778 (1981) (internal quotation marks omitted)). Whether a defendant's conduct may be reasonably regarded as so extreme and outrageous to permit recovery is initially one for a court, and only where reasonable persons might differ is it a question for a jury. *Hawkins v. Greene*, 427 S.E.2d 692, 693 (Ct. App. 1993). "Where evidence is undisputed that the defendant acted in good faith and in a reasonable manner, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community." *Id.*

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.

The Court finds *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 826 S.E.2d 609 (2019), in which the South Carolina Supreme Court states as follows:

We do not interpret *Wingate [v. Postal Telegram & Cable Co.]*, 204 S.C 520, 30 S.E.2d 307], or its progeny, to require a witness or victim to conduct their own investigation into the offense committed in order to verify the information they provide. To interpret *Wingate* in such a manner would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability. *See Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 (“Those who honestly seek the enforcement of the law ... and who are supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages.” (citation omitted)).

...

This is not to say any individual who acts in bad faith or knowingly reports incorrect information to law enforcement cannot be held liable for false imprisonment or malicious prosecution. *See Reaves v. Westinghouse Elec. Corp.*, 683 F.Supp. 521, 525 (D. Md. 1988) (“The tort of false arrest is predicated upon *knowing* misconduct.”). There is a distinct difference between an individual who, in good faith, reports mistaken or inaccurate information and an individual who *purposely* provides law enforcement with *knowingly false information*. *See Brice*, 220 F.3d at 238 (“[T]he critical question is whether the witness provided the police with his honest or good faith belief of the facts.”). However, 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. *See Jones v. Autry*, 105 F.Supp.2d 559, 561 (S.D. Miss. 2000) (noting “the law allows wide latitude for honest action” by parties who assist law enforcement); *Shires v. Cobb*, 271 Or. 769, 534 P.2d 188, 189 (1975) (“[P]ublic policy will

protect the victim of a crime who, in good faith and without malice, identifies another as the perpetrator of the crime, although that identification may, in fact, be mistaken.”).

*Huffman*, 426 S.C. at 273-75, 826 S.E.2d at 615-16.

With *Huffman* in mind, even taking Plaintiff’s allegations as true in the present matter, this Court finds Plaintiff presents no evidence that Defendants acted in bad faith or knowingly reported incorrect information to law enforcement with regard to Plaintiff. Officer Oliver testified as to her independent criminal investigation into the theft of McClellan’s financial cards, her knowledge that the Defendants were not eyewitnesses to the alleged incident, and her independent agreement with Defendants’ alleged statements that the person on the surveillance video looked similar to Plaintiff. Accordingly, the Court finds that the Plaintiff fails to present any genuine issue of material fact as to civil conspiracy, intentional infliction of emotional distress, malicious prosecution, and defamation.<sup>1</sup>

**III. The Court grants summary judgment as to Plaintiff’s claim of negligence, gross negligence, and negligent supervision as he fails to establish that Walmart breached any duty owed to him that thereby caused him harm.**

Plaintiff argued that Walmart acted unreasonably in the identification of Mr. Jacobs as the person committing the theft and causing his arrest; thus, Plaintiff argued that summary judgment

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<sup>1</sup> Additionally, in Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment and arguments at the hearing on this matter, Plaintiff only argued that Defendants “acted unreasonably in the identification of Mr. Jacobs [Plaintiff] as the person committing the theft and causing his arrest.” Plaintiff seemingly abandoned any argument that the Defendants acted intentionally, which is a required element under his causes of action that are intentional torts. *See State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (Ct. App. 2000) (recognizing that “an intentional tort . . . by definition cannot be committed in a negligent manner”); Restatement (Second) of Torts, § 262, cmt. d (“The definition of negligence given in this Section includes only such conduct as creates liability for the reason that it involves a risk and not a certainty of invading the interest of another. It therefore excludes conduct which creates liability because of the actor’s intention to invade a legally protected interest of the person injured or of a third person”).

be denied. The Court disagrees based upon the framework set forth in *Huffman*, as discussed more fully in the previous section of this Order.

In *Huffman*, the South Carolina Supreme Court explicitly denied expanding a duty of witness and/or victim in a criminal investigation to investigate and analyze evidence in the same manner as law enforcement. In the present case, it is undisputed that a third-party reported the theft of financial cards, and the evidence in the record establishes Defendants were simply cooperating in good faith with law enforcement during the course of law enforcement's independent, criminal investigation. Accordingly, the Court finds that Plaintiff failed to present evidence to show that Defendants breached any duty owed to Plaintiff that then caused Plaintiff's ultimate arrest. As a result, the Court grants summary judgment in favor of Defendants as to Plaintiff's claim of negligence.

### **CONCLUSION**

In conclusion, the Court grants summary judgment to the Defendants on all causes of action alleged in Plaintiff's Complaint and dismisses Plaintiff's Complaint with prejudice.

**IT IS SO ORDERED.**



Florence Common Pleas

**Case Caption:** Travis William Jacobs VS Walmart Stores East Lp , defendant, et al

**Case Number:** 2020CP2102572

**Type:** Order/Summary Judgment

IT IS SO ORDERED

s/D. Craig Brown (2160)

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