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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

Case No. 2020-CP-21-02572
Appellate Case No. 2023-000738

Travis William Jacobs,

Appellant,

v.

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

Respondents.

RECORD ON APPEAL

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Order Granting Summary Judgment

April 3, 2023

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**

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

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.¹

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

¹ 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)

**Transcript of Proceedings: Hearing on Walmart Defendants'
Motion for Summary Judgment**

July 7, 2023

State of South Carolina	)	
	)	Circuit Court
<u>County of Florence</u>	)	2020-CP-21-02572

Travis William Jacobs	)	
	)	
vs.	)	Transcript of Record
	)	
Walmart Stores East, LP,	)	
d/b/a Walmart Supercenter	)	
#630, et al.	)	

March 1, 2023
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge.

A P P E A R A N C E S (All present by video or telephone):

Randi Lynn Roberts
Attorney for the Defendants

John D. Clark
Attorney for the Plaintiff

Khaleelah Gantt
Transcriber



1 THE COURT: All right. We're here on the case Travis
2 William Jacobs v. Walmart Stores East, case number 2020-CP-21-
3 02572. Looks like this is Ms. Roberts' motion for summary
4 judgment. I'll be happy to hear from you, Ms. Roberts.

5 MS. ROBERTS: Thank you, Judge Brown. Good to see you.

6 THE COURT: Good to see you.

7 MS. ROBERTS: I am here on behalf of the defendants,
8 Walmart Stores East, but also the individual defendants Emily
9 Ek, Joey Barefoot, and Ginny Wright who were all at some time
10 employees at the Walmart where this incident arose. I want to
11 start -- I know that I at least have handed in a brief that
12 described in much detail the factual background. But if I
13 could just start by stating there are at least, in my opinion,
14 three undisputed facts that are essential to this case.

15 The first undisputed fact being that a third party, Belva
16 McClellan (phonetic), reported her personal property stolen to
17 the Florence Police Department. She was working at Walmart at
18 the time she made that phone call, but it was on behalf of her
19 personal belongings.

20 The second undisputed essential fact is that an arrest
21 warrant was issued through Magistrate -- I believe it was
22 Judge Debra Jackson based upon probable cause for the charge
23 of financial transaction card theft for Mr. Travis Jacobs, the
24 plaintiff in this case.

25 And I think the third undisputed fact is that he was

1 arrested by Florence Department -- Mr. Jacobs was arrested by
2 Florence Police Department only again while at Walmart.
3 Florence Police Department came, detained him, made the arrest
4 based upon the arrest warrant that they had obtained.

5 And Your Honor, in looking at, of course, the complaint
6 I'll note that Mr. Jacobs ended up bringing causes of
7 action -- numerous causes of action, assault and battery,
8 civil conspiracy, defamation, false imprisonment, intentional
9 infliction of emotional distress, malicious prosecution, gross
10 negligence, and negligent supervision. So our brief was
11 wordy, but we had to address a multitude of causes of action
12 so I apologize about that. When I looked at Mr. Clark's reply
13 brief last night when I received notice of the filing, it
14 looks like he argues only that Walmart employees acted
15 unreasonably in their cooperation with law enforcement's
16 investigation into the financial card theft.

17 My first position would be to the extent that that's his
18 argument that Walmart and these employees acted unreasonably,
19 we're talking about negligence only. Intentional torts are
20 intentional torts. You need intentional actions, not
21 unreasonable negligent actions. And so Your Honor, based upon
22 that alone, I argue that any intentional torts, which of
23 course the defamation, false imprisonment, intentional
24 infliction, malicious prosecution should all be found in
25 Walmart's and the individual defendants' favor in terms of

1 summary judgment.

2 But moving beyond that, like I said earlier, it is
3 undisputed that there was a arrest warrant issued, facially
4 valid arrest warrant. There's no argument to the contrary, no
5 allegations to the contrary. And Your Honor, that alone
6 requires, as a matter of law, summary judgment as to the false
7 imprisonment cause of action and that's based upon Carter v.
8 Bryant, 429 SC 298, that you cannot have a false imprisonment
9 cause of action when there is a facially valid warrant as we
10 have here. It was attached as Exhibit B, I believe, to
11 Walmart and the individual defendants' motion.

12 Going beyond that, because there was a facially valid
13 warrant issued, the assault and battery charge, in terms of a
14 civil assault and battery must also be found in Walmart's
15 favor and the individual defendants' favor in terms of summary
16 judgment. Because that means a lawful arrest occurred, and
17 based upon case law, you cannot have civil assault and battery
18 when the underlying arrest was lawful. And right there, we
19 just believe that the undisputed arrest warrant tosses those
20 two causes of action on summary judgment as well.

21 Your Honor, moving on to civil conspiracy, there's been
22 simply no testimony and no evidence whatsoever in the record
23 that there was any pre-ordained agreement between Walmart
24 associates, Walmart and Florence Police Department. As I
25 stated, undisputed a third party called in the theft of her

1 personal belonging, the officer came to Walmart to obtain
2 surveillance video. There's no pre-ordained, again, civil
3 conspiracy against Mr. Jacobs to find him guilty for any
4 particular charge.

5 Your Honor, moving on to malicious prosecution. Because
6 there was probable cause, we argue that there is no claim of
7 malicious prosecution as well. But beyond that, there is no
8 evidence that Walmart associates participated in any
9 prosecution of Mr. Jacobs once the arrest warrant was issued
10 and he was arrested. This was not a Walmart related charge,
11 it was not involving Walmart merchandise, and as all the
12 evidence in the record reflects and the law enforcement
13 officer testified to, there were no further interactions with
14 Walmart employees following the arrest of Mr. Jacobs. So we
15 would ask that summary judgment be granted in favor of the
16 Walmart defendants on that cause of action.

17 Your Honor, defamation. There's no evidence that any
18 particular person provided false information to law
19 enforcement. To the extent that the plaintiff is going to
20 rely upon testimony that certain associates looked at
21 surveillance video and stated the person on the surveillance
22 video looks similar to a person whom we have in the
23 orientation room at Walmart. Your Honor, the law enforcement
24 officer, Glenda Oliver, who testified in deposition under
25 oath, she agreed that based upon Facebook photos of Mr.

1 Jacobs -- comparing those Facebook photos to surveillance
2 video, she and her supervisor agreed the two people that they
3 saw in those photos looked similar to each other. And in
4 addition to the 82 pages of investigation file she had, she
5 went to a magistrate and obtained a probable cause warrant.

6 Moving on to the negligence and gross negligence causes
7 of action, we relied heavily in the brief, as you probably
8 saw, on Huffman v. Sunshine, which I think is applicable to
9 the false arrest claims, the negligence claims, and then also
10 malicious prosecution, Your Honor. But Huffman v. Sunshine,
11 for maybe once is an appellate decision that I will rely on,
12 it helps me, I believe, in the best way possible that the
13 Supreme Court was clear they were not going to create an
14 unprecedented duty upon a witness to investigate the own good
15 faith information they're providing to law enforcement. And
16 so Your Honor, here I know looking at this in the light most
17 favorable to the plaintiff today, I'm glad to assume that not
18 only did Walmart provide the surveillance video, but also that
19 certain employees looked at that surveillance video alongside
20 law enforcement.

21 No one was an eyewitness to the crime, but alongside law
22 enforcement looked at surveillance video and again said, this
23 person on the surveillance video looks similar to another
24 person we have in our orientation room. So assuming that is
25 true, Your Honor, I still believe Huffman v. Sunshine says if

1 someone a witness is going to give good faith information,
2 even if it's mistaken information, we are not going to punish
3 them under civil liability. Because that would quell --
4 public policy says that would quell and silence the public in
5 attempting to assist law enforcement in good faith in these
6 investigations.

7 And so Your Honor, we would ask that the Court find
8 summary judgment to Walmart on the negligent -- any cause of
9 action that was based upon negligence, again, because the
10 Supreme Court has already stated they're not going to extend a
11 duty to a witness, like Walmart in this case, who did not call
12 in this crime, was simply providing surveillance video to law
13 enforcement. They're not going to require Walmart to then
14 investigate its own statements as if it was law enforcement as
15 long as those statements were made in good faith. And as seen
16 in Mr. Clark's brief, there's no allegations that it was
17 intentionally false allegations that it was intentionally
18 false information provided or any bad faith in providing the
19 information. And so we believe Huffman v. Sunshine covers
20 that pretty succinctly in our favor.

21 Your Honor, I don't want to belabor the point because
22 again I know I filed an extensive brief, but glad to answer
23 any questions, as always and thank you.

24 THE COURT: All right. Thank you, ma'am.

25 Mr. Clark?

1 MR. CLARK: Thank you, Your Honor. May it please the
2 Court, Your Honor, first of all it's our position that
3 Walmart's not entitled to summary judgment; summary judgment
4 has to be denied because there's a genuine issue of material
5 fact whether Walmart acted reasonably. I was just thinking
6 about this last night and before I went -- before I started
7 law school somebody told me the answer to the professor's
8 questions is always going to be the reasonable man standard.
9 And that wasn't always true, but now we're back in this case
10 to the reasonable man standard.

11 Your Honor, we do have a date certain trial for later
12 this month and we believe summary judgment has to be denied
13 and the Court allows this case to move forward to trial. As
14 the Court is aware, summary judgment is not favored; all
15 inferences have to be construed in the light most favorable to
16 us. And we simply have the scintilla standard. Your Honor, I
17 want to go back to why we're here. And the reason why we're
18 here is because Walmart filed a Motion for Summary Judgment
19 and in that motion, the only basis that they cite is they say
20 they're entitled to summary judgment because a witness
21 cooperating with law enforcement into a theft is not grounds
22 for tort liability. That's their only basis that they put in
23 their motion and what's happening here is Ms. Roberts is
24 arguing other bases that she didn't put in her motion. And so
25 I don't think that she can come now and argue things that she

1 didn't use as a basis for the motion because we hadn't been
2 put on notice that she was going to argue that. But her
3 motion only says that they're entitled a summary judgment
4 because you can't be held accountable for tort liability for
5 cooperating with police.

6 Your Honor, I want to back up a minute and I want the
7 Court to have a clear understanding of the facts. My client,
8 Travis Jacobs, he was a newly hired employee at Walmart and
9 again I don't think Ms. Roberts disagrees with this. He was a
10 newly hired employee of Walmart, he was still in the
11 orientation phase of his employment and what happened is one
12 of the night managers at Walmart, Mr. Roberts said her name
13 was Belva McClellan. She put a pocketbook in a restricted
14 area in the back of the store and the pocketbook was on an
15 office desk, but the office was enclosed with like a wire type
16 wall, so you couldn't just walk in and get the pocketbook; it
17 was in a locked office.

18 Well when she found out that her credit card was stolen
19 out of the pocketbook, she called police. And the police came
20 to investigate the case. When they came, Walmart joined the
21 investigation. What they did was, they did their own
22 investigation and we're going to show that they did that.
23 They did more than just cooperate. What they did is they
24 pulled the video from the entrance of the store and they
25 pulled the video from the restricted area in the back. And

1 what happened is they saw a person come into the store and
2 they saw that same person in the restricted area. But it's
3 very important to understand that the video did not show this
4 person stealing anything because where the pocketbook was, it
5 was off camera and I'm going to show that to you from the
6 testimony of the officer, Glenda Oliver.

7 So the video showed a person come in the store and it
8 showed a person in the restricted area. But it did not show
9 this person stealing anything. The video was not clear, you
10 could not see the person's face clearly and so what happened
11 is when the -- when Ms. Oliver came to the store, Walmart said
12 we have this video. But we can't tell who it is because we
13 can't see his face. What happened then is the credit card was
14 used somewhere else and Ms. Oliver, she went to the Pilot
15 store for the credit card was used and she got another video
16 of a person using this credit card. But again, on that video
17 you couldn't clearly see who the person was. When she got
18 that second video, she went back to Walmart and when she went
19 back to Walmart, Walmart told her that the person on the video
20 was Travis Jacobs and he was in orientation at Walmart at that
21 time. And despite the fact that they couldn't see his face
22 clearly, Walmart told Florence Police that that was him on
23 both videos.

24 And what happened is they arrested Travis Jacobs, while
25 he was at orientation, put him in handcuffs, he started crying

1 and professing his innocence. They didn't care. They
2 arrested him anyway. They took him to jail. He had to bond
3 out. He got a lawyer. Then the Florence Police Department
4 found out that it was not in fact Travis Jacobs, that it was
5 another person that they knew from other financial crimes, and
6 the case against Travis Jacobs was dismissed. So that's the
7 factual scenario.

8 But Walmart is liable because they had no reasonable
9 basis to ID the person on the video as the perpetrator and
10 because not only could they not see the person's face, but
11 it's very important to note that the person that they saw on
12 video they could not see him stealing anything. So what you
13 had is you just had a person in the area with no evidence that
14 this person stole anything. But Walmart said he was the one
15 who stole it and so Walmart's liable because they didn't act
16 reasonably in saying that Travis Jacobs was the person who
17 stole the pocketbook, because they never saw anybody steal it
18 and they were unreasonable in identifying him when you
19 couldn't see the person's face on video.

20 Your Honor, I agree with Ms. Roberts that the Huffman v.
21 Sunshine case citing Wingate -- and Huffman, just for the
22 record is 426 SC 262 and it cites Wingate, which is 204 SC
23 520. Your Honor, I agree with Ms. Roberts that a person
24 cooperating with law enforcement cannot be liable just because
25 they cooperate. But what these cases say is that the person

1 providing information to law enforcement must be reasonable
2 and they must be cautious. And what I'd like to read to you
3 is a passage from Wingate, which is a 1944 case that
4 recognizes that a private individual can be liable for
5 malicious prosecution and false imprisonment if they are not
6 reasonable in what they tell the police. And here's what the
7 court in Wingate said, it said, "Those who honestly seek
8 enforcement of law and who are supported by circumstances
9 sufficiently strong to warrant a cautious man in the belief
10 that the party suspected may be guilty of the offense charged,
11 should not be made unduly apprehensive that they will be held
12 answerable in damages".

13 So what the court says is they're not liable if they are
14 prudently cautious. And in this case, we submit that because
15 they could not see this person's face, because they did not
16 see this person commit a crime, they were not prudently
17 cautious when they told Florence Police with certainty that it
18 was Mr. Jacobs who stole the pocketbook. And for that reason,
19 there's a genuine issue of fact of whether they acted
20 reasonably. The law is not that no matter what you tell the
21 police, you're never liable. The law is you got to be
22 cautious and you got to be careful because Mr. Jacobs has
23 rights too. So that's our position why they're not entitled
24 to summary judgment.

25 Your Honor, as I said Walmart was more than just a

1 cooperating witness. They conducted their own investigation,
2 and we rely on the testimony of Cpl. Glenda Oliver who was
3 from the Florence Police Department. And we submitted her
4 deposition to the Court and I would point to page 28 of her
5 deposition, line 6. And what it says is, I asked her the
6 question, what did they tell you? Well when I went out there
7 to follow up on the case and to pick up the video from loss
8 prevention personnel and when I went out there, they said, hey
9 one of the managers came in here and said that they believe
10 that the person that is on the video is sitting back in
11 orientation. They began investigating itself and Oliver said,
12 who was the person. Then they said, Mr. Jacobs. Then she
13 said, who told you that from -- I said, who told you that from
14 Walmart? She said the loss prevention people. Do you know in
15 particular who told you that? She says Joey Barefoot and
16 Ginny. And they said they went back when the other manager
17 was a male, I don't remember his name, but they said he had
18 seen the video of the suspect and that when he was in the back
19 he saw -- he walked by the orientation room -- this is loss
20 prevention. They walked by the orientation room, saw Mr.
21 Jacobs sitting in there and he was like, that's the guy from
22 the video, so he goes up and tells them. So they began their
23 investigation.

24 I would also point to page 39 of her deposition, line 23,
25 where she says -- I asked her the question, okay, so when you

1 got there, they had a picture for you? I'm not sure, I don't
2 know if they provided me one. While Walmart is saying they
3 were just a cooperating witness, they actually went and
4 provided a picture to law enforcement. And then over on page
5 40 at line 1, and is that the time they told you that the
6 person in the picture was Travis Jacobs. She said, I think
7 so. I would also point to page 46, line 6 of Glenda Oliver's
8 deposition testimony. I asked her the question, right, I mean
9 you didn't have any video of the person stealing the wallet,
10 right? Then she answers, no from what Walmart said and they
11 walked me through the process and they said, on this video you
12 can see the person going, getting a broom, coming back. And
13 they said the office area's like a wire cage area with a
14 cutout for the door and which was to the right, I believe, of
15 the frame. And they can see him. Then I questioned them, I
16 said wait a minute you cut out just now, they said you can see
17 him. You could make a motion like and they said what we
18 figured out -- and she's talking about Walmart. What we
19 figured out that he used a broomstick to hook the purse to
20 bring it over because they couldn't reach in through this
21 little opening. Right.

22 So in that statement, Walmart is giving her a theory of
23 what happened that she didn't have. It's important to note
24 that this pocketbook was in a caged area, the door was locked
25 and it was not on camera. And like I said earlier, you could

1 not see anybody go in and take the pocketbook, it just wasn't
2 on camera. So what Walmart told her, their theory was is that
3 he took a broom and reached through the wire cage and grabbed
4 the pocketbook. So that was their theory that they came up
5 with in their investigation. So they are much more than just
6 a witness informing the police of a crime and trying to
7 enforce the law.

8 Again, on page 79 there's evidence of their
9 investigation. At line six, she says, I remember going in and
10 it was Joey, Emily, and Ginny -- all the parties to this case
11 was in there. And as I was going over the case with them,
12 they was telling me what they learned through their course of
13 reviewing. So they did an investigation, the video and the
14 investigation on their side. So she mentions that they did an
15 investigation and they -- I don't know his name, he was a tall
16 white guy, I want to say maybe brown hair, average build,
17 manager. That they said he happened to walk in the back where
18 they were having orientation and him having seen the video
19 prior to that day, he knew what the suspect looked like. And
20 he said that it caught his attention because when he walked by
21 the door he looked into the new employees in their orientation
22 and he was like whoa, that looks like the guy from the video.
23 And he goes, he comes up front and tells him.

24 And then they go back and start trying to casually walk
25 by the door. What they're doing is they're walking back and

1 forth by the door. These are Walmart's employees and they
2 didn't want to spook anybody, what she says on line 1 of page
3 80, by going into the room and disturb the orientation. But
4 they said they walked by, looked in and they was like wow,
5 yeah that's him. So Walmart did a whole lot more than just
6 inform police, they did their own investigation. I hate to go
7 on with this, but it's extensive evidence that they did an
8 investigation on this case.

9 I would point to page 94 of her deposition. She says
10 what they did is they had a beer distributor before and what
11 they did is they told the police that he's the guy who used to
12 bring beer to us. So what they did is they went back and they
13 considered the beer guy and they told her that the beer guy
14 was the same guy as Mr. Jacobs, which turned out not to be
15 true. And so that's just a part of the investigation that
16 they did. But Your Honor, under Huffman and Wingate, they're
17 liable because they're unreasonable and reckless in
18 identifying Mr. Jacobs. And there are two basis that they
19 were unreasonable and they were reckless. Number one, they
20 never saw him steal anything. They never saw the person that
21 they thought was him on video; they never saw that person
22 reach in and steal anything. So there was no probable cause
23 to arrest the person in the store because there was no
24 evidence of a crime.

25 But they told him their theory that yeah, we can't see

1 him taking it, but our theory is he put a broomstick through
2 the wire cage, got the pocketbook and got out. There was no
3 basis for that. That was just their theory and that ended up
4 being the basis that Glenda Oliver arrested him for because
5 they told him (sic) that that person on the video actually
6 stole the pocketbook, even though there was no probable cause
7 to say that because it wasn't on video and nobody saw him
8 stealing. There's no crime on the video, just a person in the
9 area.

10 Walmart is also liable because they told Glenda Oliver
11 that they were certain that that was Mr. Jacobs that stole the
12 pocketbook, even though their video was not clear. And what I
13 would point to, Your Honor, is page 43 of Glenda Oliver's
14 deposition. You look at page 43, line number 1, I asked her
15 the simple question, could you identify who the person on that
16 video was? Her answer at line 3 was, the video wasn't that
17 clear. They had a hat on, same clothing that was in the
18 Walmart video, except he had a hat on. Then on line 6, could
19 you identify Travis Jacobs' face from that video, the Pilot
20 video -- that was the second video, which Walmart said it was
21 him on that video too. And she said no, I couldn't tell it's
22 the same person that was in the Walmart video. So Walmart
23 told her, we are certain that this is him, even though they
24 could not clearly see his face.

25 And Emily Ek, who is a defendant in this case, in her

1 deposition on page 15 which we submitted to the Court. Page
2 15, line 1 -- I'm sorry, page 14, line 25, I asked her, okay
3 did you -- could you, did you know who the person on the --
4 person was on the video? She said I did not. Then I asked
5 her this very important question, could you clearly identify
6 who that person was? On line 4 she says, I could not. So
7 what they did was, they told the police officer that they were
8 certain it was him, even though they could not identify him
9 from the video because it was not clear from the video who the
10 person was.

11 And so Huffman and Wingate, it doesn't say a private
12 party can never be liable, but it does say they can be liable
13 if they are reckless, if they are not cautious, if they are
14 not prudent, and they just tell the police something based on
15 conduct by them that's something other than cautious. Now, so
16 since this evidence is in the record, it's at least a jury
17 question of whether they violated Huffman or Wingate. And I
18 submit that since there is a genuine issue of material fact of
19 whether they acted reasonable, then the case has to go to
20 trial. They identify this man, even though they didn't have a
21 video showing his face, they couldn't see who it was. But
22 they surmised that it was him and they told Ms. Oliver that it
23 was him with certainty. They said they were pretty sure and
24 I'd like to read you what they said. Yeah, if you look at
25 page 29 of her deposition, line 16. I said and then what

1 happened? She said, I don't know what they did, but when I
2 was talking to them, Emily was doing the video for me, she was
3 downloading the video and she provided me the disk of the
4 incident. And I asked, I said, are you sure it's him? They
5 was like pretty darn sure is what Joey said and I said how do
6 you this? And they said, well, he's got earring in his ear,
7 just like the video, same features like the video. And I
8 said, well, who is he?

9 So they told the police that they were darn sure that it
10 was him. So in my opinion, that at least creates a jury
11 question as to false imprisonment, malicious prosecution,
12 negligence, defamation. I mean they told the cop that this
13 man stole something; it was not true. They didn't have a
14 reasonable basis for saying it, and so we can definitely go
15 forward on a defamation claim, as well.

16 As for conspiracy, Ms. Roberts said they didn't have a
17 pre-conceived agreement to conspire against Mr. Jacobs. I
18 don't think they had to have a pre-conceived idea. Our
19 position is is that they combined -- which I think civil
20 conspiracy only requires that parties combine for the purpose
21 of hurting someone and that's what they did. The three or
22 four Walmart employees, we believe there's evidence they
23 combined together for the purpose of hurting Mr. Jacobs and
24 they did hurt him. They got him arrested and they fired him.
25 And then when they found out it wasn't him, the case was

1 dismissed. So under these circumstances, Your Honor, I
2 believe we have the right to go forward and let a jury
3 determine whether they were reasonable or not. Thank you.

4 THE COURT: Ms. Roberts, briefly.

5 MS. ROBERTS: I'm going to try, Your Honor.

6 THE COURT: Very briefly.

7 MS. ROBERTS: Okay. I wholeheartedly disagree with the
8 factual scenario that was just provided. I do believe the
9 deposition of Glenda Oliver is essential to read because those
10 are her words. I would refer the Court specifically to pages
11 50 and 89 of Glenda Oliver's deposition. She in fact says I
12 agree the Facebook photo of Mr. Jacobs looks like the person
13 on the surveillance video. No one at Walmart, based upon her
14 testimony ever said, Mr. Jacobs committed this crime. They
15 said if we're taking all inferences in favor of the plaintiff,
16 that the person on the surveillance video looks like Mr.
17 Jacobs and in fact -- we'll say Mr. Jacobs. That was what was
18 said, that is it. There is no question, it is undisputed that
19 Ms. Belva McClellan's credit cards were stolen, they were used
20 at other places. Ofc. Oliver conducted the investigation at
21 those other places that also contributed to her probable
22 cause, Your Honor. Walmart was not an eyewitness, they simply
23 provided surveillance video upon request and provided
24 information to cooperate with the investigation as a whole.
25 And Your Honor, Wingate -- Huffman talks about Wingate and it

1 says it does not interpret Wingate to require a witness to
2 conduct their own investigation into the offense committed in
3 order to verify the information they provide. To interpret
4 Wingate in such a manner would improperly subject that witness
5 who acted in good faith when assisting law enforcement.

6 That's precisely what we have here, Your Honor, a third-
7 party crime in which Walmart was simply cooperating and
8 providing surveillance video upon request. We're not
9 eyewitnesses. Law enforcement is in a better position to do
10 their investigation fully as is their independent duty. Thank
11 you, Your Honor.

12 THE COURT: All right. I'll take a look at it and I'll
13 let you all know. Okay.

14 MR. CLARK: Thank you, Your Honor. Good to see you.

15 MS. ROBERTS: Thank you.

16 THE COURT: Thank you. You too.

17 MR. CLARK: Have a good day.

18 (End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Florence)

I, KHALEELAH GANTT, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 1st day of March, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 28, 2023



Khaleelah Gantt, CDLT-285
Transcriber

Summons and Amended Complaint

Filed November 19, 2020

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF FLORENCE)

TWELTH JUDICIAL CIRCUIT)

2020-CP-21-02572)

Travis William Jacobs,)

Plaintiff,)

-vs.-)

SUMMONS)

Wal-Mart Stores East, LP d/b/a,)

Wal-Mart Supercenter #630, Emily Ek,)

Joey Barefoot, Ginny Wright, and)

Florence Police Department,)

Defendants.)

TO: WAL-MART STORES EAST, LP, D/B/A WAL-MART SUPERCENTER #630,
EMILY EK, JOEY BAREFOOT, GINNY WRIGHT AND FLORENCE POLICE
DEPARTMENT, THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at this office at 22 East Liberty Street, Post Office Drawer 880, Sumter, South Carolina 29151-0880, within thirty (30) days after the service hereof, exclusive of the day of such service; and on your failure to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

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**CLARK LAW FIRM, LLC
ATTORNEYS FOR PLAINTIFF**

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Sumter, South Carolina
November 19, 2020

referenced and were operating in the scope and course of their employment .

4. The Defendant Florence Police Department is a governmental entity or an agency within the meaning of the South Carolina Tort Claims Act, and at the times referenced herein, was the employer of Investigator G. Oliver.

5. That on or about August 2, 2019, Plaintiff was identified to Investigator G. Oliver by employees of Defendant Wal-Mart Supercenter #630 as a person appearing on a security video suspected of stealing a credit card but Plaintiff was not the person appearing on the video.

6. That on or about September 6, 2019 Plaintiff was arrested on a warrant sworn to by Investigator Glenda Oliver and charged with Financial Transaction Card Theft.

7. That Plaintiff's arrest was without probable cause and the charges were dismissed by the State of South Carolina on November 15, 2019.

8. That as a result of Plaintiff being arrested he has suffered economic damages, shame, ridicule, embarrassment, damage to reputation, emotional distress and other damages.

**FOR A FIRST CAUSE OF ACTION
(Assault & Battery)**

9. Plaintiff re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.

10. That Defendants made forcible contact with Plaintiff's person and caused him to be in reasonable fear of bodily injury.

**FOR A SECOND CAUSE OF ACTION
(Criminal Conspiracy)**

11. Plaintiff re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.
12. That Defendants acted in combination for the purpose of injuring Plaintiff and caused him special damages.

**FOR A THIRD CAUSE OF ACTION
(Defamation)**

12. Plaintiffs re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.
13. Defendants published communications accusing Plaintiff of Financial Transaction Card Theft with actual and or implied malice and said accusations were false and resulted in damages to Plaintiff.

**FOR A FOURTH CAUSE OF ACTION
(False Imprisonment)**

14. Plaintiff re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.
15. Defendants' restraint of Plaintiff was intentional and unlawful.

**FOR A FIFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Stress)**

16. Plaintiff re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.
17. The Defendants intentionally or recklessly inflicted severe emotional distress or

was certain or substantially certain that such distress would result from their conduct.

18. The Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

19. The actions of the Defendants caused the Plaintiff emotional distress; and the emotional distress suffered by the Plaintiff was severe so that no reasonable man could be expected to endure it.

**FOR A SIXTH CAUSE OF ACTION
(Malicious Prosecution)**

20. Plaintiff re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.

21. Defendants instituted and continued criminal proceedings against Plaintiff with malice and lack of probable cause resulting in injury and damages to Plaintiff.

**FOR A SEVENTH CAUSE OF ACTION
(Gross Negligence)**

22. Plaintiff re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.

23. Defendants owed a duty of care to act reasonable and Defendants' actions were unreasonable, negligent, grossly negligent, reckless, intentional, willful, wanton proximately resulting in damages to Plaintiff.

24. Defendants knew or should have known that Plaintiff had not committed the offense of Financial Transaction Card Theft.

**FOR AN EIGHTH CAUSE OF ACTION
(Negligent Supervision)**

25. Plaintiff re-alleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.

26. Defendants failed to properly supervise and train its employees resulting in injury to Plaintiff.

27. The Plaintiff is informed and believes that he is entitled to judgment against the Defendants for actual damages and punitive damages in an appropriate amount.

WHEREFORE, Plaintiff requests judgment against the Defendants for actual and punitive damages in an appropriate amount, for the cost of this action, and for such other and further relief as the Court may deem just and proper.

(Signature Block on Next Page)

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Sumter, South Carolina
November 19, 2020

Walmart Defendants' Answer to Amended Complaint

Filed December 29, 2020

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 and Florence Police Department,

Defendants.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-21-02572

**DEFENDANT WAL-MART STORES
EAST, LP D/B/A WAL-MART
SUPERCENTER #630'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT**

**TO: PLAINTIFF AND PLAINTIFF'S COUNSEL OF RECORD: JOHN D. CLARK,
SHARON B. CLARK, AND WILLIE H. BRUNSON:**

COME NOW Defendants Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, and Ginny Wright (hereinafter, "Walmart") by and through undersigned counsel, who hereby answers Plaintiff's Amended Complaint in the above-captioned case as set forth below. Walmart denies each and every allegation contained in Plaintiff's Amended Complaint unless specifically admitted herein. Further, Walmart hereby requests a jury trial.

FOR A FIRST DEFENSE

1. Walmart has insufficient information to admit or deny the allegations of Paragraph 1; thus, Walmart does not admit or deny the allegations.
2. Walmart admits the allegations of Paragraph 2 only to the extent that it alleges Wal-Mart Stores East, L.P. is a foreign corporate entity that is organized under the laws of the State of Delaware and operates a retail store located at 230 North Beltline, Florence, South Carolina, Florence County. Walmart denies all remaining allegations of Paragraph 2.

3. Walmart admits the allegations of Paragraph 3 only to the extent that they allege Defendants Emily Ek, Joey Barefoot, and Ginny Wright were employed with the subject store on the date of the alleged incident. The allegations of Paragraph 3 pertaining to an agency relationship state a legal conclusion, which does not require a response. To the extent a response may be required, Walmart denies the remaining allegations of Paragraph 3.

4. The allegations of Paragraph 4 do not pertain to Walmart; thus, no response is required.

5. Walmart denies the allegations of Paragraph 5.

6. The allegations of Paragraph 6 do not pertain to Walmart; thus, no response is required. To the extent a response may be required, Walmart denies the allegations of Paragraph 6.

7. Walmart denies the allegations of Paragraph 7.

8. Walmart denies the allegations of Paragraph 8.

9. Paragraph 9 incorporates previous allegations; thus, it does not require a response. To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in Paragraph 9.

10. Walmart denies the allegations of Paragraph 10.

11. Paragraph 11 incorporates previous allegations; thus, it does not require a response. To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in Paragraph 11.

12. Walmart denies the allegations of Paragraph 12.

13. Plaintiff's second Paragraph 12 incorporates previous allegations; thus, it does not require a response. To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in second Paragraph 12.

14. Walmart denies the allegations of Paragraph 13.

15. Paragraph 14 incorporates previous allegations; thus, it does not require a response. To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in Paragraph 14.

16. Walmart denies the allegations of Paragraph 15.

17. Paragraph 16 incorporates previous allegations; thus, it does not require a response. To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in Paragraph 16.

18. Walmart denies the allegations of Paragraph 17.

19. Walmart denies the allegations of Paragraph 18.

20. Walmart denies the allegations of Paragraph 19.

21. Paragraph 20 incorporates previous allegations; thus, it does not require a response. To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in Paragraph 20.

22. Walmart denies the allegations of Paragraph 21.

23. Paragraph 22 incorporates previous allegations; thus, it does not require a response.

To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in Paragraph 22.

24. Walmart denies the allegations of Paragraph 23.

25. Walmart denies the allegations of Paragraph 24.

26. Paragraph 25 incorporates previous allegations; thus, it does not require a response.

To the extent a response may be required, Walmart refers Plaintiff to its response to each of the subject paragraphs of Plaintiff's Amended Complaint and denies any additional allegations that may be set forth in Paragraph 25.

27. Walmart denies the allegations of Paragraph 26.

28. Walmart denies the allegations of Paragraph 27.

29. To the extent Plaintiff's prayer for relief contains allegations against Walmart, Walmart denies all such allegations.

FOR A SECOND DEFENSE

30. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

31. Plaintiff fails to state a claim for which relief may be granted as to his cause of action for negligence as Plaintiff cannot prove that Walmart owed any duty to Plaintiff, or that it breached any duty owed to Plaintiff, thereby causing him damages. As such, the cause of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

32. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

33. Any alleged injuries sustained by Plaintiff, which Walmart expressly denies, were caused by the sole negligence and/or willfulness of Plaintiff. Further, any alleged injuries sustained by Plaintiff would not have occurred absent Plaintiff's conduct; consequently, Plaintiff is wholly barred from recovery.

FOR A FOURTH DEFENSE

34. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

35. Any alleged injuries sustained by Plaintiff, which Walmart expressly denies, were caused by the negligence and/or willfulness of Plaintiff. Further, Plaintiff's negligence and/or willfulness exceeded that which may be attributable to Walmart, same being expressly denied; consequently, Plaintiff is wholly barred from recovery.

FOR A FIFTH DEFENSE

36. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

37. Alternatively, to the extent there is any finding that Walmart was negligent, which Walmart expressly denies, any recovery awarded to Plaintiff should be reduced in proportion to Plaintiff's own negligence.

FOR A SIXTH DEFENSE

38. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

39. Any injuries and damages sustained by Plaintiff, which Walmart expressly denies, were caused by an intervening, superseding act of negligence for which Walmart is not liable; thus, Plaintiff's claims are barred.

FOR A SEVENTH DEFENSE

40. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

41. Any damages suffered by Plaintiff, which Walmart expressly denies, were the result of the acts or omissions of other parties for which Walmart bears no responsibility.

FOR AN EIGHTH DEFENSE

42. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

43. Plaintiff fails to state a claim for which relief may be granted as to his cause of action for gross negligence as Walmart at all times acted reasonably and in good faith in the exercise of its legal rights and at no time did it intentionally, consciously fail to do something that was incumbent upon it to do, nor did it intentionally do a thing it ought not do. Furthermore, as Walmart at no time breached any duty to Plaintiff, Plaintiff cannot establish Walmart failed to exercise even slight care. As such, the cause of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A NINTH DEFENSE

44. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

45. Plaintiff fails to state a claim for which relief may be granted on his claim for negligent supervision as Plaintiff cannot show that Walmart knew or had reason to know of the ability to control any particular associate or that Walmart knew or should have known of the necessity and opportunity for exercising control over the conduct of any particular associate. As such, the cause of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules

of Civil Procedure.

FOR A TENTH DEFENSE

46. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

47. Plaintiff fails to state a claim for which relief may be granted on his cause of action for malicious prosecution against Walmart as Plaintiff cannot prove that Walmart: (a) instituted original criminal judicial proceedings against Plaintiff; (b) which were terminated in his favor; (c) that Walmart acted with actual or implied malice in bringing any alleged criminal charges; (d) that Walmart lacked probable cause; or (e) that Plaintiff sustained any resulting injury or damages. As such, the Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina of Civil Procedure.

FOR AN ELEVENTH DEFENSE

48. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

49. Walmart at all times acted reasonably, in good faith, and with probable cause so as to bar any recovery against Walmart.

FOR A TWELFTH DEFENSE

50. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

51. Plaintiff fails to state a claim for which relief may be granted on his cause of action for conspiracy against Walmart as Plaintiff cannot prove that Walmart or its agents acted outside the scope of their employment and official duties to meet or conspire with any third party for the purpose of injuring Plaintiff. Further, Walmart plead intra-corporate immunity as a defense to this

cause of action. As such, the cause of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRETEENTH DEFENSE

52. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

53. With regard to Plaintiff's conspiracy claim, Plaintiff fails to allege special damages that are separate and distinct from damages alleged for other causes of action and, as a result, this cause of action must fail.

FOR A FOURTEENTH DEFENSE

54. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

55. Plaintiff fails to state a claim for which relief may be granted on his cause of action for false imprisonment as Plaintiff cannot establish that Walmart acted without reasonable and/or probable cause or that Plaintiff's detention was unlawful. Thus, Plaintiff's cause of action for false imprisonment should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FIFTEENTH DEFENSE

56. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

57. Plaintiff fails to state a claim for which relief may be granted on her cause of action defamation against Walmart as Plaintiff cannot establish that Walmart made any statement regarding Plaintiff that is defamatory or actionable. Specifically, Plaintiff cannot prove that Walmart (a) made any statement regarding Plaintiff with a defamatory meaning; (b) published any

statement regarding Plaintiff with actual or implied malice; (c) made any false statement regarding Plaintiff; (d) published any false statement regarding Plaintiff; and (e) Plaintiff cannot show legally presumed or special damages as a result of the alleged defamation. Moreover, to the extent any alleged statement was made by Walmart or its agents, they are protected by a qualified or absolute privilege. Finally, any statements regarding Plaintiff were either true, substantially true, or were made with a good faith belief in the truth of the statements. Based upon the foregoing, the Court should dismiss Plaintiff's cause of action for defamation pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SIXTEENTH DEFENSE

58. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

59. Walmart invokes the limitations on punitive damages as set forth in section 15-32-530 of the South Carolina Code and denies that it committed any actions or omissions that give rise to a punitive damage award.

FOR A SEVENTEENTH DEFENSE

60. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

61. Plaintiff fails to state a claim for which relief may be granted on his cause of action for intentional infliction of emotional distress as Plaintiff cannot prove that (a) Walmart intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from the alleged conduct, which is denied by Walmart; (b) Walmart committed any act that was extreme or outrageous so as to exceed all possible bounds of decency or that could in any way be regarded as atrocious and utterly intolerable in a civilized community;

(c) Walmart committed any act that caused Plaintiff severe emotional distress such that no reasonable person could be expected to endure it. As such, the cause of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN EIGHTEENTH DEFENSE

62. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

63. Plaintiff fails to state a claim for which relief may be granted on his cause of action for assault and battery as Plaintiff cannot establish that Walmart placed Plaintiff in reasonable apprehension of any impending unlawful, unauthorized violence on his person and he also cannot establish that Walmart inflicted any unlawful, unauthorized violence on his person. As such, the Court should dismiss this cause of action pursuant to Rule 26(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A NINETEENTH DEFENSE

64. Walmart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

65. The facts not having been fully developed, Walmart reserves any additional and further defenses as may be revealed through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Walmart prays that the Court dismiss the Amended Complaint and also prays for such other relief as this Court may deem appropriate.

(Signature on following page)

December 29, 2020

s/Randi Lynn Roberts

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Walmart Defendants' Motion for Summary Judgment

Filed August 9, 2023

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 and Florence Police Department,

Defendants.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-21-02572

**THE WALMART DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Defendants Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, and Ginny Wright (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, 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 assault and battery, conspiracy, defamation, false imprisonment, intentional infliction of emotional distress, malicious prosecution, gross negligence, and negligent supervision because a witness’s cooperation with a law enforcement investigation into theft of personal property is not grounds for tort liability. Therefore, Defendants respectfully request that the Court grant their Motion for

Summary Judgment.

Respectfully Submitted,

s/Randi Lynn Roberts

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August 9, 2022

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

**Plaintiff's Memorandum in Opposition to Walmart Defendants'
Motion for Summary Judgment**

Filed February 28, 2023

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Travis William Jacobs,

Plaintiff,

v.

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

Defendants.

**COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
2020-CP-21-02572**

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

INTRODUCTION

The Motion for Summary Judgment of Defendants Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, and Ginny Wright must be denied because the pleadings, deposition testimonies, answers to interrogatories and responses to Plaintiff's Request For Production of Documents in this matter show that there is a genuine issue of material fact as to the liability of the Walmart Defendants. Therefore, the issues in dispute must be resolved by a trial.

In this action, Plaintiff brings causes of action against Defendants of assault and battery, conspiracy, defamation, false imprisonment, intentional infliction of emotional distress, malicious prosecution, gross negligence, and negligent supervision. Defendants move for Summary Judgment on the basis that cooperation with a law enforcement investigation in theft of persona property is not grounds for tort liability. It is Plaintiff's position that Defendants did more than merely cooperate with law enforcement's independent investigation leading to Plaintiff's arrest; Defendants conducted their own investigation and joined in with law enforcement's investigation and recklessly and unreasonably caused Plaintiff's arrest, therefore

making them liable under Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 30 S.E.2d 307, 311 (1944) and Huffman v. Sunshine Recycling, LLC, 426 S.C. 262, 826 S.E.2d 609 (2019).

FACTS

At the time of the incident alleged in the Complaint, Plaintiff 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 of the store. Ms. McClellan reported the theft to the Florence Police Department and Walmart. At that time, Walmart Asset Protection Team, including Defendants Ginny Wright, Joey Barefoot and Emily Ek (“Walmart Defendants”), 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. The Walmart Defendants provided Corporal Glenda Oliver (Corporal Oliver) a copy of the video recording of a person entering the store and hanging around the restricted area where Ms. McClellan had left her purse. The recording did not provide a clear view of this person’s face but the Walmart Defendants identified Travis Jacobs as the person in the recording.

Corporal Oliver subsequently discovered that the 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, but it too provided an unclear view of the person’s face. Corporal Oliver then returned to Walmart, where the Walmart Defendants told her that the person in the Walmart and Pilot video was Plaintiff

Travis Jacobs. On September 6, 2019 Plaintiff was arrested while at work at Walmart, handcuffed, and taken into custody. Defendant Walmart 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.

SUMMARY JUDGMENT STANDARD

Rule 56 (c) SCRPC addresses Summary Judgment in South Carolina and provides that “[t]he judgment sought should be rendered forthwith if 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.”

When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than resolved at summary judgment stage. Because it is a drastic remedy, summary judgment should be cautiously invoked so no persons would be improperly deprived of a trial of the disputed factual issues. Murphy v. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (2009 Ct. App.)

Even where there is not dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. Hill v. York County Sheriff's Dep't, 313 S.C. 303, 305, 437 S.E.2d 179, 180 (Ct.App.1993).

In determining whether any triable issue of material fact exists, as required to survive summary judgment, the evidence and all inferences that reasonably can be drawn from the

evidence must be viewed in the light most favorable to the non-moving party. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (2010).

Also, credibility determinations and the drawing of legitimate inferences from the facts are jury functions. Anderson v. The Augusta Chronicle, 355 S.C. 461, 475, 585 S.E.2d 506, 513 (Ct.App.2003)

LEGAL ARGUMENT

I. Summary judgment must be denied because there is a genuine issue of material fact as to whether the Walmart acted unreasonably in the identification of Mr. Jacobs as the person committing the theft and causing his arrest.

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 (“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).

As the Court stated in Burton v. McNeill, 196 S.C. 250, 13 S.E.2d 10, 11, 133 A.L.R. 603, “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.” Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 30 S.E.2d 307, 311 (emphasis added).

Corporal Oliver testified that the Walmart Defendants did more than provide information, but that did its own investigation and identified Plaintiff with certainty as the perpetrator. *See* Exhibit A, Oliver Dep. Tr. 28, 39, 40, 46, 47, 79, 80, 83, 87- 88, 94-95.

The identification by the Walmart Defendants of Plaintiff as the perpetrator was reckless and unreasonable since they never saw anyone steal a credit card on the video recording. They merely speculated that the person seen on the Walmart video walking in the store and appearing in the restricted area was the perpetrator. *See* Oliver Dep. Tr. 30, 36, 46, 47. This falls far short of probable cause for Plaintiff’s arrest.

The Walmart Defendants were unreasonable in their identification of Plaintiff because there was not a clear view of the person’s face on either video. *See* Ek Dep. Tr. 14-15; Oliver Dep. Tr. 43.

CONCLUSION

Considering all of the evidence as a whole, in a light most favorable to Plaintiff, the only conclusion that can be drawn from the evidence at this point of the case is that there is a genuine factual dispute about whether the Walmart Defendants acted unreasonably in the identification and arrest of Plaintiff. Therefore, summary judgment must be denied.

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Sumter, South Carolina
February 28, 2023

**Deposition Transcript of Glenda Oliver: Plaintiff's Exhibit A to
Memorandum in Opposition to Motion for Summary Judgment**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF FLORENCE) CASE NO.: 2020-CP-21-02572
 Travis William Jacobs,)
)
 Plaintiff,) C O N F I D E N T I A L
)
 v.)
)
 Wal-Mart Stores East, LP)
 d/b/a Wal-Mart Supercenter)
 #630, Emily Ek, Joey)
 Barefoot, Ginny Wright and)
 Florence Police Department,)
)
 Defendants.)
 -----)

DEPOSITION OF
 INV. GLENDA OLIVER
 VIA ZOOM VIDEO CONFERENCE

Wednesday, December 29, 2021
 2:06 p.m. - 4:31 p.m.

The deposition of INV. GLENDA OLIVER was taken via Zoom
 video conference before Robin K. Reibold, CVR, a notary
 public in and for the State of South Carolina, commencing on
 Wednesday, December 29, 2021, pursuant to Notice of
 Deposition and/or agreement of counsel.

APPEARANCES

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Also Present:

Travis W. Jacobs

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

— — — —

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

INV. GLENDA OLIVER, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CLARK:

Q. What is your full name for the record?

A. Glenda Oliver.

Q. How are you employed, ma'am?

A. I'm sorry?

Q. How are you employed?

A. With the Florence police department.

Q. Okay. Have you had your deposition taken before?

A. No, sir.

1 Q. Okay. Well, I'm sure Mr. Plyler has spoken with
2 you about it. It's a question-and-answer session
3 that I'm going to ask you a series of questions.
4 And while I'm asking you the questions, you're
5 under oath; do you understand that?

6 A. Yeah. Yes, sir.

7 Q. All right. And is there anything that would
8 prevent you from understanding what I'm saying
9 today, like medication, alcohol, drugs, anything
10 like that?

11 A. No, sir.

12 Q. Okay. So if I ask you a question, you are of
13 sound mind and body to answer the question for me
14 today?

15 A. Yes, sir.

16 Q. I don't know -- we're not going to be here very
17 long, but if you need to take a break at any
18 time, all you've got to say is, "I need to take a
19 break," okay?

20 A. Yes, sir.

21 Q. And if I ask you a question and you don't
22 understand my question, will you be kind enough
23 to let me know you don't understand it so I can
24 ask you in a manner that you do understand?

25 A. Yes, sir.

1 Q. Okay. So are you familiar with the case we're
2 here about involving Travis Jacobs?

3 A. Yes, sir.

4 Q. I'm going to ask you some questions about that
5 case. But before I get into that, you said your
6 name is Glenda Oliver, right?

7 A. Yes, sir.

8 Q. What's your address?

9 A. 27 --

10 MR. PLYLER: Wait, wait, wait. John, will you take
11 that in the confidentiality order since she's a
12 current officer?

13 MR. CLARK: Absolutely. Absolutely.

14 MR. PLYLER: Any of your personal background stuff
15 would be under confidentiality, so just answer
16 his questions.

17 MR. CLARK: Yeah, sure.

18 Q. What's your address?

19 A. It's 2779 West Ridgecrest Circle in Florence.

20 Q. And what's your date of birth?

21 A. 6/22/71.

22 Q. All right. And we ask everybody their Social
23 Security number. I'm going to redact everything
24 except the last four digits; what's yours please?

25 A. 247-47-3045.

- 1 Q. So where are you from?
- 2 A. Originally I'm from Pageland.
- 3 Q. Pageland?
- 4 A. South Carolina, yes, sir.
- 5 Q. Okay. And so you went to high school in
- 6 Pageland?
- 7 A. Yes, sir.
- 8 Q. Did you graduate high school?
- 9 A. Yes, sir.
- 10 Q. Is that Central Pageland up there?
- 11 A. Yes, sir.
- 12 Q. What's the name of the high -- okay.
- 13 A. Central High School.
- 14 Q. What year did you graduate?
- 15 A. '89.
- 16 Q. And after high school what did you do?
- 17 A. I worked at a convenience store for about three
- 18 and a half years and went through -- at the time
- 19 it was Chesterfield-Marlboro Tech in Cheraw. And
- 20 I took like nursing assistance, and I took the
- 21 basic EMT, EMT Intermediate.
- 22 Q. Okay. Did you get a degree from there?
- 23 A. They were certifications.
- 24 Q. Certifications, okay.
- 25 A. Yes, sir.

1 Q. All right. And as far as work is concerned,
2 after the convenience store what kind of work did
3 you do?

4 A. Worked at the convenience store. I worked at
5 Pizza Hut. When I moved from South Carolina to
6 North Carolina, I worked at Pizza Hut. And also,
7 when I moved back home, I worked at the yarn
8 mill, Chesterfield County yarn mill.

9 Q. All right. Well, obviously you're a police
10 officer now, right?

11 A. Yes, sir.

12 Q. When did you get into law enforcement?

13 A. Originally I started as a dispatcher, a jailer,
14 at the Pageland police department. I worked
15 there for maybe a year before I moved. And then
16 when I came back home after I got hired on at the
17 yarn mill -- I also worked at Conbraco after the
18 yarn mill, and then I went to Rock Hill.

19 Q. Okay. So when did you start as a dispatcher and
20 jailer?

21 A. Oh god, that was years ago. That was I want to
22 say back in '91 maybe -- '90, '91.

23 Q. And then after that you moved to North Carolina?

24 A. Yes, sir.

25 Q. When did you move to North Carolina?

1 A. Probably around '91 -- '90, '91 some -- I --

2 Q. So that means you weren't a jailer and dispatcher
3 very long?

4 A. No, no, no, it was about a year. A little less
5 than a year.

6 Q. All right. And so why did you move to North
7 Carolina?

8 A. Met someone and moved to North Carolina.

9 Q. What part?

10 A. Originally we moved to Gastonia, and we ended up
11 in Shelby.

12 Q. Did you work in law enforcement up there?

13 A. No, sir.

14 Q. What kind of work did you do there?

15 A. Pizza Hut.

16 Q. Okay. All right. And then you moved back to
17 South Carolina at some point?

18 A. Yes, sir.

19 Q. When was that?

20 A. Maybe around '92, '93.

21 Q. And so what kind of work did you do when you came
22 back?

23 A. I initially worked at Chesterfield yarn mill,
24 and then I left that job and went to Conbraco.

25 Q. And when did you go into law enforcement? Did

1 you go into law enforcement after Conbraco?

2 A. Yes.

3 Q. When was that?

4 A. I left Conbraco -- that was 1994.

5 Q. And who did you work -- who did you start working
6 for?

7 A. Rock Hill.

8 Q. Rock Hill police department?

9 A. Yes, sir.

10 Q. Have you been in law enforcement ever since '94?

11 A. Yes, sir.

12 Q. Did you go to an academy when you first went --

13 A. I did --

14 Q. -- to Rock -- started working in Rock Hill?

15 A. Well, when I started in Rock Hill I was in --
16 what they call a community service officer. And
17 they phased they out and merged it in with
18 dispatch. So while I was in that position I went
19 to the academy as a dispatcher, went through APCO
20 communication courses till I transferred over to
21 patrol division.

22 Q. When did you transfer over to patrol division?

23 A. I started in '94. Also while I was there as a
24 dispatcher, I did a reserve position with them.
25 And I went from -- that was in '96, '97. I

1 graduated in November, I believe, in '97.

2 Q. Graduated from where?

3 A. The academy.

4 Q. And when you say academy, what do you mean?

5 A. The South Carolina Criminal Justice Academy in
6 Columbia.

7 Q. Okay. So tell me about the Criminal Justice
8 Academy. What do you do when you go there?

9 A. It's changed since I've been through there. When
10 I went, it was -- we went through the basic
11 course.

12 Q. How long were you there?

13 A. That time it was nine weeks.

14 Q. And --

15 A. Might have been eight weeks, because they changed
16 it right after my class.

17 Q. What kind of things did they teach you there, or
18 what did you study while you were there?

19 A. They went through the South Carolina Code of
20 Laws, traffic law, traffic collision reports,
21 shooting, driving.

22 Q. What about probable cause? Did they -- did you --
23 -- did they teach you about probable cause there?
24 Is that something that you learned about?

25 A. Yes, sir.

1 Q. All right. And so when you finished the Criminal
2 Justice Academy you went on patrol for Rock Hill?

3 A. Yes, sir.

4 Q. And how long have you been -- were you on -- did
5 you work for Rock Hill?

6 A. I worked for Rock Hill until 2012, when I moved
7 down here.

8 Q. When you say down here, you mean Florence?

9 A. Florence, yes, sir.

10 Q. And when -- did you start working in law
11 enforcement as soon as you moved to Florence?

12 A. Yes, sir.

13 Q. And who was it -- what agency were you working
14 for?

15 A. Florence City. Florence police.

16 Q. And so you been there since 2012 did you say?

17 A. Yes, sir, I believe so.

18 Q. Okay. And tell me about, what did you -- what
19 position did you start out with at Florence?

20 A. A patrol officer.

21 Q. And has your title changed in the last nine
22 years, ten years or so?

23 A. Yes, sir, I moved from patrol to investigation
24 unit.

25 Q. When did you go into an investigation unit?

- 1 A. Around 2019 -- 2018, 2019.
- 2 Q. Okay. All right. What's your marital status?
- 3 A. Single. Committed relationship.
- 4 Q. Have any (audio distortion)?
- 5 A. I'm sorry?
- 6 Q. Have any children?
- 7 A. No, sir. No, sir.
- 8 Q. Other than the certifications -- I think you said
- 9 you got -- you told me about some EMT
- 10 certifications you got.
- 11 A. Yes, sir.
- 12 Q. What kind of police officer certifications do you
- 13 have?
- 14 A. I have the basic certification through the
- 15 academy, a Class I. I've gone through Data
- 16 Master, radar, laser.
- 17 Q. Okay.
- 18 A. Went through CPTED.
- 19 Q. All right.
- 20 A. I have one course of the traffic reconstruction
- 21 class.
- 22 Q. All right. And you told me that you studied --
- 23 you were trained on probable cause at the
- 24 academy, right?
- 25 A. Yes, sir.

1 Q. Since that time, what training, if any, have you
2 had on probable cause?

3 A. We do our legal updates every year.

4 Q. And when you say "We do our legal updates every
5 year," what does that mean?

6 A. Every officer in the department has to do it.
7 It's --

8 Q. And so what do you do?

9 A. We watch a video that's produced by the Criminal
10 Justice Academy.

11 Q. And what does the video consist of?

12 A. It depends on what they're covering that year or
13 during that (audio distortion).

14 Q. Right. Yeah. And so what I'm asking you is,
15 when is the last time you were trained on
16 probable cause?

17 A. I mean, we do it every day. I mean --

18 Q. You trained on -- you're trained on probable
19 cause every day?

20 A. What I'm saying is, when I work, you know, during
21 the course of my job.

22 Q. You're trained on it during the course of your
23 job?

24 A. Well, I'm not sure what you mean.

25 Q. Well, I mean, you got training at the academy,

1 right?

2 A. Yes.

3 Q. And that's sitting down in a classroom and --

4 A. Yes.

5 Q. -- with books and all that, right?

6 A. Yes, sir.

7 Q. Yeah. Well, that's what I mean. That kind of
8 training.

9 A. Yes.

10 Q. Yeah. So I'm asking you, since the academy, when
11 is the last time you had training on probable
12 cause?

13 MR. PLYLER: Object to the form. You can answer. Go
14 ahead.

15 A. Through courses. I take it through the academy,
16 the updates.

17 Q. Right, and I'm asking --

18 A. I mean --

19 Q. -- I'm asking you -- do you know when the last
20 time you were trained on probable cause?

21 MR. PLYLER: Object to the form. You can answer.

22 Q. Do you know when the last time you received
23 formal training on probable cause?

24 MR. PLYLER: Same objection. You can answer.

25 MS. BRAKMANN: I'm sorry to interrupt. This is Sara.

1 Daniel, we can't really hear you. I assume what
2 you just said was an objection, but I'm having a
3 hard time hearing you so you might want to speak
4 up a little bit.

5 (Brief off-the-record comments.)

6 MR. PLYLER: You're free to answer his question.

7 Object to the form.

8 Q. Do you know the last time you received training
9 on -- formal training on probable cause -- on
10 determining probable cause?

11 MR. PLYLER: Same objection. You can answer.

12 A. Just the legal updates that we go through.

13 Q. I understand.

14 A. Back --

15 Q. But when you --

16 A. Uh-huh.

17 Q. I'm sorry, I don't want to interrupt you. Are
18 you done? You finished answering?

19 A. Yeah, go ahead.

20 Q. Yeah. Now, legal updates, when you go for legal
21 updates, doesn't that cover a variety of
22 subjects?

23 A. Yes, sir.

24 Q. And is it -- am I correct that you don't cover
25 the same subject every year?

1 A. That's right.

2 Q. All right. What I'm asking you is, when was the
3 last time you received training, formal training,
4 on determining probable cause?

5 MR. PLYLER: Same objection. You can answer.

6 A. If you are asking a specific class on probable
7 cause, I guess that would be when I went through
8 the academy.

9 Q. Right. And that would have been in 2012, or?

10 A. That would have been --

11 Q. In '94?

12 A. Yes -- well, I went through the academy in '96,
13 '97.

14 Q. So are you saying that's the last time you
15 received formal training on determining probable
16 cause?

17 MR. PLYLER: Object to the form. You can
18 answer.

19 A. I guess so. I mean, if you want to know a
20 specific class, then yes.

21 Q. Okay. When you went to work for Florence Police
22 Department in 2012, did you have to do any
23 training or anything, take any tests or anything
24 like that?

25 A. I had to qualify shooting.

1 Q. Okay. Did you get any training on determining
2 probable cause when you started working for
3 Florence P.D.?

4 A. I took the examination test that they give --

5 Q. Okay.

6 A. -- during application.

7 Q. Okay. So you took a test when you applied to
8 work at Florence?

9 A. Yes.

10 Q. A written test?

11 A. Yes.

12 Q. And that was part of the application process?

13 A. Yes, sir.

14 Q. Tell me about that test. How long was it? I
15 mean, what did it involve?

16 A. Just basic questions pertaining to law
17 enforcement.

18 Q. Okay. Any questions pertaining to determining
19 probable cause?

20 A. It's been so long, I'm not sure.

21 Q. Okay. Have you ever been fired from any law
22 enforcement job?

23 A. No, sir.

24 Q. Have you ever been reprimanded while working in
25 law enforcement?

1 A. I have.

2 Q. Tell me about that. What did you get reprimanded
3 for?

4 A. One was improper search. I was giving her --

5 Q. All right.

6 A. One was --

7 Q. Now -- all right. Go ahead. I'm sorry.

8 A. One was for evidence disposal. Disposal, I
9 guess, if you want to call it that.

10 Q. Any others?

11 A. Driving.

12 Q. When you say driving, what do you mean?

13 A. I had a wreck.

14 Q. Driving too fast?

15 A. No, I had a wreck.

16 Q. Oh, okay. All right. Anything else?

17 A. None I can think of.

18 Q. Well, what agency reprimanded you for an improper
19 search?

20 A. That was Rock Hill.

21 Q. Tell me about that incident. What are the facts
22 of that incident?

23 A. One time I went to York Tech. The police
24 officer, the chief there, called the police
25 department in reference to a larceny. I was

1 speaking with a suspect that they'd pointed out
2 to me. And during the course of the
3 investigation I asked her if she had anything on
4 her, and she said no. And I asked her would she
5 be willing to a pat down or a search, and she
6 said sure. Because of the area we was in I asked
7 was there a private area to go to, because we was
8 like in a commons area. So myself, her, and the
9 chief went to a restroom area. And next thing I
10 know she started jerking her clothes off. I'm
11 like, "Whoa, slow down. Slow down. Don't do
12 that." And then she ended up filing a complaint
13 that I did an improper strip search on her.

14 Q. Okay. All right. Well, who reprimanded you
15 about evidence disposal?

16 A. That was my -- I want to say my sergeant.

17 Q. I mean what agency?

18 A. Rock Hill.

19 Q. Well, what evidence -- what -- tell me about the
20 evidence disposal reprimand.

21 A. I went with DSS to do a standby for their home
22 study survey thing that they do. Went out to the
23 house, and during the course of them doing an
24 inspection of the house they found a baggie of
25 what we call marijuana shake, stems and seeds

1 inside a plastic bag. And she handed it to me,
2 and at that time we was instructed that if it was
3 nothing of significant value, not to -- just
4 dispose of it. So with it being just stems and
5 seeds, myself and another officer at the
6 department -- I went into the restroom and
7 flushed the -- emptied the baggie out into the
8 toilet and flushed it, with a witness. And then
9 DSS came back and, during their investigation
10 portion, they brought up the comment as far as
11 they found marijuana in the household. And they
12 was wanting -- wanted to know what I did with it.
13 And I told them it was just stems and seeds, you
14 know, we disposed of it. Because at the time our
15 evidence clerk was telling us that if it's not
16 anything significant, dispose of it because we
17 don't have room to store every little piece of
18 evidence. And we don't charge for stems and
19 seeds, so I did -- I disposed of it. And my
20 supervisor said, "Well the policy states this,"
21 and I also said, "The policy states this," in
22 rebuttal to his comment to the written warning I
23 got.

24 Q. Have you ever been charged with a crime?

25 A. No. Speeding.

1 Q. I'm sorry?

2 A. Speeding.

3 Q. Okay. Other than driving offense, --

4 A. No.

5 Q. -- never been charged with a crime? Okay.

6 A. No.

7 Q. Did you resign from Rock Hill?

8 A. I did, to come down here.

9 Q. What was the reason for your resignation?

10 A. I met someone here and moved down here.

11 Q. All right. What is your role in the
12 investigative unit at Florence P.D.?

13 A. I'm assigned to the -- basically what they call
14 white collar crimes. Check fraud, credit card
15 frauds, scams, but then when we're --

16 Q. Have you ever --

17 A. I'm sorry.

18 Q. Okay. Have you ever been sued in a lawsuit
19 before?

20 A. Yes, sir.

21 Q. Well, how many times?

22 A. Well, me personally?

23 Q. Well, in your role as a law enforcement officer?

24 A. The incident in Rock Hill.

25 Q. Okay. That the only time?

1 A. To my knowledge, yes.

2 Q. How did that lawsuit end up?

3 A. I think they paid her like \$500. I'm not certain
4 though.

5 Q. All right. So you are in white collar crimes
6 with Florence?

7 A. Yes, sir.

8 Q. And were you in white collar crimes back in July
9 of 2019?

10 A. Yes, sir.

11 Q. Who's your supervisor?

12 A. At that time or now?

13 Q. Both.

14 A. At that time it was Lt. Lochart, Sgt. Clark,
15 Lt. Nida, and Sgt. Cantey.

16 Q. Well, who's your supervisor now?

17 A. Lt. Nida and Sgt. Cantey.

18 Q. How many cases do you work on at one time?

19 A. It varies.

20 Q. All right. I asked you about lawsuits and
21 reprimands. Do you know how many complaints have
22 been filed, if any have been filed, against you
23 in law enforcement?

24 A. Exact number, no.

25 Q. How many would you estimate?

1 MR. PLYLER: Object to form. You can answer.

2 A. I have no clue.

3 Q. All right. Okay. Lt. Lochart and Sgt. Clark,
4 they oversaw your work back in June, July of
5 2019?

6 A. Yes, sir, around that time frame. They're both
7 retired. I'm not sure if that matters.

8 Q. Okay. All right. How do you get assigned cases?

9 A. Through the sergeant.

10 Q. And is there a -- do you have a handbook or
11 guidelines that the City of Florence requires
12 that you follow in your duties in the
13 investigation unit?

14 A. Not really. When I came up here I got -- I was
15 put with the person that was assigned -- I was
16 assigned to someone up here, and basically, he
17 just gave me a case and said, here, start working
18 it, and he walked me through it.

19 Q. And so you were never given a handbook or a
20 guidebook or anything on how to carry out your
21 duties?

22 A. I mean, we have our policies and procedures and
23 our general orders. But as far as up here, it --
24 I mean, it doesn't outline step by step.

25 Q. Well, the policies and procedures, what's that?

1 A. It's the policies and procedures that the police
2 department goes by.

3 Q. And so there is a book that you refer to as
4 policies and procedures?

5 A. For the whole department, yes.

6 Q. Do you have a copy of it?

7 A. I have a copy on my computer.

8 Q. Okay. What kind of training did you receive, if
9 any, on the policies and procedures?

10 A. Had to sit down when I first came down here, I
11 had to read the whole policy and procedure manual
12 throughout the course of different duties. The
13 shift I was on, we would go and review the
14 different policies during roll call.

15 Q. You mean during the court session? When you say
16 roll call, what roll call are you talking about?

17 A. Like our morning briefing.

18 Q. Okay. Does the policy and procedures book
19 address probable cause, how to determine probable
20 cause?

21 A. Yes, sir.

22 Q. What does it say about that?

23 A. Verbatim, I couldn't tell you.

24 Q. Well, what is your understanding of how to
25 determine probable cause?

1 A. Basically, the reasonable person -- I mean,
2 basically, you've got the evidence to --
3 substantiate the crime that the person committed.

4 Q. So that's your understanding of what probable
5 cause is, that you have the evidence to
6 substantiate --

7 A. Well, it can be circumstantial.

8 Q. I understand, but -- it can be circumstantial,
9 but your understanding is -- is it your
10 understanding that probable cause means to have
11 evidence to substantiate the charge; is that what
12 you just said?

13 A. Yeah, that's what I just said.

14 Q. Okay. And it can be circumstantial?

15 A. Yes, sir. Yes.

16 Q. All right. And so in your role you have the
17 authority to have people arrested, don't you?

18 MR. PLYLER: Object to the form. You can
19 answer.

20 A. Yes, sir.

21 Q. Do you have the authority to have people
22 arrested?

23 A. If we have probable cause to believe a crime was
24 committed, yes.

25 Q. Right. And do you believe having someone

1 arrested is a serious matter?

2 A. Yes, sir, I do.

3 Q. You take it seriously?

4 A. Yes, sir, I do.

5 Q. Do you do everything that you can to make sure
6 that probable cause actually exists?

7 A. Yes, sir, I do.

8 Q. All right. Do you agree that arresting a person
9 can -- without probable cause, or arresting a
10 person period, can cause them damages; do you
11 agree with that?

12 MR. PLYLER: Object to the form. You can
13 answer.

14 A. Yes, sir.

15 Q. It could be hurtful to a person in many ways,
16 couldn't it?

17 MR. PLYLER: Same objection.

18 A. Yes, sir.

19 Q. Have you ever made mistakes in charging people
20 without -- you know, thinking that you had
21 probable cause and you really didn't? Have you
22 ever made a mistake doing that?

23 A. No, sir, I had enough evidence at the time to
24 make the charge or to get a warrant.

25 Q. Okay. All right. Does anybody have to approve

1 your action in getting a warrant on somebody?

2 A. At the time we would present everything to our
3 sergeant, and that was the sergeant --

4 Q. So you did that before you got any warrants, you
5 presented it --

6 A. Yes.

7 Q. -- to your sergeant?

8 A. Yes, sir.

9 Q. And you acknowledge that Mr. Jacobs, you arrested
10 him on a warrant looks like in September of 2019
11 -- September 6, 2019; you acknowledge that,
12 right?

13 A. Yes, sir.

14 Q. And you know that's what we're here about, that
15 case?

16 A. Yes, sir.

17 Q. And I've been provided -- and are you saying you
18 presented your evidence to your sergeant before
19 you got that warrant?

20 A. Yes, sir, I spoke with him about the case.

21 Q. And what did he -- what did you tell him?

22 A. I showed him the information I received from
23 Walmart, the information that they provided to
24 me. That they told me the pictures I had, the
25 information received from the different companies

1 --

2 Q. Well, wait a minute. You said they told you --
3 when you say, "they told you," who are you
4 talking about, Walmart employees?

5 A. Yes, the Walmart employees.

6 Q. What did they tell you?

7 A. Well, when I went out there to follow up on the
8 case and to pick up the video from the loss
9 prevention personnels, and when I went out there
10 they say, "Hey, one of the managers came in here
11 and said they believe that the person that is on
12 the video is sitting back in orientation."

13 Q. And who was that person?

14 A. Mr. Jacobs.

15 Q. Who told you that from Walmart?

16 A. The loss prevention people.

17 Q. Do you know in particular who told you that?

18 A. Joey Barefoot and Ginny. And they said they went
19 back -- when the other manager was -- a male, I
20 don't remember his name -- but they said that he
21 had seen the video of the suspect. And then when
22 he was in the back he saw -- he walked by the
23 orientation room, saw Mr. Jacob sitting in there
24 and he was like, "That's the guy from the video."
25 And so he goes up and tells them.

1 Q. Wait a minute. And who are you talking about
2 now?

3 A. The manager who initially saw him. I don't know
4 the --

5 Q. Do you know -- okay.

6 A. A male. It was a guy.

7 Q. All right. And he went up and told --

8 A. Told Ginny and Joey and everybody in the front
9 office.

10 Q. Right. And told them that the person on the
11 video was Mr. Jacobs?

12 A. Said that, "I believe the person that's on your
13 video is back in the orientation," which means
14 Mr. Jacobs. So Joey and Ginny goes back there to
15 look at him to see if it's him.

16 Q. And then what happened?

17 A. I don't know what they did, but when I was
18 talking to them -- Emily was doing the video for
19 me. She was downloading the video, and she
20 provided me the disk of the incident. And I
21 asked, I said, "Are you sure it's him?" They was
22 like, "Pretty darn sure" is what Joey said. And
23 I said, "How do you this?" And they said, "Well,
24 he's got earring in his ear just like the video.
25 Same features on the video." And I said, "Well,

1 who is he?" And so they pulled up his
2 information, provided me all his information. I
3 said, "Well, I'll look at it."

4 Q. Okay. Now, the video that you're talking about,
5 is that the video of a person walking in the
6 area?

7 A. Walking into Walmart and in the back.

8 Q. Did you ever see any video of anybody taking a
9 pocketbook or stealing a credit card on video?

10 A. Not on video. Joey and Ginny and them walked me
11 through the process and the layout of the back
12 room. And they said basically -- where the
13 office was, it was just to the -- I think to the
14 right of the frame. And he said basically what
15 the person done was went and used like a broom
16 handle to stick it through the little opening in
17 the door to pick the purse up, and then reach in
18 and get the wallet out.

19 Q. And they told you -- go ahead. Go ahead and
20 finish. I'm sorry.

21 A. And then the person walked out and I believe went
22 to the bathroom, if I remember correctly.

23 Q. So there was a video of this?

24 A. That's what they showed me.

25 Q. They showed you a video of a person reaching a

1 broomstick into a room and getting the pocketbook
2 and retrieving it and taking something out and
3 putting it back?

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

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

10 A. Whatever is on the video they provided me. If I
11 remember correctly, it was just off frame. And I
12 said, "Well, how do you know that what -- that's
13 what he's doing?" And they walked me through it.

14 Q. Now, what you saw on video, was it anything more
15 than a person sitting in the room?

16 A. In what room? You talking about the back office?

17 Q. Well, let me back up a minute. Let me back up.
18 You got assigned this case by Sgt. Cantey -- no,
19 Sgt. Clark?

20 A. Yes, sir.

21 Q. Who'd you get assigned this case from?

22 A. Clark.

23 Q. Okay. And so when you got assigned the case, did
24 he just talk to you or did he give you an
25 assignment form, or what?

1 A. No, they just give us the case number, and then
2 we go and look up the report.

3 Q. All right.

4 A. And then we start working on it.

5 Q. Okay. Well, tell me what was reported in this
6 case, the first report that you looked up.

7 A. It was an original report that Officer Dunn -- I
8 believe it was Officer Wynn did the initial
9 report.

10 Q. Do you still have a file on this?

11 A. Yes, sir.

12 Q. You have it with you now?

13 A. I have copies of the report.

14 Q. All right. So pull that first -- the report you
15 were just talking about Officer Wynn did. Do you
16 have that in front of you?

17 A. It's Officer Howard.

18 Q. That -- oh, PO G Howard?

19 A. Yeah, that's Howard, I'm sorry. Howard is Wynn's
20 first name. I'm sorry.

21 Q. And what's the number on that report?

22 A. It's -- the case number?

23 Q. Yes -- well, yeah.

24 A. It's 2019-006996.

25 Q. And is that one that says Incident Type, Theft

1 from Building, 23D; and then Debit/Credit Card
2 Fraud, 26B?

3 A. Yes, sir.

4 Q. At the top?

5 A. Yes, sir.

6 Q. Then says North Beltline Drive (Walmart
7 Supercenter), Florence?

8 A. 2030 North Belt- -- yeah.

9 Q. Right. And it says Incident Date, 7/28/2019?

10 A. Yes, sir.

11 Q. And then at the bottom it has Howard's name,
12 7/28, his unit number; and then Sgt. Walters,
13 7/30, and his unit number?

14 A. Yeah, he's the approving supervisor, patrol unit.

15 Q. All right. And so Mr. Howard gave you this
16 report; is that right?

17 A. No, not directly, no.

18 Q. I mean, he assigned the case to you and you went
19 and got -- well, you got assigned the case, then
20 you went and got the report?

21 A. What I do is we pull up Law Track and we print
22 off the report, yes.

23 Q. Okay. And this is the report you pulled off?

24 A. Yes.

25 Q. All right. And who took this report?

1 A. PO G Howard.

2 Q. So is the process that someone would call in, and
3 he would do this report as a result of the call?

4 A. Yes, sir. Whoever gets dispatched to it or
5 assigned it.

6 Q. Okay. And so -- and just looking at the
7 narrative section -- well, the victim is --
8 that's Belva Rogers McClellan, right?

9 A. Yes, sir.

10 Q. 63 years old?

11 A. At the time of the report, yes, sir.

12 Q. Yeah. All right. And I don't want to read the
13 whole thing, but in the narrative section it
14 describes what she's -- what she was complaining
15 of, right? Is that right?

16 A. Yes, sir.

17 Q. And does it say that she put -- she went to work
18 -- she worked at Walmart at that time, right?

19 A. Yes, sir.

20 Q. And she worked in the receiving department?

21 A. That's what the report says, yes.

22 Q. And does it also say that on July 29 she went to
23 -- she went to the City Center to file a report
24 about her wallet being stolen while at work,
25 right? I'm just reading the first line of the

1 narrative.

2 A. Yes, sir.

3 Q. All right. And then she goes on to say she put
4 her pocketbook down in the receiving department
5 on a box, and when she walked around to see what
6 she had to do -- see it says, "and placed her
7 purse down on a box and walked around to see what
8 she had to do. She stated an employee named
9 Annie was standing where she placed her purse,
10 and was in the same location when she returned
11 and picked her purse up. She stated she did not
12 know her wallet was missing until she received a
13 fraud alert."

14 A. Uh-huh.

15 Q. "She stated in her wallet was her driver's
16 license, insurance card, Walmart discount card,"
17 and couple other credit cards, right?

18 A. Yes, sir.

19 Q. And then she said that her Bank of America card
20 was used at Pilot for \$37.77, Circle K, and Pilot
21 again but it was declined, right?

22 A. Yes.

23 Q. And then she said the card was used at Wish.com
24 for \$278, the debit card was used. She said she
25 didn't know that -- she didn't Annie's last name,

1 and that she got off at 11:00, right?

2 A. That's right.

3 Q. Then it says, "There is no other information on
4 this incident."

5 A. Yes.

6 Q. Right?

7 A. Yes.

8 Q. All right. So did she ever -- so just so I
9 understand, her pocketbook was never actually
10 missing, correct?

11 A. That's right.

12 Q. It was her wallet. Was her wallet missing or
13 just the cards out of the wallet?

14 A. Her wallet containing her cards.

15 Q. Okay. And did she ever tell you that she saw
16 anybody take her wallet out of that pocketbook?

17 A. No.

18 Q. Did you ever see any video of anybody taking that
19 wallet out of her -- out of that pocketbook?

20 A. No.

21 Q. All right. And did she ever tell you that
22 Mr. Jacobs took the wallet out of her pocketbook?

23 A. No, sir.

24 Q. Did Walmart ever tell you that they saw --
25 anybody from Walmart ever tell you that they saw

- 1 Mr. Jacobs take the wallet out of her pocketbook?
- 2 A. No.
- 3 Q. All right. And so when you got this report, did
- 4 you go out to the store?
- 5 A. Yes, sir.
- 6 Q. And then did you do a incident report
- 7 supplemental?
- 8 A. Yes, sir.
- 9 Q. All right. And I know it's been a while, but
- 10 looking at your incident report supplemental,
- 11 does that refresh your memory, or can you refer
- 12 to it and recall what you did and -- after --
- 13 when you went out there?
- 14 A. I went out there and spoke with Ginny Wright.
- 15 Q. All right.
- 16 A. And --
- 17 Q. Well, let's look at -- let me ask you some
- 18 questions about the report.
- 19 A. Uh-huh.
- 20 Q. All right. It's dated August 2nd, 2019?
- 21 A. Yes, sir. August 1st.
- 22 Q. August 1st? Okay. It says you reviewed the case
- 23 and realized you didn't have a number for the
- 24 victim, Ms. McClellan, right?
- 25 A. That's right.

1 Q. And you went by Walmart and spoke with Ginny
2 Wright. She gave you the lady's phone number?

3 A. Yes, sir.

4 Q. You called her and got a voice message or
5 something, right?

6 A. Yes, sir.

7 Q. She called you back?

8 A. Yes, sir.

9 Q. And you told her you needed documentation from
10 the bank?

11 A. Yes, sir.

12 Q. You explained to her the forgery affidavit
13 process, right?

14 A. Yes, sir.

15 Q. Then she told you she had got some fraud alerts?

16 A. Yes, sir.

17 Q. But that you needed the information from the bank
18 and the fraud alert so you could get started on
19 the case, right?

20 A. Yes, sir.

21 Q. All right. And then it looks like on August 2nd
22 you went to Walmart and picked up two disks
23 containing video from asset protection personnel
24 Emily Ek; is that right?

25 A. Yes.

1 Q. All right. And you put those disks into
2 evidence?

3 A. Yes.

4 Q. Did you look at them?

5 A. Yes, sir.

6 Q. Where did you look at them at?

7 A. At Walmart.

8 Q. So you looked at them before you took them?

9 A. Yes.

10 Q. And Emily Ek, she showed you on her computer the
11 videos that you watched?

12 A. Her and Joey both was sitting there.

13 Q. All right. So you were in the office with them
14 and looking at these videos on their computer?

15 A. Yes.

16 Q. And what videos was it -- tell me, which videos
17 were these?

18 A. They showed me the person walking in the door.

19 Q. And when you say "the person walking in the
20 door," do you mean Ms. McClellan or someone else?

21 A. The suspect, the picture that they printed out
22 for me.

23 Q. Okay. So when you got there they had a picture
24 for you?

25 A. I'm not sure. I know they provided me with one.

1 Q. And is that the time they told you that person in
2 the picture was Travis Jacobs?

3 A. I think so.

4 Q. Okay. All right.

5 A. Because I know I went a couple different times.

6 Q. Okay. So the videos that you saw was a person
7 entering the restricted area? Receiving -- is
8 that the receiving department?

9 A. I'm not sure what they call it. The one I saw
10 was when they first came -- when the person first
11 came through the front doors.

12 Q. Well, I mean, the area that you're talking about
13 is where the pocketbook is believed that -- the
14 wallet's believed to have been stolen, right?

15 A. Yeah, in the back area.

16 Q. Right. And Ms. McClellan told you she put the
17 pocketbook down in the receiving department,
18 right?

19 A. That's what was in the report, yes.

20 Q. Right. So did you believe you were looking at a
21 video of a person in the receiving department?

22 A. No, the picture that -- the one they showed me of
23 the side view is the front door, where the person
24 came in the front door.

25 Q. Okay.

1 A. And then they played the video -- what they did,
2 they followed the person from the time they came
3 in through the store as they go into the back.

4 Q. Okay.

5 A. And certain areas in the back does not have
6 camera coverage.

7 Q. Okay. And where the pocketbook was did not have
8 camera coverage?

9 A. No.

10 Q. Right. And at some point did they tell you that
11 they believed that was the person that stole the
12 wallet?

13 A. Yes.

14 Q. And did they tell you at some point that they
15 believed that person was Travis Jacobs?

16 A. Yes.

17 Q. All right. And so you then -- once you met with,
18 you said Ginny and Joey --

19 A. Joey.

20 Q. -- right? -- you left with the video, right?

21 A. Yes.

22 Q. Did they print you off a still picture too?

23 A. Yes.

24 Q. And at that time is -- during that visit they
25 told you that they thought the person on the

1 video was Travis Jacobs?

2 A. Yes.

3 Q. All right. And when you left, am I correct that
4 the next you did was you started subpoenaing
5 documents, trying to get Ms. McClellan's bank
6 records and things?

7 A. Yeah, I spoke with her numerous times asking for
8 the information.

9 Q. Okay. You contacted Wish.com and some of these
10 other places where the card had been used, right?

11 A. Yes, sir.

12 Q. And that's the Bank of America card we're talking
13 about, right?

14 A. I would have to make sure. She had --

15 Q. What are her credit cards?

16 A. Yeah, she had four total, and two Bank of
17 Americas, Walmart, and a State Farm.

18 Q. All right. And then the next thing you did, did
19 you go to the Pilot the next time?

20 A. I did. I did.

21 Q. All right. And you spoke with a manager, Kit
22 Thames there, right?

23 A. Yes.

24 Q. And you got a video from them too, didn't you?

25 A. Yes.

1 Q. Could you identify who the person on that video
2 was?

3 A. The video wasn't that clear. They had a hat on.
4 Same clothing that was in the Walmart video,
5 except had a hat on.

6 Q. Could you identify Travis Jacobs' face from that
7 video, the Pilot video?

8 A. No. I could tell it's the same person that was
9 in the Walmart video.

10 Q. Okay. So it was your opinion it was the same
11 person?

12 A. Yes.

13 Q. All right. And it was your opinion that the
14 person had on the same clothing?

15 A. Plus a hat.

16 Q. All right. Do you know what Travis Jacobs was
17 wearing on the day that this incident happened?

18 A. Have no clue.

19 Q. Had you even met Travis Jacobs at that point?

20 A. No, sir.

21 Q. All right. I want you to look down at -- let's
22 see, one, two, three, four, five, six, seven,
23 eight, the ninth paragraph you have on this
24 incident report supplemental.

25 MR. PLYLER: What does the paragraph start

1 with, John, just to make sure we're --

2 MR. CLARK: "I went to the Pilot located at 3006 North
3 Williston."

4 MR. PLYLER: Okay.

5 Q. You got that?

6 A. Yes.

7 Q. "-- in the county of Florence, South Carolina,
8 and spoke with the manager, Kit Thames, who was
9 able to locate the suspect on video using the
10 stolen card." That's what you just told me,
11 right?

12 A. Yes.

13 Q. Then you said the person attempted to make --
14 they wanted to get three packs of Newports. The
15 card was declined. And then you say, "The
16 subject then swiped the card and it was also
17 declined. The subject is the same person, Travis
18 Jacobs, that was seen on video in the employee-
19 only area of Walmart where the wallet was left."
20 You see that?

21 A. Yes.

22 Q. When you said it was the same person, were you
23 basing that on clothing only?

24 A. No, I was basing that off of what Walmart told
25 me.

1 Q. So Walmart told you that the person that you saw
2 in the Pilot video was Travis Jacobs too?

3 A. Based off the person being the same in the
4 Walmart video, yes.

5 Q. So are you saying they had already told you that
6 that person was Travis Jacobs, and when you saw
7 the person on the video at Pilot with the same
8 clothes on, you assumed it was the same person
9 that they identified as Travis Jacobs?

10 A. Yes.

11 Q. All right. And then in that same paragraph it
12 says, "The subject is the same person, Travis
13 Jacobs, that was seen on video in the employee
14 area -- employee-only area of Walmart where the
15 wallet was left. The suspect had on same
16 clothing as in the Walmart video to include a hat
17 at the Pilot. Mr. Thames was able to download
18 the video to a disk." You wrote that, right?

19 A. Yes.

20 Q. And so Inv. Oliver, am I correct in concluding
21 that the only evidence that the person with the
22 clothing on had done this was that he was in the
23 area, right? Was there anything else that
24 indicated that person had actually stolen the
25 wallet other than that they were in the area?

1 A. You talking about at Walmart?

2 Q. Yes, ma'am.

3 A. Being in the back room?

4 Q. Right. I mean, you didn't have any video of the
5 person stealing the wallet, right?

6 A. No. From what Walmart said -- and they walked me
7 through the process -- and they said, on this
8 video you can see the person going, getting a
9 broom, coming back. And they said -- the office
10 area is like a wire cage area with a cut-out for
11 the door, which was to the right I believe of the
12 frame. And they (audio distortion) can see him -
13 -

14 Q. Wait a minute. You cut out just now. They said
15 they could see him doing it?

16 A. You could -- make a motion like -- and they said,
17 what we figured out was that he used a broomstick
18 to hook the purse to bring it over because they
19 couldn't -- couldn't reach it through the little
20 opening.

21 Q. Right.

22 A. Is what they (audio distortion).

23 Q. And so that was their theory about how it
24 happened?

25 A. That's what they explained to me, and I said,

1 well, how do you know this? And they said, after
2 watching the video, they said that's the only way
3 it could have happened. Because where she said
4 she sat it down, and the broom -- lifting it up,
5 bringing it closer to the door, to the little
6 opening, and then reaching in.

7 Q. But even that was based on their opinion, right?
8 I mean, it wasn't any factual eye witness or
9 anything like that?

10 A. No.

11 Q. All right. And there was no video evidence of
12 anybody reaching --

13 A. No, because they --

14 Q. -- a broom, taking --

15 A. -- said it was off-frame.

16 Q. You cut out a little bit.

17 A. They said the actual area was off-frame of the
18 video.

19 Q. Okay. And then let's turn over to the next page.
20 You went to the Phoenix Mart and the Youngs
21 Grocery, but you didn't find any video there; is
22 that right?

23 A. Hang on a second. That's correct.

24 Q. And then you went back to Walmart and met with
25 Ginny Wright, and she located a video of the bank

1 card being used on July 26, right?

2 A. Hang on a second.

3 Q. By Ms. McClellan?

4 A. Yes, that one, she actually used it herself, yes.

5 Q. Okay. And then you contacted -- on September 6
6 you got a warrant charging Mr. Jacobs with
7 financial transaction card theft, right?

8 A. Yes.

9 Q. And you also got a search warrant for Wish.com?

10 A. Yes.

11 Q. All right.

12 A. That was prior to.

13 Q. Okay. Now, when you got that warrant had you
14 ever met Mr. Jacobs at that point?

15 A. Met who?

16 Q. Mr. Jacobs, Travis Jacobs, the gentleman you
17 eventually arrested.

18 A. (Audio distortion) cut out. I didn't hear a
19 name. No, sir.

20 Q. Had you ever seen any pictures of him other than
21 the ones that were on the video from the store?

22 A. From his Facebook page and his driver's license.

23 Q. All right. So based on what Walmart asset
24 protection told you, you went and found his
25 Facebook page?

1 A. Yes.

2 Q. And what -- and so what did you conclude once you
3 found the Facebook page?

4 A. Basically, I was looking -- comparing the photos.

5 Q. All right.

6 A. Seeing if there was anything that was, you know,
7 similar to the video at Walmart.

8 Q. Is the video at Walmart clear? Can you see a
9 person's face clearly?

10 A. I mean, it was clear enough to where you could
11 see, yes.

12 Q. All right. Well, on the video -- well, let me
13 ask you this. Did you eventually -- well, this
14 case was eventually dropped against Mr. Jacobs,
15 right?

16 A. That's right.

17 Q. And did you eventually arrest someone else for
18 this?

19 A. No, sir.

20 Q. Never did?

21 A. No, sir.

22 Q. All right. Did you believe the person in the
23 Facebook picture was the same person on the
24 video?

25 A. At that time, yes.

1 Q. Why did you believe that?

2 A. Based on the characteristics of the video, the
3 picture from Walmart, and the Facebook page, they
4 was -- they had the same type of earring, same
5 physical characteristics.

6 Q. But can you make a identification of the person?

7 A. I showed it to my supervisor at the time and he's
8 like, yeah, looks like him. Said, go ahead and
9 sign warrants on him if it's the same one
10 compared to the video.

11 Q. All right. Well, did you at some point change
12 your opinion about that being Travis Jacobs?

13 A. I did.

14 Q. When was that?

15 A. When I received the information back from Wish
16 and started to review that.

17 Q. What was that?

18 A. The documents they sent me. I noticed a email
19 was a play on a name of another person that we
20 was actually -- not me personally, another
21 investigator was actually currently
22 investigating.

23 Q. Wait a minute now. You've got to explain that to
24 me. I didn't quite follow you.

25 A. I don't have a copy of the email, that paperwork

1 with me. I believe -- do they have a copy of
2 that?

3 MR. PLYLER: I'm not supposed to help. I'm sorry.

4 THE WITNESS: Oh, I'm sorry.

5 Q. Tell me, when did you --

6 MR. PLYLER: John?

7 MR. CLARK: Uh-huh? Yes, I'm sorry.

8 MR. PLYLER: She's talking about something we
9 produced in discovery, and I'm (audio
10 distortion) help it along.

11 THE WITNESS: I'm sorry.

12 MR. CLARK: Okay. All right.

13 Q. So this is an email you got from Wish.com?

14 A. It's the paperwork I requested, yes.

15 Q. But tell me what it said. I mean --

16 A. I don't have it in front of me, so I'm not sure.

17 Q. Well, what made you change your mind?

18 A. The email that was listed on there was a play
19 similar to that of another person that another
20 investigator was currently investigating.

21 Q. And so explain to me how that made you change
22 your mind or your opinion that it was Travis
23 Jacobs.

24 A. I went to the other investigator and asked him
25 for that person's information. And I started

1 looking that person up in our system, on DMV
2 files, and Facebook also.

3 Q. All right. And what?

4 A. Basically comparing the information that I
5 received from Wish to Mr. Jacobs and to this
6 other person.

7 Q. And when you say the information, do you mean
8 pictures or the email address or what?

9 A. The -- all the information that they sent me.
10 The email, and I think the name --

11 Q. So this person had used an email to -- how did --
12 the card belonged -- that made the purchase from
13 Wish was from Ms. McClellan, right?

14 A. Yes.

15 Q. All right. So tell me how Wish had a email for
16 somebody else. Was something ordered online with
17 the card, or?

18 A. Yes. When the person placed a order online
19 through Wish, they used her card to pay for that
20 order. The information that they put in for like
21 -- I believe it was the shipping address and the
22 person, the email address. Once I received that
23 information -- they was able to cancel the order
24 so it didn't go through. So when they sent me
25 the information, to me from Wish, that the person

1 used to place that online order, I looked at the
2 name and I'm like -- it was a kind of odd name,
3 and the other investigator was investigating this
4 person. And I went to him and I said, "Hey,
5 what's your guy's name that you're looking at for
6 shoplifting?" And he told me. And so I went
7 back and started look -- pulling him up,
8 comparing his information to the information that
9 was used on Wish. It was a -- the email, the
10 name, was a play of his actual name.

11 Q. Okay. So he got an email that contained his name
12 and kind of referred to him?

13 A. Well, not --

14 Q. It was a play on his name; I understand what
15 you're saying. I gotcha. I understand what
16 you're saying. You're saying it alluded or
17 referred somehow to his name?

18 A. Yes.

19 Q. Right. I understand. That drew you to -- all
20 right, so once that happened did you look at that
21 person's picture? Did you have a mug shot of him
22 or something like that?

23 A. Yeah, I started researching him.

24 Q. All right. And did he look like the person on
25 the video as well?

1 A. Yep. Yeah.

2 Q. Okay. Well, was that person ever charged?

3 A. No.

4 Q. Why not?

5 A. Because I was told to let it be, that they had
6 him for other charges. Since I already charged
7 Mr. Jacobs, they said just dismiss -- just to
8 drop charges like you did, and just let it go.

9 Q. Okay. So Inv. Oliver, at this point do you
10 believe that Mr. Jacobs is innocent of stealing
11 the credit cards of Ms. McClellan?

12 A. I had doubts enough to where I didn't want to
13 pursue the charges anymore. I mean, I had a
14 doubt, and as soon as I realized that I'm like,
15 huh-uh, you know, it -- I don't -- I didn't know
16 if they were working together or if it was a
17 totally different person, but I knew at that time
18 I had doubts on him and I said I'm not pursuing
19 this.

20 Q. Did you ever get back with Walmart and show them
21 what you had gotten back? Did you ever explain
22 to them that the case was being dismissed? Did
23 you ever show them the picture of the other
24 person?

25 A. Well, they knew him also. Later on they became

1 familiar with him.

2 Q. Well, tell me about that.

3 MR. PLYLER: John, the only hesitancy I've
4 got, if it's an ongoing investigation or
5 criminal charges against that guy, I
6 don't know if she can talk about it.

7 MR. CLARK: I understand.

8 MR. PLYLER: Okay.

9 Q. Well, what I want to know is what was -- what --
10 did you go back to Walmart after you discovered
11 that another person had -- that you thought
12 another person had made a email of -- an online
13 order with that credit card, did you go back to
14 them and advise them of that?

15 A. If I'm not mistaken, I think I spoke with Joey
16 about it.

17 Q. All right. And did they know -- did Joey know
18 who that person was at that point?

19 A. No. Are you talking about?

20 Q. Once you got the email back from -- once you got
21 the email back from Wish.com --

22 A. Yes.

23 Q. -- and you made the connection to another
24 individual, and you went and looked at the other
25 individual's photograph --

1 A. Yes.

2 Q. -- what I'm trying to determine is, what did you
3 tell Walmart, and what was their reaction then?

4 A. I remember speaking to Joey on the phone, and he
5 asked me whatever happened to the case. And I
6 told him, I said, "Well, I dismissed the case in
7 prelims." And he was like, "Why?" And I said,
8 "Because I received some information from Wish;
9 that may not be the same person. It may not be
10 him." I said, "I don't know at this point." I
11 said, "But the name, the information that I
12 received from Wish is pointing or leading me into
13 direction of this other person."

14 Q. Okay. And did you ever show them the photograph
15 of the other person?

16 A. I think later on I did.

17 Q. Who did you show it to?

18 A. I want to say Joey.

19 Q. What was his reaction?

20 A. He was like, "Yeah," he was like, "I can see
21 that."

22 Q. Meaning he then thought it was that guy on the
23 video and not Mr. Jacobs?

24 MR. PLYLER: Object to form.

25 A. I mean -- (audio distortion) similarities, yes.

1 Q. Okay.

2 A. I mean, even the attorney, Flores, when I spoke
3 to him about, it he agreed. And Mr. Jacobs'
4 attorney at the time, we showed it to him.

5 Q. Was a mistake made in arresting Mr. Jacobs?

6 A. With what was given at the time I don't believe
7 so, no.

8 Q. Do you think that Walmart was mistaken in their
9 identification of him? I'm just asking you your
10 opinion.

11 A. At this point, possibly, yes.

12 Q. Do you take any responsibility -- well, let me
13 ask you this. Arresting a person who's not
14 guilty of a crime and -- that's a serious thing,
15 isn't it?

16 A. Yes, sir.

17 Q. Do you take any responsibility for -- well, let
18 me ask you this. Do you agree an error was made
19 by someone in arresting Mr. Jacobs?

20 MR. PLYLER: Object to the form. You can
21 answer.

22 Q. Was an error made by someone in arresting Mr.
23 Jacobs?

24 MR. PLYLER: Same objection again.

25 A. At the time, I don't think so.

1 Q. Well, you don't think Walmart made an error? You
2 don't think Walmart made a error?

3 A. Once I received the other information back, I do
4 -- I do now. I mean, there is doubt.

5 Q. Well, so now you believe Walmart made an error in
6 identifying him, Mr. Jacobs, as a person who
7 stole a pocketbook?

8 A. Yeah, because that's basically what I based my
9 investigation off of, was I had four people there
10 saying it was him.

11 Q. And they not only told you it was him, but they
12 told you how the person stole the wallet, right?

13 A. Yes.

14 MS. BRAKMANN: Object to form.

15 Q. And there was no video evidence to back -- to
16 verify that, was there?

17 A. Not a complete video, no.

18 Q. Right. And you took what they told you and
19 arrested Mr. Jacobs?

20 A. After I did my investigation and compared the
21 information, the pictures, consulting with my
22 supervisor at the time, yes.

23 Q. Did you ever apologize to Mr. Jacobs for
24 arresting him?

25 A. I have not spoken to him, no, sir.

1 Q. You think an apology would be appropriate?

2 MR. PLYLER: Object to the form. You can

3 answer.

4 Q. Would an apology be appropriate?

5 MR. PLYLER: Same objection. You can answer.

6 A. If it wasn't him, yes.

7 Q. All right. So Inv. Oliver, are you saying that

8 the probable cause you used in arresting Mr.

9 Jacobs was based on what Walmart told you?

10 MR. PLYLER: Object to the form again.

11 Q. Well, was it based on what Walmart told you?

12 MR. PLYLER: Same objection.

13 A. Partially, yes.

14 Q. Okay. And what they told you, did it turn out to

15 be erroneous?

16 MS. BRAKMANN: Object to the form.

17 Q. Was it erroneous? Was it correct what they told

18 you?

19 MS. BRAKMANN: Same objection.

20 Q. You can still answer.

21 A. I'm sorry. What was that?

22 Q. You said your probable cause was based partly on

23 what Walmart told you, right?

24 A. Yes, sir.

25 Q. And my question is, at some point after they told

1 you that, did you have doubts about the accuracy
2 of what they were telling you, the
3 identification?

4 A. Yeah, after I -- after I got the information back
5 from Wish.

6 Q. Right. Okay. And the photo of the other person,
7 right?

8 A. Which photo?

9 Q. Well, I mean, I'm assuming you went and got a
10 driver's ID photo of the person that was --

11 A. What, the other person that was --

12 Q. Right.

13 A. Yeah. Yes.

14 Q. Yeah. And so --

15 A. I pulled his photo. I pulled his Facebook photo
16 --

17 Q. And when you saw his face in the video, that
18 caused you to doubt whether it was Mr. Jacobs as
19 well, right?

20 A. Yeah, because based on what I did was I laid all
21 the photos I had down, all three. I even asked
22 some of my coworkers, a majority of my coworkers,
23 I said, "Can you -- do these not look similar?"
24 And they all agreed, yes, all three photos look
25 similar. And I'm like --

1 Q. And --

2 A. And this was --

3 Q. Go ahead. I'm sorry.

4 A. That was after I got the information from Wish
5 and started comparing everything.

6 Q. Okay. Now, I don't see a report that indicates
7 how you identified the other person. Do you have
8 a report that shows that?

9 A. Well, I did a report at the time. I think what
10 happened was, it was placed under a different
11 case number, and we couldn't locate it.

12 Q. All right. So you did do a report once you --

13 A. I remember doing it, yes, sir.

14 Q. Okay. But you can't find that report now?

15 A. We looked for it, because I did it -- I
16 inadvertently did it with another report. I
17 looked at the wrong case number, and started
18 typing it and realized I messed up. And I think
19 that's what happened with that at that time too.

20 Q. Is there an ongoing case against the other person
21 that you know of?

22 A. I think so. I'm not positive. I will have to
23 check with the other investigators. I'm not
24 sure, but I think --

25 Q. You don't of any -- do you know of any

1 investigation going on regarding him, open case
2 against him?

3 A. I'm not sure.

4 Q. So you don't know of any open investigation
5 against this other person?

6 A. I don't know the status --

7 Q. As you sit here right -- huh?

8 A. I don't know the status of the other
9 investigators' cases.

10 Q. Right. So what I'm saying at this point, as you
11 sit here today, do you know of any open
12 investigations regarding this other person?

13 A. I don't know if it's been to trial yet or not.

14 Q. But this was on another case, right? Because you
15 never charged him. If anything's going to trial,
16 --

17 A. Not that I know --

18 Q. -- it's another case against him, right?

19 A. He's got multiples, yes.

20 Q. Yeah, what's his name?

21 A. Last name Hickson.

22 Q. Hickson?

23 A. Hickson is his last name.

24 Q. What's his first name?

25 A. Nikkikel I think is how you say it.

1 Q. And you're saying he's got some cases pending now
2 in general sessions you believe, or --

3 A. I think so.

4 Q. Okay. You have any other -- I want to get a
5 picture of this guy. Where can I get a picture?

6 MR. PLYLER: John, we produced stuff to you
7 that's got all this in there.

8 MR. CLARK: Pictures of him?

9 MR. PLYLER: It's got --

10 MR. CLARK: No, I -- go ahead. I'm sorry.

11 MR. PLYLER: Yeah, if you look at Bates set
12 Jacobs-A-1 through 57. And in there is -

13 -

14 MR. CLARK: Yeah, that's what --

15 MR. PLYLER: -- documentation of that.

16 MR. CLARK: Yeah. Okay.

17 MR. PLYLER: Including the response from Wish
18 that she's been referring to, which can
19 be --

20 MR. CLARK: Yeah, I got that. Yep, I got that.

21 MR. PLYLER: A-47 through A-49.

22 MR. CLARK: Okay. Yeah, I see the photograph at A-17.
23 Can you show her A-17? Is that the photograph of
24 Mr. Hickson?

25 MR. PLYLER: A-17 is your client's Facebook

1 photograph.

2 MR. CLARK: Okay. Well, where is the photo of Mr.
3 Hickson?

4 MR. PLYLER: His driver's license photo is on
5 page A-46.

6 MR. CLARK: Okay. Thank you. Thank you.

7 Q. Now, Inv. Oliver, when you arrested Mr. Jacobs he
8 was at work, right?

9 A. Yes.

10 Q. And you went to the store and you put him in
11 handcuffs immediately, didn't you?

12 A. No, sir, I didn't.

13 Q. Well, I mean, did somebody with you put him in
14 handcuffs?

15 A. Kelly did, yes.

16 Q. Was he under arrest as soon as you approached
17 him? Well, you had a warrant at that point,
18 right?

19 A. I had a warrant, yes.

20 Q. Okay. And did you ask to speak to him about the
21 incident?

22 A. Yes, sir.

23 Q. And did he deny any involvement?

24 A. Yes, sir.

25 Q. And didn't he -- he was reduced to tears at some

1 point, wasn't he? Wasn't he crying and talking
2 to you about it?

3 A. I think so. I'm not sure.

4 Q. Okay. And there were other people in the store
5 that -- you walked him through the store with
6 handcuffs on, right?

7 A. We came -- the back aisle, yes.

8 Q. Okay. Tell you what, Inv. Oliver, give me a
9 minute. I think I'm about done, okay?

10 MR. CLARK: If we can just take like a three-minute
11 break guys, I think I'm just done.

12 MR. PLYLER: Okay.

13 MS. BRAKMANN: Okay.

14 (Off the record from 3:29 p.m. to 3:35 p.m.)

15 MR. CLARK: We back on now?

16 MR. PLYLER: Yes, sir.

17 Q. Inv. Oliver, have you understood all my questions
18 that I've asked you today?

19 A. Yes, sir.

20 Q. Your answers have been truthful to the best of
21 your knowledge?

22 A. Yes, sir.

23 Q. Okay. Well, I thank you for your time. I don't
24 have any other questions for you at this point.

25 A. Thank you, sir.

1 Q. The other lawyers might have some questions
2 though.

3 A. Okay.

4 EXAMINATION

5 BY MS. BRAKMANN:

6 Q. Good afternoon. My name is Sara Brakmann, and
7 I'm the attorney who is representing Walmart,
8 Ginny Wright, Joey Barefoot, and Emily Ek, who
9 are personally named in this action. How are you
10 doing today?

11 A. Pretty good.

12 Q. Good. Good. Well, I also have some questions
13 for you, but before we get started -- I'm sorry
14 to reiterate any of this; but just so you know,
15 this, as you understand, is a question-and-answer
16 session. And I'm trying -- I'm not going to re-
17 ask questions you've already answered, but I may
18 need to go back over some things. So I apologize
19 for that. But before we get started, I believe
20 Officer is the title we've been referring to you
21 as; is that the correct title?

22 A. Yes. Yes, ma'am.

23 Q. Perfect. Just wanted to make sure. Okay. And
24 again, before I get started, if there's any point
25 where you cannot understand me or have a hard

1 time hearing me, I'm happy to restate the
2 question. I also will -- is it fair for me to
3 assume if you do answer my question that you
4 understood it correctly --

5 A. Yes.

6 Q. -- or understood it and responded -- okay.
7 Sounds good. Can you explain for me just a
8 little bit, what are the basic job duties as an
9 officer with Florence police department?

10 A. Depends on what you're assigned to, what unit
11 you're assigned to. Currently I'm assigned to
12 the investigation unit. And I mainly do white
13 collar crimes, check fraud, bank fraud, scams.
14 When I'm on call, of course, you get called out;
15 it could be anything.

16 Q. And you were in the investigation unit back at
17 the time of this particular incident; is that
18 correct?

19 A. Yeah, I'd just started up here.

20 Q. Okay. And when you say you had just started,
21 were you still in training at that point?

22 A. To be honest with you, they -- I mean, I -- Day
23 One when I came upstairs, they started giving me
24 cases. It was kind of like on-the-job training
25 is what the other investigator that trained me

1 told me. He said it's -- you've just got to
2 start.

3 Q. And can you just explain for me what typically
4 happens after you're assigned a case?

5 A. Basically when we're assigned a case, me
6 personally, I'll go back to my office and pull up
7 the report. I'll review the report to see if I
8 have enough information to begin a report. If
9 not, then I'll see if any paperwork, any POs,
10 anything like that was logged into evidence by
11 the officer or turned in downstairs to our record
12 division. If not, then I'll make contact with
13 the victim and just go back over the case,
14 circumstances, what happened, and then start the
15 investigation from there.

16 Q. So let's -- today we've referenced multiple
17 documents. Do you have an independent memory of
18 the incident we're discussing here today?

19 A. I remember it, yes.

20 Q. Okay. And we've discussed a couple different
21 individuals who work at Walmart. Was the
22 investigation in this incident, was that the
23 first time you'd interacted with Joey Barefoot?

24 A. No.

25 Q. When did you first interact with Mr. Barefoot?

1 A. I could not tell you when. We interact with the
2 loss prevention personnel with Walmart. While I
3 was on the road we interacted with them when they
4 called us over. The very first time, I could not
5 tell you.

6 Q. Okay. When you say on the road, do you mean when
7 you were a patrol officer?

8 A. Yes, ma'am.

9 Q. And do you know, at the time of this incident,
10 what Mr. Barefoot's job title was?

11 A. I think they called themselves assets protection
12 -- loss prevention officer employees.

13 Q. And do you know if he was in a managerial
14 position or if he was an associate?

15 A. I have no clue.

16 Q. And do you know what kind of training Walmart
17 administers for individuals who are in that role?

18 A. I do not.

19 Q. And generally speaking, prior to this incident,
20 had your interactions with Mr. Barefoot -- how
21 would you characterize those interactions?

22 A. He's always been pleasant, knowledgeable. I
23 never really had an issue with him. Normally
24 when I'd interact with him, majority of time -- I
25 mean, they have the case -- all the facts of the

1 case and everything else for us.

2 Q. So was this particular issue or incident we're
3 discussing today, was this like most of the other
4 times when you went to Walmart and spoke with Mr.
5 Barefoot?

6 A. Do what now? I'm sorry.

7 Q. You're fine. Was this instance -- I'm trying to
8 think of a good way to word this, but was this
9 instance similar to the other types of calls you
10 would get in response to a Walmart?

11 A. Yes, ma'am.

12 Q. Okay. Did Walmart, as an entity, report this
13 missing wallet, or was this an individual loss
14 that took place at the Walmart?

15 A. I do know the victim made the report with us, and
16 she also contacted them to report it to them at
17 Walmart.

18 Q. So you would agree that this was an -- a case
19 where an individual -- there was an individual
20 item stolen at Walmart? This was not a
21 shoplifting incident?

22 A. That's right.

23 Q. Okay.

24 A. (Audio distortion) property.

25 Q. I'm sorry. Can you say that one more time?

1 A. What we call personal property of the victim.

2 Q. Okay. And Ginny Wright, do you know what her
3 occupation -- or her job title was at Walmart at
4 the time of the incident?

5 A. I think she was over Joey and Emily at the time.

6 Q. Did she also work in the asset production area?

7 A. Yes, ma'am.

8 Q. Okay. And had you interacted with her prior to
9 the day of this incident?

10 A. Yes, ma'am.

11 Q. And can you characterize generally how your
12 interactions with her had been prior to --

13 A. Basically the same as Joey; pleasant,
14 knowledgeable. They normally have everything
15 just about ready for us when they call us as far
16 as documentation, photos, videos, stuff like
17 that.

18 Q. Is it accurate to say when they typically call
19 you, they're calling about shoplifting
20 merchandise from the store?

21 A. Normally, yes. Or either breach of trust or, you
22 know, employee theft.

23 Q. Okay. And Emily Ek, do you know what her
24 position was at the store?

25 A. She was a loss prevention officer.

1 Q. And had you spoken with her prior to the date of
2 this incident?

3 A. Yes, she was I guess the newest member, so I had,
4 you know, minimal interaction with her.

5 Q. Had she also generally been helpful and pleasant
6 prior to --

7 A. Oh, yes, ma'am.

8 Q. Interacting with these three individuals, did you
9 have any reason to believe that any of them at
10 any time had given you false information on
11 purpose?

12 A. No.

13 Q. And when -- the individuals at Walmart, when they
14 report an incident to you or present you with
15 evidence, do you make a -- do you conduct an
16 additional investigation in addition to what they
17 give you?

18 A. Yes. Normally we'll go out there and they tell
19 us, you know, what took place, and then we'll ask
20 to see video to, you know, back up what they just
21 told us and, you know, get the required
22 documentations for court.

23 Q. And generally speaking, why do you need to gather
24 the products?

25 A. So that we would have physical evidence to

1 present in court to back up the, you know,
2 whatever crime has been committed.

3 Q. Okay. And in cases like this where it's a credit
4 card or cards, multiple, that have gone missing,
5 what type of steps do you usually take to
6 investigate things like that?

7 A. Normally I'll make contact with the victims and
8 ask for pronouncement of banks, if they could,
9 you know, contact their banks, credit card
10 companies, and get printouts showing the date,
11 time, the location, the store, the amount that
12 was used. If they can't provide that to us, then
13 we'll do search warrants for the companies and
14 request the information.

15 Q. And do you have to establish anything prior to
16 arresting an individual?

17 A. Probable cause, reasonable suspicion.

18 Q. What kind of -- what is your understanding of the
19 difference between that reasonable suspicion and
20 probable cause?

21 A. That a reasonable person -- how can I -- that
22 basically you have reasonable belief that a
23 person committed a crime, have involvement in the
24 crime.

25 Q. And do you have to -- is there any process you

1 have to go about to present probable cause before
2 you can arrest someone?

3 A. Basic -- are you talking about like for a warrant
4 or -- if I'm doing a warrant, basically I have --
5 take all my documentation I have that I've
6 gathered for the case. I'll take it downstairs
7 to see the judge, present my findings to -- you
8 know, they swear us in, present the findings to
9 him, and show them what documentations I have to
10 support the probable cause for the warrant.

11 Q. Okay. I'm going to share my screen, and I have
12 on here a document that we've already been
13 discussing today.

14 A. Okay.

15 Q. Do you see a City of Florence incident report on
16 your screen?

17 A. Yes, ma'am.

18 Q. All right. Perfect.

19 MS. BRAKMANN: And Robin, this will be Defendant
20 Walmart's Exhibit 1.

21 (Defendants' Exhibit 1 was identified.)

22 MR. PLYLER: It's marked Confidential so it'll
23 need to be treated as such during the
24 deposition.

25 COURT REPORTER: Okay. Got it.

1 Q. And this is Bates stamped Jacobs-A-058. Can you
2 identify for us what this document we're looking
3 at is?

4 A. Basically that's an incident report. It's the
5 primary incident report that we complete when
6 someone makes a complaint.

7 Q. And is this document a collaborative document
8 between you and other officers, or is this a
9 document that only one officer will typically
10 draft?

11 A. It depends on the circumstances.

12 Q. Okay. Looking at this current incident report,
13 is this an incident report that you contributed
14 to, or is this an incident report that someone
15 else penned?

16 A. No, this is a report that Officer Howard
17 completed.

18 Q. Okay. And it references PO Howard and Sgt.
19 Walters as officers on this matter. Were either
20 of these officers -- what was their involvement
21 in the actual investigation of the matter?

22 A. I'm not sure, other than what's on the report.
23 Normally the process is the reporting officer's
24 name would be on the -- the lower left-hand
25 corner, where it says Howard. And then the

1 approving officer would be their supervisor, who
2 reviewed the report to make sure it was -- didn't
3 have any errors or anything like that, and all
4 the information that needs to be in there should
5 be in there.

6 Q. Okay.

7 A. And then --

8 Q. I'm looking at the bottom part of page 1 of this
9 report.

10 A. Yes.

11 Q. It references Mr. Travis Jacobs as a suspect, and
12 it marks Warrant, Arrest and Jail. Was this part
13 of the report completed at a later date, or was
14 this completed on the same day as the initial --

15 A. All of that is normally done later. Normally
16 when they submit -- once the report is approved
17 by, it states Sgt. Walters here, they download
18 their computers. Records will get the
19 information, and then they'll start doing their
20 process of making sure everything is correct.
21 And normally that's -- they'll make sure, you
22 know -- an officer should do it -- make sure, you
23 know, the Suspect block is marked off.

24 Q. Okay. And now let's go to -- and this Bates
25 stamped Jacobs-A-60, and this is a document

1 marked Incident Report Supplemental. Can you
2 just briefly describe kind of what we're looking
3 at here?

4 A. Basically this is the supplemental that I filled
5 out, detailing the case, my involvement with the
6 case.

7 Q. Okay. And what was your understanding of the
8 alleged crime when initially speaking with Ms.
9 McClellan?

10 A. That somebody took her wallet that contained her
11 credit cards from the back area of Walmart where
12 she had placed it down. That somebody went in
13 and took the wallet and stole it, and left, and
14 started using the credit cards.

15 Q. And did Ms. McClellan, did she herself provide
16 the identification (inaudible) that she believed
17 to be involved in the theft?

18 A. The only thing she knew is that Ms. -- I think
19 her name was Annie -- Ms. Annie was in the area
20 when she went -- when she came into work. She
21 said, "I don't know if she took it. I'm not
22 saying she took it. I'm just saying my stuff is
23 missing."

24 Q. Okay.

25 A. And I'm like, well, you know, there should be

1 video and stuff like that. And I said, if so, I
2 said, you know, I'll, you know, go that route if
3 need be but, you know, let's go ahead and pull up
4 -- pull the video and get the information that we
5 need to start a report.

6 Q. Did you ever investigate this Annie that she
7 referred to?

8 A. I didn't.

9 Q. Was there a reason for that?

10 A. Based on the information provided by Walmart
11 personnel, they reviewed the -- because she came
12 to them and made a complaint there that her stuff
13 was stolen. So they started reviewing the camera
14 system and started reviewing the case, and they
15 knew that Ms. Annie didn't take it.

16 Q. Do you know what they based that belief off of?

17 A. Based off their investigation.

18 Q. And when you -- did you do any independent
19 investigation between the time that you received
20 the case and between the time you went to
21 Walmart?

22 A. I reviewed the incident report and reviewed -- to
23 see what information was turned in so I could
24 start the process of having the documents that I
25 need for court, and to get the information.

1 Q. Okay. And looking at this supplemental report,
2 it first mentions that you went to Walmart and
3 you got two disks from from AP personnel Emily
4 Ek. Can you described for me any part of that
5 conversation that you remember?

6 A. I remember going in. It was Joey, Emily --
7 because Emily was working on the computer -- and
8 Ginny was in there also. And I was going over
9 the case with them, and they was telling me what
10 they learned through their course of reviewing
11 the video and the investigation on their side.
12 And then they -- I don't know his name, he was a
13 tall white guy, I want to say maybe brown hair,
14 average build, manager, that -- that's -- they
15 said he happened to walk in in the back where
16 they was having orientation, and him having seen
17 the video prior to that day, he knew what the
18 suspect looked like. And he said that it caught
19 his attention because when he walked by the door,
20 he looked into the new employees in their
21 orientation, and he was like, whoa, that looks
22 like the guy from the video. And so he goes --
23 he comes up front and tells them. And then they
24 go back there and start, you know, trying to
25 casually walk by they said, because they didn't

1 want, you know, they didn't want to spook anybody
2 by going into the room and disturb the
3 orientation. But they said they walked by,
4 looked in, and they was like, wow, yeah, that's
5 him. They said, that looks just like the guy
6 from the video. And then -- uh-huh.

7 Q. I'm sorry, go ahead.

8 A. And then after that I asked them to play the
9 video, because a lot of times we have issues with
10 certain videos when they're downloaded so we
11 always try to watch it there because their set-
12 up, their players, and everything else. So we
13 always, you know, try to watch it on their system
14 so, that way, we know it will play.

15 Q. Okay. And so I have a couple follow-up questions
16 about that.

17 A. Uh-huh.

18 Q. So at the time you visited to get the disks, were
19 Emily, Joey, and Ginny all in the AP office?

20 A. Yeah, because Joey was sitting to the left of
21 Emily, Emily was sitting at the desk, and I think
22 Ginny was -- she was back and forth.

23 Q. Okay. And was it your understanding that all of
24 them had contributed to looking into this
25 incident?

1 A. From what they was telling me, yes.

2 Q. And after they suggested that the person in the
3 video could have been an employee, did you ask
4 for any additional information about this
5 employee from them?

6 A. I did. I said, well, do you have his information
7 so that way I can, you know, at least, you know,
8 pull photos and stuff like that and start doing
9 an investigation.

10 Q. Would you have felt comfortable arresting Mr.
11 Jacobs on that day after speaking with them?

12 A. Based off of just what they said, me personally,
13 I don't like to do that. I mean, I want a little
14 bit more concrete evidence so to speak before I
15 just go arrest somebody. I mean, I'm the type of
16 person, I play devil's advocate on my cases. You
17 know, I look at it from all different angles.
18 And if I have a doubt, I'm not going to pursue
19 it. I've always been that way.

20 Q. And was Emily Ek, was she an eye witness to the
21 theft?

22 A. Of?

23 Q. Of the cards?

24 A. She -- I mean, she was downloading the videos. I
25 assume she watched the video; so what her

1 knowledge was just from watching the video.

2 Q. Okay. Well, I guess my question is, was it your
3 understanding that she had, in person or on
4 video, actually seen the person take the cards
5 from the wallet?

6 A. No.

7 Q. And to your knowledge was Mr. Barefoot, was he an
8 eye witness?

9 A. I'm sorry, who?

10 Q. Joey Barefoot, was he an eye witness?

11 A. No. I know he walked me through the video
12 process of everything, but no.

13 Q. And about Ginny Wright, was it your understanding
14 that she was an eye witness to the theft?

15 A. No. Same thing, video.

16 Q. Okay. And other than the video, did you gather
17 any other physical evidence from the store at
18 Walmart?

19 A. They gave me copies of -- I asked for a still
20 photo. They printed out a still photo for me, so
21 that way I made I sure had it. They gave me a
22 copy -- a disk with the video on it. As far as -
23 - I think that's it on that case.

24 Q. A couple of times today you've mentioned
25 something along the lines of that someone at

1 Walmart or people at Walmart said that they
2 believed the person in the video to be Travis
3 Jacobs. To the best of your memory, what was
4 their exact wording?

5 A. I remember talking to all four, because I briefly
6 interacted with the manager that initially seen
7 him and brought it to their attention. And I'm
8 like, "Are you sure this is him?" And they was
9 like, "Yeah, pretty darn close. I mean, that's -
10 - yeah, that's him." And said, "He looks just
11 like him." And I'm like, okay. I'm like --

12 Q. So is it your testimony that the unknown manager,
13 Emily, Joey, and Ginny all said that we were
14 "pretty sure" that was him?

15 A. I mean, variations from everybody. But, yeah,
16 they all agreed that, yeah, that he looked like
17 the guy in the photo.

18 Q. Did you ever provide a photographic lineup to the
19 Walmart employees?

20 A. No.

21 Q. Okay. Did you ever ask the employees to attend
22 an in-person lineup?

23 A. No.

24 Q. And did you ever obtain a sworn statement from
25 the employees?

1 A. Not as far as the -- no.

2 Q. Okay. And --

3 A. I mean, when we investigate it, their statement,
4 I mean, that's -- I mean, we take their
5 statements.

6 Q. And were their exact statements, word-for-word,
7 were those captured in your supplemental incident
8 report or incident report?

9 A. What now? I'm sorry.

10 Q. You're fine. Were your -- were each of the
11 employees' statements, were those captured word-
12 for-word or as accurately as possible in your
13 supplemental report or the incident report?

14 A. I think I -- basically my report on what they
15 told me.

16 Q. And I get what you're saying. I guess my
17 question is, is there any place where their exact
18 statements to you are memorialized as -- word-
19 for-word or as closely as when they reported them
20 to you?

21 A. I don't think so.

22 Q. So I'm still looking at, I guess this is Jacobs-
23 A-060 of your supplemental report which is
24 contained in the incident report. And a couple
25 paragraphs mention going to other stores where

1 the cards were used.

2 A. Yes.

3 Q. Did you speak with employees at those other
4 stores?

5 A. Yes. I went to the one out off of 95, the Pilot.
6 Spoke with a manager there. He let me review the
7 video there and downloaded it for me. Then I
8 left there and went to the Circle K on East
9 Palmetto and McCurdy Road. Spoke with two
10 employees there that was trying to operate the
11 camera system for video for that time frame. And
12 to be honest with you, they wasn't too enthused
13 on helping me and they just, in my opinion, just
14 halfway did it, put it that way, and said they
15 couldn't find video.

16 Q. And what kind of things other than video -- or,
17 what kind of things did you discuss with the
18 employees at the stores?

19 A. What I discussed with them?

20 Q. Uh-huh.

21 A. Basically the description of the suspect who I
22 was looking for, the date and time, and I might -
23 - told them the amount the purchase was; if they
24 could, you know, go through the cash register
25 receipts and locate the transaction and stuff

1 like that, so that way we can compare it to the
2 video. And then they was telling me that if he
3 used an ATM or certain pumps outside to make a
4 purchase, then it wouldn't be on their video; it
5 just depends on where the, you know, interaction
6 was in the store.

7 Q. Okay. I am going to pull up another document.
8 One minute please. All right. This is going to
9 be Defendants' Exhibit 2. This is the
10 investigative file that was produced by law
11 enforcement, and it's confidential.

12 (Defendants' Exhibit 2 was identified.)

13 A. Yes.

14 MR. PLYLER: Are you saying the entire 57
15 pages are the exhibit, or just the one
16 page you're showing her?

17 MS. BRAKMANN: I'm going to mark the entire packet as
18 an exhibit. I'm only going to -- but any
19 particular part of it I will specifically refer
20 to. I don't intend to go through all 57 pages.

21 MR. PLYLER: Okay.

22 Q. Can you see my screen?

23 A. I can.

24 Q. We're looking at Jacobs-A-004 in the
25 investigative file. What are we -- what

1 photograph are we looking at here?

2 A. That's the entrance and exit door way to Walmart.

3 Q. And did you request that the store pull this
4 particular screen shot, or pull any screen shot?

5 A. Normally we'll go through the video and then
6 I'll, you know, pick out the best photos.

7 Q. Okay. And is this a photograph that someone at
8 Walmart identified Travis Jacobs off of?

9 A. Yeah, that's the one they told me that the guy in
10 the back looked like him, yeah.

11 Q. For the record, can you just describe the person
12 who we are looking at currently on-screen?

13 A. Black male, short haircut, earring in his left
14 ear, wearing a red shirt, short sleeve, some type
15 of white design on the left chest area of the
16 front.

17 Q. And did --

18 A. Dark --

19 Q. I'm sorry. Go ahead.

20 A. I'm sorry. Maybe dark pants.

21 Q. Okay. Thank you. And did only one Walmart
22 employee make an identification on this
23 photograph, or did multiple employees?

24 A. As far as I know, all four more or less.

25 Q. And when you say four, are you referring to Ginny

1 Wright, Emily Ek, Joey Barefoot, and the unnamed
2 male manager?

3 A. That's right.

4 Q. Okay. And were there any other photograph -- or
5 I'll show you. This is Jacobs-A-005. Is this
6 also a photograph that was used to identify the
7 suspect?

8 A. Yes.

9 Q. And did you request that the screen shot be
10 pulled, or did the store supply it?

11 A. Probably both, to be honest with you.

12 Q. So I'm now looking at page 8 -- or, sorry, 7.
13 It's Jacobs-A-007. What document are we looking
14 at right now?

15 A. That's the one from the Phoenix I believe. When
16 -- well, let me see here. It's the date and
17 time. That's the transaction summary showing
18 that the card was used and the location.

19 Q. Okay. And just generally speaking, why would
20 this record be part of the investigative file for
21 this matter?

22 A. It has a date and time stamp on it and the
23 location.

24 Q. And the handwritten note, is that by you? Is
25 that your handwriting?

1 A. Yeah. That's my handwriting.

2 Q. Okay. And one moment. This is Jacobs-017.

3 A. Yes.

4 Q. Can you describe what we're looking at here?

5 A. That's the Facebook photo I printed off from
6 Mr. Jacobs' Facebook page.

7 Q. And what was the purpose of this being Mr.
8 Jacobs' Facebook page?

9 A. Because it has similarities to the printout that
10 Walmart gave me of the guy coming in, showing the
11 earring in the left ear and his facial structure
12 characteristics.

13 Q. And were you able to tell if this was a current
14 photograph of Mr. Jacobs?

15 A. Just what was on the Facebook when it was --
16 whenever it was, you know, listed on Facebook.

17 Q. Okay. Can you describe for us what exactly
18 happened from the time you arrived at the Walmart
19 on the date that you arrested Mr. Jacobs?

20 A. I called out to see if he was at work, and they
21 said he was.

22 Q. Who said he was?

23 A. I believe Joey was, and I believe that's who was
24 on the phone and said that, yeah, he was at work.
25 And I said, "All right. I'm going to be on the

1 way out there." And so went to Walmart and met
2 with them in a front office and basically just
3 asked them where he was, and they told me. And I
4 always ask, do you think he'll run? And normally
5 I'll have a patrol unit or a transport unit to
6 meet with me. On that day Officer Kelly came
7 over. He went around the outside. I went with I
8 think Joey and Ginny, I want to say -- I know it
9 was Joey -- towards the back, to the automotive
10 area. By the time we got back there, Officer
11 Kelly had already made contact with him and was
12 detaining him. And at that time I asked him, you
13 know -- Mr. Jacobs said, you know, what's going
14 on, and I said we'll talk about it, discuss it
15 later, because we was out there in the garage
16 area, and I didn't want to discuss anything out
17 there in front of everybody.

18 Q. When you say everybody, can you estimate for me
19 how crowded that area was?

20 A. I'm not sure. I remember -- I know I saw -- I
21 know I saw two people.

22 Q. Okay. And so Officer Kelly was there, and what
23 specific Walmart employees were there for that
24 part?

25 A. Joey was there, and I think Ginny was there also.

1 Q. And so what occurred after you have that
2 exchange?

3 A. Escort him to the front office. Normally what I
4 do is, if Walmart has anything that they want to
5 discuss with him, they do their thing, and then
6 I'll talk to them.

7 Q. So in this case -- earlier you mentioned that you
8 walked through the store with Mr. Jacobs. Can
9 you describe for me the path y'all took through
10 the store?

11 A. I want to say -- I'm pretty positive -- we came
12 down the back aisle, along the wall, and came
13 around by the pharmacy, into the office.

14 Q. Can you estimate for me how many customers and
15 associates y'all passed while walking through the
16 store?

17 A. I'm not sure, because instead of walking down the
18 main aisle I want to say we went the back aisle
19 just so, that way, he wouldn't be seen.

20 Q. And who decided that it is necessary for him to
21 be in handcuffs at this point?

22 A. Officer Kelly, he did that as soon as he made
23 contact with him.

24 Q. Okay. Do you know the reasoning for that?

25 A. Normally if we're going to detain somebody or

1 something like that, or if we have warrants for
2 somebody, we'll go ahead and detain them him so,
3 that way, they can't fight.

4 Q. And who all entered the office once y'all arrived
5 at the office?

6 A. It was me, Mr. Jacobs, I think Kelly came in and
7 just stood by; I'm not sure. I'm pretty sure he
8 was standing in there, and Ginny, and I think
9 Joey was in there at that time.

10 Q. And what occurred after y'all entered the office?

11 A. I know I Mirandized him and asked him if he
12 wanted to talk to me, and he said that he would
13 be willing to talk me. I Mirandized him. He
14 agreed, understanding his rights; he waived his
15 rights. And filled out a waiver of rights form,
16 and -- he was in handcuffs, so he couldn't sign
17 it. And then I basically, you know, just started
18 talking to him about the case, why I was there.

19 Q. Can you remember exactly any specific words that
20 were exchanged?

21 A. No, ma'am, I can't.

22 Q. And do you remember if the Walmart employees said
23 anything while y'all were in the office?

24 A. Yeah, I think Joey -- I know Ginny was there, and
25 she was speaking with him also.

1 Q. Do you remember anything that she said at that
2 time?

3 A. She was just -- he was asking questions about,
4 you know, why he was in there, what happened, you
5 know, that led up to all this. And we was trying
6 to explain to him the reporting -- the report and
7 the process and everything.

8 Q. Okay. At that time were you prepared to arrest
9 Mr. Jacobs no matter what he said, or were you
10 still waiting on information before arresting
11 him?

12 A. I had the warrant, and I always like to, you
13 know, talk to the people before I serve the
14 warrant. I spoke to him, and the information
15 that he was providing to me and the information
16 that Walmart provided to me -- you know, like I
17 was told that he used to be the beer person for
18 the store and that he's been in the back, he
19 knows the layout of the back area. He was there
20 when he worked for the beer company. And when I
21 questioned Mr. Jacobs about it, he said, no, he's
22 never been in the back, he's never been in
23 Walmart. He said he don't shop at Walmart. And
24 that -- and I'm like, "You never came out here to
25 the store?" And he's like, "No, because if I

1 did, I sat in the car. My girlfriend came out
2 here, my fiancé." And it just -- red flags was
3 thrown up during the interview with him. And at
4 that point I'm like, you know, I got you in the
5 store. I got you being in here, being in the
6 back area, having knowledge of the layout in the
7 back area. You're saying you've never been in
8 there. You're saying you don't wear a red shirt
9 or that type of shirt. It was just -- and I had
10 photos -- like the earring, he said, "I don't
11 wear earrings. I never wear earrings like that."
12 And then I'm like, "Well, is this you in the
13 photo?" He's like, "Yeah." I said, "Well, it's
14 got you wearing an earring just like the person
15 in this photo." And just different things he
16 said. And at that point I'm like, you know,
17 you're going to be placed under arrest for the
18 financial card transaction.

19 Q. The conversation about him working with the beer
20 delivery company, when did that conversation take
21 place?

22 A. When?

23 Q. Uh-huh.

24 A. Joey was telling me about it, and Ginny was
25 telling me about him being there, having

1 knowledge of it, when they said they thought that
2 was him. And they started looking, and I guess
3 from the information he listed on his application
4 they realized, hey, he used to be our beer guy,
5 and --

6 Q. Did they tell you that specifically?

7 A. Yeah. He said, you know, he used to be our beer
8 guy. Said he used to come in, set up the -- do
9 the beer in the back and stuff like that. And
10 said that he's been in our back area. He knows
11 the back area.

12 Q. And it was Joey who told you that?

13 A. Joey and Ginny both. Definitely Joey, I know for
14 sure.

15 Q. Okay. At the time you arrested Mr. Jacobs, did
16 you have any other suspects in the case?

17 A. No.

18 Q. And can you remember anything else that was
19 discussed by y'all were in the office at the time
20 of Mr. Jacobs' arrest?

21 A. No, ma'am. I mean, just -- I remember talking to
22 him and Ginny talking to him and explaining why I
23 was there.

24 Q. Okay. Do Walmart employees have the ability to
25 arrest people?

1 A. No.

2 Q. And did you accompany Mr. Jacobs when he was
3 escorted out of the store?

4 A. Normally I walk out with the officer until they
5 get in the vehicle. I want to say yes, I did
6 walk out with him. And then once they got to the
7 vehicle, then I turned around and came back in.

8 Q. Okay. After the day of the arrest, did you have
9 any other role in investigating or pursuing the
10 charges against Mr. Jacobs?

11 A. Do what now? I'm sorry.

12 Q. You're fine. So after the day of the arrest,
13 what other steps did you take to either continue
14 the investigation or continue your role in
15 regards to that investigation?

16 A. I did my supplemental reports, and then I got the
17 information back from Wish. And I -- to be
18 honest with you, I didn't immediately look at it
19 because I had other cases I was working on at the
20 time. And then when I had time to focus on that,
21 I sat down and started reviewing everything in
22 depth, and started looking at it and just
23 comparing, you know, the information they sent
24 me. And at that time the other investigator was
25 dealing with Mr. Hickson on his case, and I had

1 heard his name -- also my sergeant was dealing
2 with him on a case also. And I had heard his
3 name mentioned. And then when I looked at the
4 name, the email on the Wish paperwork, I'm like,
5 hey, I think that's kind of like the other guy.
6 And so I went to the other investigator, and I
7 said, "Hey, what was your guy's name?" I said,
8 "How does he spell it?" And so I started getting
9 that information, started looking at him. And
10 then start Googling the address, getting a
11 description, you know, like location, where the
12 address was. Came back to I think Evans Street.
13 I think it came back to a barber shop maybe. I'm
14 not sure. But anyway, I looked at the address,
15 just started comparing everything that Wish sent
16 me to what I already had. And then I'm like,
17 yeah, you know? I don't know if they're working
18 together or what. And so it started, you know --
19 I started looking at it more in depth.

20 Q. And it -- I'm sorry if this was already asked,
21 but how far after the arrest was this kind of
22 process taking place?

23 A. I'm not -- I think it's on the report, when I
24 started looking at it. Let's see here.

25 Q. Is it fair to say it was in the month or so

1 following the arrest?

2 A. Yes.

3 Q. Okay. And did you have to attend any hearing
4 dates or anything, or go to go court at all in
5 regards to Mr. Jacobs' arrest?

6 A. Yes, I got a notice to attend prelims here at the
7 City Center. And then I was still working on my
8 other cases and that case, doing -- pulling the
9 information and comparing information. And then
10 prelims came up and I'm like, you know what? I'm
11 like, huh-uh. So I talked Solicitor Flores and I
12 told him, I said, "Look," I said, "what do I need
13 to do to either dismiss the charge, nol process
14 the charge or whatever? What do I need to do to
15 -- because I've got some information." I showed
16 him the information I received and told him my
17 thoughts on the case. And I told him, I said,
18 "Look," I said, "I'm not comfortable going
19 forward at this point." I said, "Based on this
20 new information I got," I said, "there is a
21 possibility it may not be him. It may be they're
22 working together. I don't know. But based on
23 what I have and what I've learned so far," I
24 said, "I am not comfortable going forward with
25 this case." And I said, "What do we need to do?"

1 And he was like, "Well, we need to speak with his
2 attorney." He said, "Based on this information,"
3 he was like, "you just want to dismiss it." And
4 I said, "That's fine," I said, "because right now
5 with what I have in-hand I don't feel comfortable
6 going forward."

7 Q. Did you have to consult with Walmart before you
8 dismissed it?

9 A. I did not, no.

10 Q. And was Walmart ever resistant to the dismissal?

11 A. No. I know Joey called me one day and he was
12 like, "Hey," he's like, "what's going on with the
13 case?" And I told him. And I'm like, "You know
14 what," I said, "this is what I did; this is why I
15 did it." And he was like, "Oh, okay." You know,
16 like, "No problem."

17 Q. Okay. And I know we don't want to be here all
18 day, so I'm just making sure I'm not re-asking
19 questions. In this case do you currently, as you
20 sit here today, do you have any knowledge that
21 any Walmart employees either lied to you or
22 purposely gave you false information about Mr.
23 Jacobs?

24 A. No, because normally the information they provide
25 has been accurate.

1 Q. Okay. And in this case, if you had any suspicion
2 that any Walmart employee was acting in bad
3 faith, would you act on that information?

4 A. Do what now? I'm sorry. If they acted in --

5 Q. If you had a suspicion yourself that a Walmart
6 employee was acting in bad faith or purposely
7 giving you bad information, would you act on that
8 information?

9 A. I'd investigate it.

10 Q. So -- and you're required to do a reasonable
11 investigation; do you agree?

12 A. Yes.

13 Q. And do you have any information that Walmart
14 employees knowingly or -- were reckless in giving
15 you information?

16 A. No. Based on the information we all had at the
17 time, we thought it was Mr. Jacobs.

18 Q. And would you agree that as a member of law
19 enforcement you are authorized to take certain
20 actions and have the ability to investigate
21 matters to a greater extent than a Walmart
22 employee?

23 A. Yes.

24 Q. And do you have any evidence to support a
25 conclusion that Walmart employees purposely

1 provided false information to anyone about Mr.
2 Jacobs?

3 A. No.

4 Q. And while you were investigating this case, did
5 you ever witness any Walmart employees lay hands
6 on Mr. Jacobs or assault him?

7 A. No.

8 Q. And did you ever witness any Walmart employees
9 verbally assault or -- Mr. Jacobs at any time?

10 A. No.

11 Q. And is there anything -- any other interaction
12 with a Walmart employee that we've not already
13 discussed that you can remember in regards to
14 this incident?

15 A. I know I spoke with the victim numerous times.
16 She was constantly calling both me and Walmart
17 wanting information about the case, wanting
18 something done, wanting charges pressed. And
19 then just, of course, speaking with Joey and
20 Ginny and Emily. That's the only contact I had.

21 Q. Okay. And the victim in this case was Ms.
22 McClellan, correct?

23 A. Yeah.

24 Q. And typically in a case where Walmart's reporting
25 like suspected shoplifting, the victim's actually

1 Walmart; is that correct?

2 A. Yes. For shoplifting.

3 Q. Okay. Just two more quick follow-up questions,
4 and I'm not asking to be nosy. We just -- in
5 case this ever goes to trial, I don't want to
6 have your cousin on the jury. Do you have any
7 family members in Florence County?

8 MR. PLYLER: As long as you agree to hold it
9 confidential, she's free to answer your
10 question.

11 MS. BRAKMANN: Absolutely.

12 A. No, to my knowledge I have no family here.

13 Q. And you mentioned being in a committed
14 relationship. Would you give us the name of the
15 person you're in your relationship with?

16 MR. PLYLER: Same agreement, then she's free.

17 A. Mary Buddin.

18 Q. Thank you so much. No further questions for me.

19 MR. PLYLER: I don't have any questions for her
20 at the time.

21 MR. CLARK: I don't have any questions either.

22 (Whereupon, the deposition in the above-entitled matter
23 was concluded at 4:31 p.m. Signature was waived.)

24 (*This transcript may contain quoted material. Such
25 material is reproduced as read or quoted by the speaker.)

1 (Defendants' Exhibits 1 and 2 were marked at the
2 conclusion of the deposition.)

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CERTIFICATE

Be it known that I, Robin K. Reibold, CVR, do hereby certify that INV. GLENDA OLIVER appeared before me and I took the foregoing deposition at the location, date and time aforesaid by means of stenomask with backup; that I was then and there a notary public in and for the State of South Carolina and that by virtue thereof, I was duly authorized to administer an oath; and that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

I further certify that the foregoing transcript represents a true, accurate, and complete transcript of said deposition to the best of my ability. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that the witness was given an opportunity to read and correct said deposition and to subscribe the same. Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself/herself of the opportunity to sign or the signature has been waived.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

Witness my hand and seal this 14th day of January, 2022.

Robin K. Reibold, CVR
Notary Public for South Carolina
My Commission Expires: 04/22/2031

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**Deposition Transcript of Emily Ek: Plaintiff's Exhibit B to
Memorandum in Opposition to Motion for Summary Judgment**

Travis William Jacobs,

Plaintiff,

vs.

Wal-mart Stores East LP, d/b/a Wal-Mart
Supercenter #630, Emily Ek, Joey
Barefoot, Ginny Wright and Florence
Police Department,
District and City of Bishopville,

Defendant.

Deposition of EMILY EK, taken by Doris Tompkins
Brown, Certified Verbatim Reporter and Notary Public
in and for the State of South Carolina, commencing
at 10:10 A.M. on November 14, 2022 via Zoom.

FOR THE PLAINTIFF:

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* * * * *

(No exhibits introduced into deposition)

* * * * *

(COURT REPORTER'S NOTE: --- INDICATES INTERRUPTION,
INCOMPLETE PHRASE, TRAILING OFF, INCOMPLETE SENTENCE)

1 The deposition of Emily Ek is being taken pursuant to
2 Notice and in accordance with the South Carolina Rules of
3 Civil Procedure and Amendments as adopted by the Supreme
4 Court which shall control the taking of said deposition and
5 its use thereof.

6 Counsel, with the specific consent of the witness,
7 waives the reading and signing of the deposition prior to
8 the time it is filed with the Court.

9 (Emily Ek, having been duly sworn, testifies as follows:)

10 EXAMINATION BY MR. CLARK:

11 Q. Good morning. Would you state your full name, please?

12 A. Emily Renee Ek.

13 Q. Did you say Ek or Elk?

14 A. Ek. Just E-K.

15 Q. Okay. All right. Okay. Well, I am John Clark. I
16 represent Travis Jacobs in this lawsuit that has been
17 brought against Wal-mart, Emily Ek, Joey Barefoot, and
18 we previously sued the Florence Police Department.
19 You were listed as a witness; so, I have Noticed you
20 -- your deposition for today. Have you ever had your
21 deposition taken before?

22 A. No.

23 Q. All right. Well, it is just a question and answer
24 session where I am going to ask you some questions and
25 ask you to answer them. Do you understand that much?

1 A. Yes, sir.

2 Q. All right. Before we get started, I just want to go
3 over a couple rules with you. Do you understand that
4 you are under oath now?

5 A. Yes, sir.

6 Q. That you are sworn to tell the truth?

7 A. Yes, sir.

8 Q. All right. Is there anything that will prevent you
9 from understanding my questions this morning, like,
10 medication or alcohol or anything like that?

11 A. No, sir.

12 Q. Are you of sound mind this morning where you think you
13 can understand what I'm asking you?

14 A. Yes, sir.

15 Q. All right. If you need to take a break at any time,
16 all you have got to do is just tell me; okay?

17 A. Okay.

18 Q. I don't think we will be here that long, but if you
19 need a break, all you have got to do is tell me. If
20 you don't understand my question, please tell me and
21 I will try to rephrase it for you; okay?

22 A. Yes, sir.

23 Q. If -- but if you answer a question, then I'm going to
24 assume that you heard my question and you understood
25 it. Is that fair enough?

1 A. Yes, sir.

2 Q. All right. What is your address, Emily Ek, Ms. Ek?

3 A. 305 Brittany Court, Jacksonville, North Carolina. I'm
4 not sure on the zip code because I haven't been here
5 that long.

6 Q. Okay. All right. Now, are you still working for Wal-
7 mart?

8 A. No.

9 Q. What is your date of birth?

10 A. July 16th, 1996.

11 Q. And what is your Social Security Number? We are only
12 going to put the last four digits.

13 A. XXX-XX-0629.

14 Q. Where are you from?

15 A. Lancaster, South Carolina.

16 Q. Do you have any relatives in Florence, South Carolina?

17 A. No.

18 Q. All right. Where are you working now?

19 A. Dixon High School.

20 Q. What are you doing there?

21 A. I teach Social Studies.

22 Q. All right. And did you go to high school in
23 Lancaster?

24 A. Kershaw, South Carolina.

25 Q. Kershaw. What -- was that Andrew Jackson?

1 A. Yes.

2 Q. That you went to?

3 A. Yes.

4 Q. Okay. All right. And so -- so, did you graduate in
5 about 2014?

6 A. Yes.

7 Q. All right. So, what is your marital status?

8 A. Single.

9 Q. Do you have any children?

10 A. No.

11 Q. And no relatives in Florence?

12 A. No.

13 Q. All right. What did you do when you graduated high
14 school?

15 A. I went to Coker College in Hartsville.

16 Q. How did you like it there?

17 A. Small. It was nice.

18 Q. I'm not going to tell them what you said, but just
19 curious, how did you like Coker?

20 A. Can you repeat that? Sorry.

21 Q. It was what?

22 A. Can you repeat that?

23 Q. Yeah, how did you like Coker? I'm just -- it's really
24 not relevant; I'm just asking. How did you like going
25 to Coker College?

1 A. It was nice. Small. It was nice.

2 Q. Okay. Did you graduate?

3 A. I did.

4 Q. What kind of Degree did you get?

5 A. A BA in Psych and History.

6 Q. Okay. All right. Did you work while you were going
7 to Coker?

8 A. Yes.

9 Q. Where did you work?

10 A. I worked at Palmetto Moon in the mall, and I worked at
11 Groucho's Deli in Mars Hill.

12 Q. What does Palmetto Moon do?

13 A. They're just a retail clothing store and accessory
14 store.

15 Q. Okay. When did you start -- at some point, did you
16 start working for Wal-mart?

17 A. After I graduated from Coker.

18 Q. Okay. And that would have been what, 2018?

19 A. Yes, sir.

20 Q. Okay. And so, when -- when in 2018 did you start
21 working for Wal-mart?

22 A. October.

23 Q. And what was your job there?

24 A. Asset Protection Associate.

25 Q. And the case that we are here about today involves

1 Wal-mart, and I think it's Number 630 in -- in
2 Florence. Is that where you started working at?

3 A. Yes, sir.

4 Q. Did you fill out an application for that job?

5 A. Yes, sir.

6 Q. Did you apply for a job in Asset Protection or did you
7 apply for any job in particular?

8 A. I applied for the Asset Protection Associate job.

9 Q. Okay. And what does Asset Protection Associate job,
10 what is that; what do you do in that job?

11 A. So, we do several different things. We look after
12 merchandise. We put merchandise in the protective
13 plastic things, put locks on things, looking out for
14 individuals trying to shoplift the merchandise. But
15 we also look after customers, associates; if there's
16 a slip and fall or any kind of accident, we would
17 investigate that. If there is a tornado -- not a
18 tornado -- a bomb threat like we had, we get everyone
19 out, make sure that no one goes back in. People lose
20 their keys, their children, their car gets towed, we
21 look into a wide range of things, but -- but both
22 merchandise and customers and associates.

23 Q. Okay. And what -- what kind of training do they give
24 you, if any?

25 A. When I first started, I had to do the normal

1 orientation that all employees do, do the very heavy
2 in law CVL's that continue that we have to complete
3 either quarterly or yearly. Then I went to be trained
4 with an AP or Asset Protection Associate at another
5 store for about two or so weeks. You get signed off
6 after you make your first stop, but then I also had an
7 APSM or an Asset Protection Manager who is also
8 watching over us, making sure we do what we're
9 supposed to do. So, there's continual training.

10 Q. Okay. And who was your supervisor when you were
11 working at the Wal-mart in -- in Florence?

12 A. My supervisor was Virginia or Ginny Wright.

13 Q. How long did you work for Wal-mart?

14 A. Just over a year.

15 Q. And why don't you work for them any more?

16 A. I left in December 2019 because I got into N.C. State
17 for their -- the Master's in Teaching program. And
18 so, I wanted to be a teacher.

19 Q. Did you end up getting your Master's from N.C. State?

20 A. I did. Yes.

21 Q. Okay. All right. Have you ever been arrested?

22 A. No.

23 Q. Or convicted of a crime?

24 A. Could you repeat that?

25 Q. Have you been -- ever been convicted of a crime?

1 A. No.

2 Q. All right. While you were working in Asset Protection
3 at Wal-mart, were you ever reprimanded?

4 A. No, sir.

5 Q. All right. Were you there -- well, let me ask you
6 this, Walt Barefoot, I think I'm saying his name right
7 -- is that -- do you know who that is?

8 A. No. I don't know Walt Barefoot.

9 Q. I think I've got his name right. Just a moment. Let
10 me see somewhere. I'm sorry. Joey Barefoot, do you
11 know him?

12 A. Yes.

13 Q. I think Walt Barefoot is a lawyer down in Florence.
14 That's where I'm getting confused. You do know Joey
15 Barefoot?

16 A. Yes.

17 Q. And how was -- what was his job title at Wal-mart?
18 Did you work with him?

19 A. Yes.

20 Q. What was his job title?

21 A. Asset Protection Associate.

22 Q. Was he your supervisor or was he on the same level
23 that you were?

24 A. No, he was an Associate like me.

25 Q. And you said -- did you say Ginny Wright was your

1 supervisor?

2 A. Yes.

3 Q. Do you know if Joey is still working there or not?

4 A. He is not.

5 Q. Do you still have contact with him?

6 A. Seldom, but yes.

7 Q. What about Ginny, is she still working there?

8 A. No, she is not.

9 Q. Do you know where she's -- she is working at now?

10 A. In the mall. Palmetto Moon.

11 Q. Do you know why she is not working -- do you know why
12 she is not working at Wal-mart?

13 A. No. I don't know.

14 Q. What about Joey, did you say he was still working
15 there or not?

16 A. No.

17 Q. Do you know why he is not working there any more?

18 A. No.

19 Q. Okay. Have you heard any -- you hesitated a little
20 bit. Do -- do -- do you -- do you have any idea why
21 he is not working there any more?

22 A. No.

23 Q. Okay. All right. Ms. Ek, as I said, I represent
24 Travis William Jacobs in a lawsuit that has been
25 brought against Wal-mart and you and Mr. Barefoot and

1 Ginny Wright, and it is the result of him being
2 arrested at Wal-mart on September the 6th of 2019. Do
3 you remember Mr. Jacobs and the incident at Wal-mart?

4 A. Yes.

5 Q. All right. Was he arrested at Wal-mart on or about
6 September 6th, 2019?

7 A. Yes.

8 Q. And I'm looking at a Warrant that says he was charged
9 with Financial Transaction/Card Failed. Is that your
10 understanding of what he was charged with?

11 A. I just understood that the investigation was about a
12 credit card or a debit card that had been stolen. I
13 was not sure of the official charges.

14 Q. Were you there when he was arrested?

15 A. I don't remember.

16 Q. Did you ever -- you say you don't remember the
17 official charge. Do you remember what he was being
18 investigated for?

19 A. Yes. An employee at Wal-mart, overnight Manager's
20 card had been stolen or taken; they called in the
21 case, and that's what the investigation was about.

22 Q. Okay. When you say "they called in the case," who do
23 you mean when you say "they"?

24 A. The Manager whose card was taken.

25 Q. Okay. What is that person's name?

1 A. Ms. McClelland or McClellan (pronounced phonetically).

2 Q. Okay. All right. So, you didn't call in the case?

3 A. No, I did not.

4 Q. All right. Did you investigate the case?

5 A. I was in the room when the video was being pulled, but
6 I did not pull the video, no.

7 Q. Okay. Now, what video are you talking about?

8 A. The video of the back room where the Training Room is
9 where the overnight Manager's wallet, cards,
10 pocketbook were at, the video to see what may have
11 happened or what happened.

12 Q. Okay. Did you ever view the video?

13 A. I did.

14 Q. All right. What -- what did the video show?

15 A. The video showed an individual go into the -- there's
16 a window that opens this way -- (witness demonstrates
17 with hand) -- to the Training Room, not a door, but
18 like a window and a desk.

19 Q. Uh-huh (affirmative response).

20 A. An individual was looking in. At one point, they used
21 what I believed was a broom or mop handle-type thing
22 to reach through into the room.

23 Q. All right. Did the video show a person using a mop or
24 broom to reach into the room?

25 A. Yes.

1 Q. You actually saw that?

2 A. Yes.

3 Q. All right. And when they -- so, do you know whether
4 it was a mop or a broom?

5 A. I do not. I just know it was a type of handle that
6 would go on a cleaning mechanism.

7 Q. All right. And did the video show what was inside the
8 window?

9 A. No, sir.

10 Q. Could you see what the person was doing inside the
11 window?

12 A. I don't remember.

13 Q. As you sit here today, did you see the person who you
14 said used the broomstick or mop handle, did you ever
15 see that person take a card or credit card or steal
16 anything out of that room?

17 A. I don't remember.

18 Q. Okay. All right. All right. When was the first time
19 you saw that video?

20 A. The first time I saw the video, I had come into work,
21 and it was already being pulled and investigated.

22 Q. Who pulled it and started the investigation?

23 A. I don't remember who specifically pulled the video.
24 There were several people in the AP office.

25 Q. Okay. Did you -- could you -- did you know who the

1 person was on the video?

2 A. I did not.

3 Q. Could you clearly identify who that person was?

4 A. I could not.

5 Q. All right. Could you see any particular
6 characteristics of that person?

7 A. Not like a tattoo or birthmark or anything like that,
8 no.

9 Q. Did you see the person's face?

10 A. There were shots with the person's face in it, yes.

11 Q. Could you identify the face; was it clear enough to
12 see exactly who it was?

13 A. I don't remember how clear it was.

14 Q. All right. And so, you saw the person stick a handle
15 into the room; is that what you said earlier?

16 A. Yes. That's what I remember.

17 Q. Okay. Now, was that room locked or was the window
18 open or what? Describe the window for me.

19 A. It's one of those that slides like this --
20 (demonstrates with her hand) -- like, you know, how
21 drive-through windows open like that?

22 Q. Uh-huh (affirmative response). Okay.

23 A. Kind of like that, but not automated. If that makes
24 sense.

25 Q. All right. And what -- what room -- what was in the

1 room?

2 A. It was the Training Room that also had a smaller
3 office in it.

4 Q. And you didn't see any -- this person steal anything
5 out of that room that day, did you?

6 A. I don't remember.

7 Q. All right. Once you looked at the video, what did you
8 do then?

9 A. When we were looking at the video, one of the
10 individuals in the room, Manager -- I don't remember
11 who it was -- mentioned that the person in the video
12 resembled someone in our Training Room.

13 Q. And who said that?

14 A. I don't remember which Manager it was.

15 Q. Well, who were the Managers? Who could it have been?

16 A. There were several. There were several Managers at
17 the store. I do not remember who it was specifically.

18 Q. Okay. But they said it looked like -- what -- tell me
19 again exactly what they said.

20 A. They said that it resembled someone in our Training
21 Room.

22 Q. All right. And who was that person that they said it
23 resembled?

24 A. It was later found out that it was Travis Jacobs.

25 Q. It was later found out that the person on the video

1 ---

2 A. No, the person in the Training Room.

3 Q. Okay. Was Travis Jacobs?

4 A. Yes, the individual in the Training Room was Travis
5 Jacobs.

6 Q. Okay. Did you ever determine that Travis Jacobs was
7 on the video -- was -- was the person on the video?

8 A. That was up to law enforcement to conduct their
9 investigation.

10 Q. Okay. Well, did you ever determine that the person
11 resembled Travis Jacobs?

12 A. Can you repeat that again, please?

13 Q. Did you ever determine that the person resembled
14 Travis Jacobs?

15 A. Can you say it one more time?

16 Q. Did you ever make a determination that the person
17 resembled Travis Jacobs, the person on the video
18 resembled Travis Jacobs?

19 A. I was asked to go to the Training Room ---

20 Q. Uh-huh (affirmative response).

21 A. -- to see if the individual in the Training Room that
22 was later known as Travis Jacobs, if he had on the
23 same shoes from the night before as the person in the
24 video camera. They were sitting down doing something.
25 I came back and said, "I don't know."

1 Q. So, you were asked to go and look -- what -- you were
2 asked to go and look at Travis Jacobs; is that what
3 you are saying?

4 A. I was asked to go see and if the individual in the
5 Training Room had on the same shoes as the individual
6 from the night before or the individual in the video.

7 Q. Okay. And the individual in the Training Room was
8 Travis Jacobs?

9 A. Yes.

10 Q. All right. And what kind of shoes did the person in
11 the video have?

12 A. I don't remember.

13 Q. What kind of shoes did Mr. Jacobs have?

14 A. I don't remember. Like I said, they were sitting at
15 the table doing stuff. I didn't see them. That's why
16 I came back and said, "I don't know."

17 Q. Well, when you say "they were sitting at the table,"
18 who are you talking about?

19 A. Travis Jacobs as well as the other employees doing
20 orientation.

21 Q. Okay. So, you went back there to see what kind of
22 shoes Travis was wearing?

23 A. Yes.

24 Q. All right. And you said earlier you don't remember
25 what kind of shoes the person in the video was wearing

1 and you don't remember what kind of shoes Mr. Jacobs
2 was wearing; is that correct?

3 A. I do not remember what shoes the individual in the
4 video had on.

5 Q. Uh-huh (affirmative response).

6 A. And I did not get a good look, and I do not remember,
7 I did not know what shoes Mr. Jacobs had on.

8 Q. So, you didn't get a good look at his shoes?

9 A. Yes, I did not.

10 Q. Okay. Why not? You couldn't see them or too dark or
11 why -- why didn't you -- why weren't you able to see
12 his shoes?

13 A. Like I said, Mr. Jacobs and the others in the
14 orientation were all sitting down at the table doing
15 stuff.

16 Q. Uh-huh (affirmative response).

17 A. I tried to go in; I could not see them. I walked out.

18 Q. Did you ever ask him to stand up so you could see his
19 shoes?

20 A. I did not.

21 Q. All right. So, when you went to look at the shoes,
22 would it be fair to say that you could not match the
23 shoes that Mr. Jacobs was wearing with the shoes that
24 the person had on in the video?

25 A. Yes, because I could not see the shoes at all.

1 Q. All right. Did you -- were you asked to do anything
2 else, other than look at his shoes to see if they were
3 the same type of shoes of the person in the video?

4 A. No, sir, not that I remember.

5 Q. All right. And then -- so, once you went back to look
6 at the shoes, what did you do then?

7 A. After I walked out of the Training Room, I went back
8 to the AP office and said, "I don't know." (Witness
9 is coughing).

10 Q. All right. Are you okay?

11 A. Yeah. I'm fine.

12 Q. All right. Now, when you went back to the AP office
13 -- and the AP means what, Asset Protection?

14 A. Asset Protection.

15 Q. I can figure that out. Okay. All right. I've got
16 that. All right. Asset Protection, that is what AP
17 means?

18 A. Right.

19 Q. All right. So, you went back and said -- I couldn't
20 see his shoes; right?

21 A. I remember saying, "I don't know."

22 Q. You don't know. Okay. And when you say you don't
23 know, you meant you don't know whether those are the
24 same type of shoes as the person in the video; right?

25 A. Yes. Yes.

1 Q. And did you ever tell anyone that Mr. Jacobs was in
2 fact the person in the video?

3 A. No.

4 Q. All right. Were you asked to do any other thing to
5 try to identify Mr. Jacobs as the person in the video?

6 A. Not that I remember, no.

7 Q. So, all you did in investigating this case, and you
8 tell me if I'm right or wrong, was go back to see if
9 that person had on the same type of shoes as the
10 person in the video?

11 MS. ROBERTS: Object to form, but
12 go ahead and answer.

13 A. Could you repeat it? I'm sorry.

14 Q. Sure. Did you do anything else to try to determine
15 whether Mr. Jacobs was the person in the video other
16 than look to try to match the shoes up?

17 A. I did go and look at the shoes. I was also in the
18 room while it was being investigated. But I did not
19 pull video or anything.

20 Q. What I'm asking you is, did you do anything else to
21 try to determine if Mr. Jacobs was the person in the
22 video?

23 A. I don't know.

24 Q. Okay. All right. So, when you went back to the Asset
25 Protection office and told them that you didn't know,

1 and when you went back, who were you talking to?

2 A. There were several different people in the room.

3 Q. Tell me who those people were.

4 A. Myself. Joey Barefoot.

5 Q. Uh-huh (affirmative response).

6 A. Ginny. The investigator and then there were a couple
7 of Managers still in the room.

8 Q. And when you say -- when you say the investigator, do
9 you mean Glenda Oliver?

10 A. Yes.

11 Q. And who were the other Managers in the room? You told
12 me Joey was in there, Ginny was in there?

13 A. There were several -- there were several different
14 people in the room. I don't remember specifically
15 which Managers were in there.

16 Q. Okay. Do you know who pulled the video from the --
17 the video that showed the person going in the back
18 room?

19 A. I do not know. I don't remember.

20 Q. What is the name of the back room? I mean, I want to
21 make sure I understand that. The place where Mr.
22 Jacobs was sitting when you went to look at his -- his
23 tennis shoes or whatever shoes he was wearing, what --
24 what do they call that room?

25 A. Training Room.

1 Q. Training Room. Okay. And what do they call the room
2 where the video shows the person leaning in, the one
3 you described had the window with the sliding glass
4 window on it?

5 A. Training Office. It's just an office with a Training
6 Room.

7 Q. Okay. Now, just so I'm clear, when you went back and
8 said you didn't know whether those were the same shoes
9 or not, did you do anything else to try to determine
10 whether Mr. Jacobs was the person in the video?

11 A. No, it was not my job to determine if he was the
12 person in the video.

13 Q. All right. Do you know what -- whether -- and Mr.
14 Jacobs was -- was Mr. Jacobs arrested that day?

15 A. Which day?

16 Q. The day that you went back to see if he was wearing
17 the same shoes as the person in the video.

18 A. No.

19 Q. All right. Now, after that day, did you do anything
20 else to try to identify him, identify the person in
21 the video?

22 A. No. The video and everything that law enforcement
23 wanted was turned over to them and it was their
24 investigation.

25 Q. Was it turned over to them that day?

1 A. I don't recall if the video was given to investigators
2 that specific date.

3 Q. Okay.

4 A. I don't remember.

5 Q. All right. Well, who was in charge of Wal-mart's side
6 of this investigation?

7 A. This isn't a Wal-mart investigation.

8 Q. Well, ---

9 A. An individual Manager called it in. It's not a Wal-
10 mart investigation.

11 Q. Who called it in?

12 A. The overnight Manager, Ms. -- Ms. McClelland or
13 McClellan (pronounced phonetically).

14 Q. Right.

15 A. The individual whose card was taken.

16 Q. Okay. When you say it wasn't Wal-mart's
17 investigation, who -- who decided to go get the video
18 in the first place; whose decision was that?

19 A. Law enforcement came ---

20 Q. Uh-huh (affirmative response).

21 A. -- because they were called. I was not there when the
22 investigators arrived. I came into the middle of it.

23 Q. All right. I understand. But when you came into it,
24 who was in charge of -- who asked you to go look at
25 the shoes?

1 A. I don't remember. There were several people in the
2 room.

3 Q. Do you know whether it was somebody from Wal-mart or
4 whether it was law enforcement?

5 A. I don't remember.

6 Q. Okay. All right. Were you ever asked to do anything
7 else to try to identify this person?

8 A. I don't remember.

9 Q. Okay. All right. Did you ever hear anyone tell the
10 investigator, Glenda Oliver, that they believed that
11 the person that is on the video is sitting back in
12 orientation; did you ever hear anybody tell the
13 officer that?

14 A. I recall a Manager saying that it resembled someone in
15 the back room.

16 Q. Okay.

17 A. Or the Orientation Room.

18 Q. Okay. What Manager said that?

19 MS. ROBERTS: Object to form. Go
20 ahead and answer.

21 MR. CLARK: I'm sorry? I'm sorry,
22 Randi; I didn't hear your objection.

23 MS. ROBERTS: I just said, "Object
24 to form. And I told her to go ahead and
25 answer.

1 MR. CLARK: Okay.

2 Q. You said -- did you say a Manager said it resembled a
3 person in the Orientation Room; right?

4 A. I remember a Manager saying that the person in the
5 video looked like or resembled someone in the Training
6 Room.

7 Q. And you don't know what Manager said that?

8 A. I do not remember, no.

9 Q. Okay. Was that before you went to look at the shoes
10 or after?

11 A. It was before.

12 Q. Did you tell Glenda Oliver that you couldn't see the
13 shoes?

14 A. I did not.

15 Q. Why not?

16 A. I don't remember. I don't know why I didn't say it.

17 Q. All right. And just so I'm clear, did Glenda Oliver
18 tell you to go try to identify the shoes or did
19 someone at Wal-mart tell you or did you do that on
20 your own? How did you end up doing that?

21 A. Like I said, I don't remember who brought it up or who
22 asked. I don't remember.

23 Q. Do you know whether Glenda Oliver told you that?

24 A. I do not remember.

25 Q. Okay. And when you went to look at the person in the

1 Orientation Room, is it correct that the video had not
2 been turned over to law enforcement yet?

3 A. I don't know. I'm not sure. I don't know.

4 Q. Did you know that what -- when Travis Jacobs, I think
5 he was arrested on about September 6th of 2019, --
6 were you there when he was arrested?

7 A. I don't remember.

8 Q. At any point in time, did you tell law enforcement
9 that you could not match the shoes of that person in
10 the video with the shoes that Travis Jacobs was
11 wearing?

12 A. I did not say those words. I just said that I did not
13 know. "I don't know" when I came back from the
14 Training Room.

15 Q. Did you tell the investigator that or who -- who were
16 you talking to?

17 A. The individuals in the room. Joey, Ginny, the
18 investigator and the several Managers.

19 Q. Okay. So, it is your testimony that you told the
20 investigator that you couldn't match the shoes?

21 A. No. I said, "I don't know." That's the only thing I
22 said when I got back.

23 Q. Well, let me be clear now; so, you told the
24 investigator that you don't know if those were the
25 same shoes; is that your sworn testimony?

1 A. I remember saying "I don't know" when I got back.

2 Q. And were you -- did you tell the investigator that?

3 A. I told the individuals in the room.

4 Q. Did that include ---

5 A. I don't know.

6 Q. -- did that include the investigator?

7 A. I believe they were in there. She was in there.

8 Q. Okay.

9 A. But I'm not one hundred percent.

10 Q. Okay. All right. Well, when you told your Managers
11 you couldn't match the shoes, what happened then?

12 A. Continued watching video, doing their roles of what
13 they were doing.

14 Q. When you say "continued watching video," what video
15 are you talking about?

16 A. The video was still pulled up on the computer.

17 Q. Did you continue to watch it?

18 A. Yes.

19 Q. All right. Did you ever during the entire time or
20 were you ever able to identify Travis Jacobs as the
21 person in the video? Were you able to ever identify
22 him as that person?

23 A. No, that wasn't our job. Our job was to give law
24 enforcement what they needed so they could continue
25 their investigation.

1 Q. Okay. Well, did law enforcement ask you to match the
2 shoes up?

3 A. Like I said, I don't know. I don't remember.

4 Q. Well, what did law enforcement ask you to do?

5 A. They were getting video.

6 Q. All right. They just asked for the video?

7 A. They were pulling up video when I came into the AP
8 Office. Again, this incident wasn't brought to me to
9 look up.

10 Q. I understand. But my question is, did law enforcement
11 ever ask you to do anything to try and identify the
12 person in the video?

13 A. I don't remember.

14 Q. Okay. All right. Now, okay. Now, I don't want to --
15 you said that one of the Managers told law enforcement
16 that the person in the Orientation Room, who was
17 Travis Jacobs, was the person on the video?

18 A. No.

19 Q. Well tell -- what -- what did the Manager say about
20 that?

21 MS. ROBERTS: Object to form.

22 Go ahead and answer.

23 Q. Did the Manager say anything about -- to law
24 enforcement about the person in the video being in the
25 back room?

1 A. The Manager made the general comment ---

2 Q. Okay.

3 A. -- that the person in the video resembled an
4 individual in the back room.

5 Q. Okay.

6 A. Not pointed towards anyone.

7 Q. Okay. Well, Glenda Oliver has testified that one of
8 the Managers, when she came out to pick up the video,
9 one of the Managers came in and said they believe that
10 the person that is on the video is sitting back in
11 orientation. Did you ever hear a Manager say that to
12 Glenda Oliver?

13 MS. ROBERTS: Object to form. Go
14 ahead and answer.

15 A. I do not remember hearing that specific statement.

16 Q. Well, what do you specifically remember the Manager
17 saying if you don't remember that specific statement?

18 MS. ROBERTS: Object to form. Go
19 ahead and answer.

20 Q. If anything?

21 A. I remember a Manager saying that it looked like -- the
22 person in the video looked like someone in the
23 Training Room.

24 Q. And you don't know who that Manager is?

25 A. To my knowledge, ---

1 Q. Do you know who that Manager is?

2 A. I do not. I do not. I do not remember.

3 Q. Was it a white male, black male, female; do you
4 remember that?

5 A. I do not remember.

6 Q. So, you don't know if it was a male or female, white
7 or black person?

8 A. I do not remember. This was three years ago. I don't
9 remember.

10 Q. Okay. Were you there when any of the Managers -- let
11 me ask you -- I'm sorry, let me strike that question
12 and ask you this question. When the -- when Wal-mart
13 had a video pulled up and law enforcement was there
14 and you went back and you couldn't match the shoes,
15 did anybody else go back to try to identify -- to look
16 at Mr. Jacobs and determine if he was the person in
17 the video?

18 A. I do not remember.

19 Q. Okay. Did you ever hear anybody from Wal-mart say to
20 Glenda Oliver -- that's the guy from the video?

21 A. I do not remember that.

22 Q. Okay. All right. Did you ever hear a Manager say --
23 I believe the person that's on your video is back in
24 the Orientation Room?

25 MS. ROBERTS: Object to form.

1 Go ahead and answer.

2 A. Can you repeat it? Sorry. (Witness is coughing).

3 Q. Did you ever hear a Manager tell the police officer
4 that I -- quote, "I believe the person that's on your
5 video is back in the Orientation"?

6 A. I do not remember that specific statement.

7 Q. Okay. Do you ever remember Joey Barefoot and Ginny
8 Wright going back to the Orientation Room and looking
9 at Mr. Jacobs sitting in there?

10 A. I do not remember that, no.

11 Q. All right. Were you the person who downloaded the
12 video?

13 A. No.

14 Q. All right. Do you remember anybody from Wal-mart
15 telling Ginny Wright -- I'm sorry, not Jenny Wright --
16 Glenda Oliver, the police officer, that the person in
17 the video was Travis Jacobs?

18 MS. ROBERTS: Object to form.

19 Go ahead and answer.

20 A. No, I do not remember that. (Witness is coughing).

21 Q. Okay. Do you remember Glenda Oliver -- are you okay?

22 A. Yeah. I'm getting over sickness.

23 Q. Okay. Do you remember Glenda Oliver, the police
24 officer, asking the people in the room from Wal-mart
25 -- are you sure it's him; do you remember her asking

1 that?

2 A. No, I do not remember that.

3 Q. Do you remember someone telling Glenda Oliver that
4 they were pretty darn sure? Do you remember Joey
5 saying that, that he was pretty darn sure that the
6 person in the video was Travis Jacobs?

7 MS. ROBERTS: Object to form.

8 Go ahead and answer.

9 Q. It's -- go ahead and answer the question, please.

10 A. No, I do not remember that.

11 Q. Did you ever hear Joey say he was pretty darn sure the
12 person in the video was Travis Jacobs?

13 A. I do not remember.

14 Q. Okay. Did you ever hear Joey Barefoot or anybody
15 employed by Wal-mart say -- well, he's got an earring
16 in his ear just like the video, same features on the
17 video; did you ever hear Joey, Ginny or anybody from
18 Wal-mart say that?

19 A. I do remember the earring. But that -- I don't ---

20 Q. What do you remember about that; what do you remember
21 about the earring?

22 A. Just exactly what you said. But that's it. I
23 remember a comment about the earring being the same,
24 and that's it.

25 Q. Okay. Well, who made that comment?

1 A. I do not remember who made it.

2 Q. So, you remember hearing that; right?

3 A. Yes.

4 Q. All right. Did you ever do any reports of this while
5 you were employed at Wal-mart?

6 A. Can you rephrase it? Sorry.

7 Q. Did you ever do any written reports of your
8 investigation of this incident at Wal-mart?

9 A. No, I did not. It was not a Wal-mart case; so, we did
10 not have to do our reports.

11 Q. All right. Well, did Glenda Oliver ask you to go
12 identify the shoes?

13 A. Like I said before, I do not remember.

14 Q. Okay. Do you know whether you did that on your own or
15 at Wal-mart's request?

16 A. I do not remember whose request.

17 Q. All right. Could it have been for Wal-mart?

18 MS. ROBERTS: Object to form.

19 Go ahead and answer.

20 Q. I'm sorry. What is your answer?

21 A. I don't know.

22 Q. Okay.

23 A. I don't know.

24 Q. All right. And you don't know -- you don't know who
25 asked you to go try to identify the shoes the person

1 was wearing?

2 A. Like I said, I do not remember.

3 Q. Okay. So, as you sit here today, can you say Glenda
4 Oliver asked you to do that?

5 A. No, because I do not remember.

6 Q. All right. Who asked you to pull the video?

7 A. I did not pull the video. I came in and a video was
8 already being pulled.

9 Q. Did you do anything to pull it?

10 A. Not that I remember. No, it was already being pulled.

11 Q. Who was pulling it?

12 A. I do not recall.

13 Q. All right. If Glenda Oliver says you were pulling it,
14 do you disagree with that?

15 A. I do not remember pulling the video.

16 Q. Okay. All right. When you went back to look at the
17 shoes, were you working for Wal-mart at that time?

18 A. I was on the clock for Wal-mart, but I was -- do not
19 remember if I was asked by someone from the Wal-mart
20 to do that.

21 Q. But I mean, I didn't ask you that this time. I'm --
22 I asked you were you working for Wal-mart when you did
23 it.

24 A. Yes, I was on the clock.

25 Q. Okay. Do you know of any -- do you know if anyone was

1 able to identify or match the shoes that the person
2 was wearing to the shoes in the video?

3 A. I do not know.

4 Q. Did you ever see anything about Mr. Jacobs when you
5 went back to look at him that matched the person in
6 the video?

7 A. I don't remember. I just remember coming back and
8 keep saying "I don't know." A blanket statement.

9 Q. All right. Did anybody else from Wal-mart go back and
10 look at him that day?

11 A. I do not remember.

12 Q. Do you know whether anyone from Wal-mart any -- at any
13 time was able to identify anything about Mr. Jacobs
14 that they saw about him that they saw on the video?

15 A. I remember the comment about the earring, and that's
16 about all I remember.

17 Q. So, as far as you know, the only thing -- and you tell
18 me if I'm correct or not -- the only thing that you --
19 that anyone from Wal-mart could match to the person in
20 the video was that the person had an earring and Mr.
21 Jacobs had an earring; is that correct?

22 MS. ROBERTS: Object to form.

23 Go ahead and answer.

24 Q. Go ahead.

25 A. I remember the earring and one of the Managers saying

1 that it resembled someone in the back room.

2 Q. All right. What kind of earring was it?

3 A. It was a stud, I believe.

4 Q. Okay. So, the person had a -- in the video had a stud
5 earring?

6 A. I believe. I'm not one hundred percent sure.

7 Q. Did Mr. Jacobs have -- have the exact same type of
8 earring as was in the video, as the person in the
9 video?

10 A. I don't remember. I'm not the one -- I didn't notice
11 the earring specifically. I just remember hearing the
12 comment.

13 Q. All right. And the comment by who?

14 A. I don't recall who made it.

15 Q. All right. Did you hear anything else by anyone from
16 Wal-mart that matched what Travis Jacobs was wearing
17 or anything about him that matched the person in the
18 video?

19 A. No, just the things that I just said.

20 Q. Just the earrings, is that the only thing you ever
21 heard that matched the person in the video?

22 A. And that he resembled someone in the back room.

23 Q. All right. Who said that?

24 A. I do not remember.

25 Q. Okay. Now, did you ever -- were you ever able to

1 identify the person in the video?

2 A. It was not my job to identify them.

3 Q. Well, I -- okay. It wasn't your job, but I'm asking
4 you the question. Was it your job to go back and try
5 to identify the shoes the person was wearing?

6 MS. ROBERTS: Object to form.

7 Go ahead and answer.

8 A. Could you repeat it? Sorry.

9 Q. Was it your job to go back and try to see if Mr.
10 Jacobs was wearing the same shoes as the person in the
11 video?

12 MS. ROBERTS: Object to form.

13 Go ahead and answer.

14 A. No.

15 Q. But did you do that, though?

16 A. Yes, I did.

17 Q. Well, if you did it and you were at work, why are you
18 saying it wasn't your job?

19 MS. ROBERTS: Object to form.

20 Go ahead and answer.

21 Q. What is that?

22 A. I don't know.

23 Q. You were at work and you did it; right?

24 A. (Witness shakes head affirmatively).

25 Q. Is that correct?

1 A. Yes. Sorry.

2 Q. Somebody from Wal-mart asked you to do it; right?

3 MS. ROBERTS: Object to form.

4 Go ahead and answer.

5 Q. Did someone from Wal-mart ---

6 A. I do not ---

7 Q. Huh? Let me finish the question so the record is
8 clear.

9 A. I do not remember.

10 Q. So, you don't remember who asked you to do that?

11 A. Yes, I do not remember.

12 Q. Could it have been someone from Wal-mart?

13 MS. ROBERTS: Object to form.

14 Go ahead and answer.

15 A. There is a possibility that it could be, but I do not
16 remember who specifically asked or brought it up.

17 Q. All right. And you saw -- you said the video was up
18 when you got to work; right?

19 A. Yes.

20 Q. Who pulled it up?

21 A. I do not remember.

22 Q. Who showed you the shoes that the person was wearing?

23 A. I do not remember who was pulling video.

24 Q. And you don't remember who asked you to go back and
25 look?

1 A. I do not, no.

2 Q. Okay. All right. Did you know Travis Jacobs at the
3 time that you went -- when this -- when this case was
4 pending, when you went back to see if he was wearing
5 the shoes that the person was wearing in the video?

6 A. No, I did not know Mr. Jacobs' name.

7 Q. All right. And did -- did you -- the whole time that
8 you were involved in this case, did you identify
9 anything other than the -- the earring of matching Mr.
10 Jacobs to the person in the video?

11 A. I did not say I identified the earring; I remember
12 hearing a comment about the earring.

13 Q. So, my question is, did you hear any other comments
14 where anything matched Mr. Jacobs to the person in the
15 video? Did you hear any other comments? I want to
16 know anything you heard that matched -- that anyone
17 thought Mr. Jacobs matched the person in the video or
18 had clothes on like the person in the video, had shoes
19 on, looked like the person, had the same face; do you
20 remember anybody saying that?

21 A. I just remember hearing that it resembled the
22 individual in the Training Room.

23 Q. All right. Who said that?

24 A. That's what I remember.

25 Q. Who said that?

1 A. I don't remember.

2 Q. Okay. All right. Now, I just want to clear one thing
3 up. The video that we are talking about, does it show
4 a person sticking a broomstick into the window?

5 A. I remember the individual in the video at one point
6 having a broomstick or a mop-handle, a rodlike handle
7 that would connect to something, rod-shaped.

8 Q. Did you ever see that person reach into somebody's
9 pocketbook?

10 A. I cannot remember.

11 Q. Did you ever see that person steal a credit card or a
12 debit card or some other type of financial card?

13 A. I do not remember if I saw that on the video.

14 Q. So, as you sit here today, you can't -- can you say
15 that you actually saw that person steal something?

16 MS. ROBERTS: Object to form.

17 Go ahead and answer.

18 A. I cannot because it's been three years. I don't
19 remember.

20 Q. Okay. Did you make any records of this?

21 A. Like a report?

22 Q. Yes.

23 A. Is that what you are talking about?

24 Q. Yes, ma'am.

25 A. No, I did not make a report. Wal-mart did not; an

1 individual called.

2 Q. Okay. I mean, but did you make a report of what you
3 did?

4 A. No, I did not.

5 MR. CLARK: All right. Let's
6 take a quick five minute break. I
7 think I'm about done; okay?

8 (OFF THE RECORD).

9 MR. CLARK: Okay. I think I am
10 ready to finish up.

11 EXAMINATION BY MR. CLARK CONTINUED:

12 Q. Did you ever see a person by the name of Annie on the
13 video standing next to where the pocketbook was left?

14 A. I don't remember.

15 Q. All right. And when Ms. -- and when Ms. Glenda Oliver
16 came to the -- to Wal-mart, did she indicate to you or
17 anyone else that she knew who Travis Jacobs was?

18 A. I don't remember. No.

19 Q. All right. No. Okay. All right. Now, when she came
20 did she ask to see Travis Jacobs?

21 A. Not that I remember, no.

22 Q. Okay. Was she aware that Travis Jacobs was even in
23 the back or in the -- in the -- what did you call that
24 room? The back room, did she even know he was back
25 there?

1 A. No.

2 Q. And was it you or one of Wal-mart employees that told
3 her Travis Jacobs was in the back?

4 A. A statement was made by a Manager that the person in
5 the video resembled someone in the back.

6 Q. So -- so, do you agree with me that Wal-mart or a
7 representative of Wal-mart was the person who
8 connected Travis Jacobs to this case?

9 MS. ROBERTS: Object to form.

10 Q. To the theft. Do you agree with me on that?

11 MS. ROBERTS: Object to form.

12 Go ahead and answer.

13 Q. Let me ask you this question before you answer. When
14 Ms. Oliver came to see the video, did she know who
15 Travis Jacobs was then?

16 A. No. I also did not know who he was.

17 Q. Okay. Well, how did you know to go look in the back?

18 A. In the beginning, I did not know who he was or his
19 name. A Manager said or made a statement that the
20 person in the video resembled someone in the -- not
21 back room -- Training Room.

22 Q. Okay. Now, the Manager was -- was that person in
23 Asset Protection?

24 A. I don't remember who said it.

25 Q. Okay. But do you remember whether Ms. Oliver knew who

1 he was?

2 A. I don't know.

3 Q. Did someone from Wal-mart, and I just want to be clear
4 on this -- did someone from Wal-mart tell Glenda
5 Oliver that the person in the video resembled Mr.
6 Oliver -- Mr. Jacobs who was in the back?

7 A. A Manager just made a statement, ---

8 Q. Uh-huh (affirmative response).

9 A. -- not a pointed at or -- that's not the right word --
10 but pointed at anyone.

11 Q. Okay. Now, I want to finish this up, but I just want
12 to be clear. What evidence did Wal-mart have that Mr.
13 Jacobs was the person in the video when they told
14 Glenda Oliver that he resembled the person in the
15 video? And I think you may have already said -- well,
16 I'm going to ask that you answer the question so the
17 record is clear.

18 A. Can you just repeat it for me real quick?

19 Q. Yeah. What evidence did Wal-mart have or did Wal-mart
20 rely on when they told Glenda Oliver that the person
21 in the video resembled Mr. Jacobs?

22 MS. ROBERTS: Object to form.

23 Go ahead and answer.

24 A. It was just a blank statement that was made.

25 Q. All right. And Ms. Ek, do you believe you took part

1 in the investigation by the Florence Police
2 Department?

3 A. No, I do not. I believe that the Police Department
4 came to Wal-mart for videos, like, they do ---

5 Q. Uh-huh (affirmative response).

6 A. -- all the time if someone calls in an incident on
7 their own, if they lose their debit card or if
8 someone's debit card is used at our store, and we give
9 law enforcement what they're asking for so that they
10 can do their own investigation.

11 Q. Well, did they ask you to go back to see if he had on
12 the same shoes or did you do that on your own?

13 MS. ROBERTS: Object to form.

14 A. I told you I do not remember.

15 Q. You can't remember. Okay. All right.

16 MR. CLARK: I think those are
17 all the questions I have for you.

18 Thank you.

19 EXAMINATION BY MS. ROBERTS:

20 Q. Ms. Ek, I just have a couple for you before you go.
21 To be clear, you did not witness the theft of Ms. --
22 I'll call her Ms. McClellan. I don't know how to
23 pronounce it; so, -- it's true that you did not
24 witness the theft of Ms. McClellan's financial cards;
25 is that right?

1 A. Yes.

2 Q. And so, the only information that you have about the
3 theft of Ms. McClellan's cards are what you saw on the
4 surveillance video; is that right?

5 A. Yes.

6 Q. And that surveillance video is what was shown to law
7 enforcement and given to law enforcement; is that
8 right?

9 A. Yes.

10 Q. Were you responsible for obtaining an Arrest Warrant
11 related to the theft of Ms. McClellan's financial
12 cards?

13 A. No, I was not.

14 Q. Were you responsible for presenting probable cause to
15 a judge in relation to the theft of Ms. McClellan's
16 financial cards?

17 A. No.

18 Q. It is safe to say that Ms. McClellan's financial cards
19 are not Wal-mart merchandise or property; is that
20 right?

21 A. Yes.

22 Q. Did law enforcement ever ask you to participate in a
23 photographic lineup that you then signed your name to?

24 A. No.

25 Q. Are you aware of any other steps that -- I think we

1 have been calling her Investigator Oliver -- did in
2 relation to Ms. McClellan's financial cards?

3 A. No, I was -- we are not told details.

4 Q. And so, no one has ever told you that she issued
5 Subpoenas to different entities related to the
6 financial cards?

7 A. No.

8 Q. And were you aware that Ms. -- I'm sorry --
9 Investigator Oliver went to other entities and asked
10 for surveillance video from them as well?

11 A. They -- she mentioned that she would go, but we did
12 not know what the video turned up.

13 Q. Again, is it fair to say that you have no idea what
14 other steps she took in the course of her
15 investigation before she presented probable cause to
16 a judge; is that right?

17 A. Yes.

18 Q. Did you personally ever tell Investigator Oliver that
19 a man named Travis Jacobs committed the theft of Ms.
20 McClellan's financial cards?

21 A. No.

22 Q. Did you ever knowingly provide false information to
23 Investigator Oliver in relation to the theft of Ms.
24 McClellan's financial cards?

25 A. No.

1 MS. ROBERTS: Okay. No further
2 questions.

3 MR. CLARK: No further questions
4 from me. Thank you.

5 (THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS
6 CONCLUDED AT 11:22 A.M.).

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