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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Appellate Case No. 2023-000738

Case No. 2020-CP-21-02572

Travis William Jacobs,

Appellant,

v.

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

Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGEMENT IN FAVOR OF RESPONDENT ON APPELLANT'S CAUSES OF ACTION FOR FALSE ARREST, MALICIOUS PROSECUTION AND DEFAMATION?

STATEMENT OF THE CASE

On November 19, 2020, Appellant brought this action alleging assault and battery, civil conspiracy, defamation, false imprisonment, intentional infliction of emotional distress, malicious prosecution, gross negligence and negligent supervision. Respondents answered Appellant's complaint denying Appellant's claims and alleging defenses of failure to state a claim, comparative negligence, superseding acts of negligence, acts or omissions of others, good faith, intra-corporate immunity, failure to allege special damages, limitations on punitive damages and reservation of defenses.

By order filed April 3, 2023, the trial court granted summary judgment in favor of Respondents on all causes of action. On May 2, 2023, Appellant served the Notice of Appeal on Respondent.

STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment when "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 a judgment as a matter of law." Rule 56(c), SCRPC. Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as

to the conclusion to be drawn from those facts. *Id.* In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988). An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRPC. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998).

FACTS

At the time of the incident alleged in the Complaint, Appellant Travis Jacobs had been recently hired at Walmart Supercenter #630 and was still in new employee orientation. On July 28, 2019, while Mr. Jacobs was in orientation, an overnight Walmart manager, Belva McClellan, alleged that someone stole her credit and/or debit cards from her wallet and purse during an overnight shift.

Ms. McClellan apparently left her purse on a desk in a locked area accessible only to Walmart employees. The desk was in an office within a fence-like enclosure. Ms. McClellan reported the theft to the Florence Police Department and Walmart. At that time, Walmart Asset Protection Team, including Respondents Ginny Wright, Joey Barefoot and Emily Ek (“Walmart Respondents”), as well as an undetermined number of managers reviewed a video recording of the night in question and began their own investigation to identify how the theft occurred and who may have been responsible.

Corporal Glenda Oliver of the Florence Police Department (“Investigator Oliver”) was assigned to investigate the case. When she contacted Respondent Walmart she was provided a

copy of the video recording of a person entering the store and hanging around the restricted area where Ms. McClellan's financial cards were stolen. The recording did not provide a clear view of this person's face.

Investigator Oliver subsequently discovered that Ms. McClellan's credit card had been used at a Pilot gas station in Florence, S.C. She obtained a video recording of the person using the card at the Pilot station, but it too provided an unclear view of the person's face. She did, however, share this video with the Walmart Asset Protection team, including the Walmart Respondents.

Investigator Oliver then returned to Walmart where the Walmart employees told her that the person in the Walmart and Pilot videos was Appellant Travis Jacobs, despite the fact that the person's face was not clear on the Walmart video. On September 6, 2019, Appellant was arrested while at work at Walmart, handcuffed, and taken into custody. Respondent Walmart subsequently terminated his employment.

After Mr. Jacobs' arrest, the Florence Police Department discovered that the person using Ms. McClellan's cards was in fact an unrelated individual and the charges against Mr. Jacobs were dismissed.

ARGUMENT

BECAUSE THERE WAS A GENUINE ISSUE OF MATERIAL FACT OF WHETHER RESPONDENTS ACTED UNREASONABLY IN IDENTIFYING APPELLANT TO POLICE AS THE PERPETRATOR OF THE THEFT, THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT.

The notion that a private individual may face potential liability for false imprisonment is recognized in South Carolina. Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 528, 30 S.E.2d

307, 311 (1944) (“The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may cause, instigate or procure an unlawful arrest.”). As the Court definitively stated in Wingate, it is “well settled that where a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment.” Id.; see Whitmire v. Publix Theatre Corp., 164 S.C. 487, 162 S.E. 753 (1931) (finding evidence justified the jury's conclusion theater representative's actions caused plaintiff's arrest by requesting police return plaintiff to the theater for an investigation); Falls v. Palmetto Power & Light Co., 117 S.C. 327, 109 S.E. 93 (1921) (holding sufficient evidence from which the jury could conclude power company's general manager acted unreasonably and without ordinary prudence in calling for the arrest of plaintiff who sold similar goods as those stolen from power company); Huffman v. Sunshine Recycling, LLC, 426 S.C. 262, 272–73, 826 S.E.2d 609, 615 (2019).

In this case, Respondents’ are liable for Appellant’s arrest and detention because Respondents were not just witnesses or victims assisting law enforcement or honestly seeking the enforcement of law, they did their own investigation independent of law enforcement and acted unreasonably and without ordinary prudence in identifying Appellant as the perpetrator, leading to his arrest. In other words, they conducted their own investigation and identified Appellant as the perpetrator even though there was no evidence identifying him as such. In doing so, they acted unreasonably and without ordinary prudence under the circumstances. At the very least there is a genuine issue of material fact that should be decided by a jury.

The evidence is clear that Walmart did its own investigation and were not just assisting law enforcement. The Walmart Asset Protection team, including the Walmart Respondents,

engaged in a coordinated effort to identify and ultimately prosecute the perpetrator of the theft. They gathered and assembled to discuss the case, reviewed the Walmart video and even came up with their own strategy for trying to identify Appellant as the perpetrator by his shoes. They also had members of the Asset Protection team walk by and look at Appellant while he was in orientation in an independent effort to try to identify Appellant. It is also important to note that the Asset Protection team, including the Walmart Respondents, did all of this without the request or coordination with law enforcement.

There is also evidence that Walmart Respondents acted unreasonably and without ordinary prudence in identifying Appellant as the perpetrator in this case. At the time Walmart Respondents identified Appellant, there were no witnesses that actually saw the cards being taken, nor was the theft captured on the Walmart video. Also, the Walmart Respondents admitted that they could not identify Appellant from the videos.

Investigator Oliver, the police officer who arrested Appellant, testified as follows:

Q. They showed you a video of a person reaching a broomstick into a room and getting the pocketbook and retrieving it and taking something out and putting it back?

A. The actual part of him reaching in with the broomstick they said was off frame.

Q. Okay. So there's no video of anybody reaching for anything; am I correct in that? I'm just trying to make sure I understand what you're saying.

A. Whatever is on the video they provided me. If I remember correctly, it was just off frame. And I said, “Well, how do you know that what –that’s what he’s doing? And they walked me through it.

Oliver Dep. Transcript 30:25-31:13.

The Walmart Respondents also could not identify Appellate as the person on the video from Walmart because the image was unclear. Respondent Emily Ek, Respondent Walmart’s Asset Protection Associate, testified that she could not clearly identify the person on the Walmart video:

Q. Okay. Did you –could you—did you know who the person was on the video?

A. I did not.

Q. Could you clearly identify who that person was?

A. I could not.

Ek Dep. Transcript 14:25 – 15:2.

According to Investigator Oliver, the Walmart employees identified Appellant as the perpetrator despite not being able to clearly see the person on the Walmart video.:

Q. Well, wait a minute, you said they told you—when you say, “they told you,” who are you talking about, Walmart employees?

A. Yes, the Walmart employees.

Q. What did they tell you?

A. Well, when I went out there to follow up on the case and to pick up the video from the loss prevention personnels, and when I went out there they

say, “Hey, one of the managers came in here and said they believe that the person that is on the video is sitting back in orientation.”

Q. And who was that person?

A. Mr. Jacobs.

Q. Who told you that from Walmart?

A. The loss prevention people.

Oliver Dep. Transcript 28:2-16.

Investigator Oliver testified that Joey Barefoot was certain that the person on the video was Appellant.

Q. And then what happened?

A. I don't know what they did, but when I was talking to them – Emily was doing the video for me. She was downloading the video and she provided me the disk of the incident. And I asked, I said, “Are you sure it's him? They was like, “Pretty darn sure” is what Joey said. And I said, “How do you this?” And they said, “Well, he's got earring in his ear just like the video. Same features on the video.” And I said, “Well, who is he?” And so they pulled up his information, provided me all his information. I said, “Well, I'll look at it.”

Oliver Dep. Transcript 29:16-30:3.

The identification of Plaintiff as the perpetrator was reckless and unreasonable because the Walmart Respondents never saw anyone steal a credit card on the video recording, nor could

they clearly identify anyone on either of the videos. They merely speculated that Appellant was the person seen on the Walmart video walking in the store and appearing in the restricted area.

Appellant was arrested solely based on the flawed investigation conducted by the Walmart Respondents, their reckless identification of Appellant as the perpetrator of the theft, and their unfounded representation to the arresting officer that Appellant was the individual in the Walmart video. At the very least, these unreasonable actions present a question of material fact sufficient for a reasonable jury to return a verdict in favor of Appellant.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,



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