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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.

APPENDIX TO RECORD ON APPEAL

December 12, 2023

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**Walmart Defendants' Memorandum in Support of Motion for
Summary Judgment**

August 9, 2022

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'
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

Defendants Wal-Mart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, and Ginny Wright (collectively, “the Walmart Defendants”), by and through their undersigned counsel, submit this Memorandum in Support of the Walmart Defendants’ Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The Walmart Defendants respectfully request this Court grant their Motion for Summary Judgment as to all of Plaintiff’s claims.

INTRODUCTION

This lawsuit arises out of Plaintiff’s allegations that he was arrested by the Florence Police Department after being misidentified as the suspect in the theft of Belva McClellan’s credit cards. It is undisputed that McClellan reported the theft of her personal property to Florence Police Department on July 28, 2019, while she was working at the Walmart store located at 230 North Beltline Drive, Florence, South Carolina 29501. Florence Police Department conducted a criminal investigation into the theft and obtained an arrest warrant for Plaintiff, who was an employee of the subject store. On September 6, 2019, Plaintiff was detained and arrested by law enforcement

officers at the subject Walmart while he was working. The charge of financial card theft was subsequently dismissed.

There is no genuine issue as to any material fact from which this Court could reasonably infer Plaintiff is entitled to relief from the Walmart Defendants under any theory of law. The Walmart Defendants cannot be culpable for simply cooperating with law enforcement's investigation into the theft of a third-party's personal property.

FACTUAL BACKGROUND

Belva 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. *See Exhibit A, Oliver Dep. Tr. 34:2 – 36:7.* McClellan further reported that she realized that her wallet had been stolen when she received a fraud alert via her telephone, and she realized that a couple of her credit and/or debit cards had been used at various locations without her permission. *See id.* McClellan reported that an employee named Annie was standing around the general vicinity at the time she placed her purse down and at the time she picked up her purse, but McClellan did not observe a person remove her wallet from the purse. *See Exhibit A, Oliver Dep. Tr. 35:3 – 36:20.* Significantly, neither McClellan nor anyone with Walmart ever reported to law enforcement that Plaintiff removed McClellan's wallet from her purse. *See Exhibit A, Oliver Dep. Tr. 36:21 – 37:2.*

Florence Police Department assigned the investigation into the theft 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. *See Exhibit A, Oliver Dep. Tr. 37:3 – 38:8.* Oliver spoke with McClellan about the theft of her credit cards and requested additional information and documentation. *See Exhibit A, Oliver Dep. Tr. 38:4-20.* Oliver then 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. *See* Exhibit A, Oliver Dep. Tr. 38:21 – 39:15. Oliver reviewed the surveillance video from Walmart as part of her investigation. *See* Exhibit A, Oliver Dep. Tr. 39:4-9. Oliver also testified that at least one of the employees at Walmart stated that the suspect in the surveillance video, believed to be the person that took McClellan's financial cards, looked like Plaintiff, who was a new employee with the subject store. *See* Exhibit A, Oliver Dep. Tr. 41:7 – 42:2; 82:24 – 84:21. 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. *See* Exhibit A, Oliver Dep. Tr. 81:20 – 84:21. Following her second visit to Walmart, Oliver proceeded with her investigation, which included subpoenaing records from McClellan's bank, Wish.com, and other places that McClellan's financial cards had been used without her permission. *See* Exhibit A, Oliver Dep. Tr. 42:3-17. 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. *See* Exhibit A, Oliver Dep. Tr. 42:18-25; 44:2-12; 84:22 – 86:6. In reviewing the surveillance video from Pilot, Oliver determined that the same person was seen in both the Pilot surveillance video and Walmart surveillance video based on the clothing worn. *See* Exhibit A, Oliver Dep. Tr. 43:1-20. Oliver then visited the Phoenix Mart and Youngs Grocery, where McClellan's financial cards were used without her permission, but neither location was able to provide surveillance video. *See* Exhibit A, Oliver Dep. Tr. 47:19-22; 88:12 – 89:1. Oliver thereafter returned to the subject Walmart to retrieve additional surveillance video. *See* Exhibit A, Oliver Dep. Tr. 47:24 – 48:4. Oliver conducted a 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. *See* Exhibit A, Oliver Dep. Tr. 49:22 – 50:10; 89:2-16. Significantly, 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. *See* Exhibit A, Oliver Dep. Tr. 49:22 – 50:10. McClellan presented her investigation to the Magistrate Court, which found probable cause existed for an arrest warrant. *See* Exhibit A, Oliver Dep. 48:5-8; *see* Exhibit B, Arrest Warrant for Plaintiff dated September 6, 2019. Oliver admitted that at the time she obtained the arrest warrant for Plaintiff, she had not personally met with or interviewed Plaintiff. *See* Exhibit A, Oliver Dep. Tr. 48:13-22. After obtaining the arrest warrant, Oliver called the Walmart store and asked if Plaintiff was working, and the store answered in the affirmative. *See* Exhibit A, Oliver Dep. Tr. 89:17-21. Oliver and another law enforcement officer, Officer Kelly, arrived at the store, and Officer Kelly handcuffed and detained Plaintiff. *See* Exhibit A, Oliver Dep. Tr. 90:1-17; 91:20 – 92:3. The law enforcement officers guided Plaintiff to a private area at the store, Mirandized him, and then began asking questions. *See* Exhibit A, Oliver Dep. Tr. 92:4 – 94:18. After her interview with Plaintiff at the store, Oliver decided to arrest Plaintiff. *See* Exhibit A, Oliver Dep. Tr. 94:16-18. On a subsequent date, Oliver received documents in response to a subpoena she had issued that included an email address indicating that the suspect was a person other than Plaintiff. *See* Exhibit A, Oliver Dep. Tr. 50:18 – 54:19. Shortly thereafter, Oliver abandoned the charge against Plaintiff. *See* Exhibit A, Oliver Dep. Tr. 54:9-19; 96:12 – 99:9. The investigative file produced by Florence Police Department for the theft of McClellan's financial cards totals 57 pages.¹

¹ The investigative file in its entirety was marked as confidential by Florence Police Department. The Walmart Defendants are glad to submit the investigative file for *in camera* review if needed.

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. *See* Pl.'s Compl. The parties exchanged written discovery and conducted depositions; thus, the matter is ripe for the Walmart 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, even taking the Plaintiff's allegations as true, he fails to establish even a scintilla of evidence that any Walmart employee knowingly provided false information to law enforcement thereby causing his arrest. The only evidence in the record shows that Walmart employees cooperated in good faith with law enforcement's independent investigation into a third-party's report of theft. 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—because providing information to law enforcement in good faith during the course of a law enforcement investigation is not grounds for tort liability.

PERTINENT CASE LAW

Huffman v. Sunshine Recycling, LLC, 826 S.E.2d 609, 2019 WL 1372359 (2019), provides precedent that governs the facts of this case as to the Walmart Defendants and compels summary judgment in their favor. In *Huffman*, our Supreme Court examined whether witnesses cooperating with law enforcement were to be held to a greater duty of care by requiring them to perform their own investigation before assisting law enforcement with its investigation. The Supreme Court declined to expand the duty of witnesses in such a manner and ruled 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)).

Other jurisdictions have categorically refused to accept such a standard on public policy grounds and we chose to follow suit. *See, e.g., Brice v. Nkaru*, 220 F.3d 233, 238–39 (4th Cir. 2000) (“[W]e are aware of no authority supporting the novel proposition that a witness, by honestly providing information to a law enforcement official, may be held responsible for the official's execution of his independent duty to investigate.”); *Lawson v. Kroger Co.*, 997 F.2d 214, 217 (6th Cir. 1993) (stating a reporting victim “may not provide false information with an improper motive, but is not required to investigate offenses against it, nor must it volunteer all information within its knowledge ..., though it may not withhold information for an improper purpose”).

In sum, we find the court of appeals' decision goes too far and risks chilling public cooperation with law enforcement investigations. *See Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 (“Where a person has information or knowledge that the law has been violated, he not only has a right, but frequently it is his duty, to communicate such information or facts to the proper officer so as to give such officer the opportunity, if in his judgment it is proper to do so, to take whatever steps may be necessary to apprehend the offender.”); *Elletson v. Dixie Home Stores*, 231 S.C. 565, 573, 99 S.E.2d 384, 388 (1957) (“[I]t is to be remembered that, while individuals are to be protected against rash and baseless prosecutions, the public interests demand that courts shall not frown upon honest efforts made in attempts to bring the guilty to justice”); *Turner v. Mellon*, 41 Cal.2d 45, 257 P.2d 15, 17–18 (1953) (“The victims of crimes should not be held to the responsibility of guarantors of the accuracy of their identifications A view contrary to that ... would, we think, inevitably tend to discourage a private citizen from imparting information of a tentative, honest belief to the police and, hence, would contravene the public interest which must control.”), *abrogated on other grounds by Hagberg v. Cal. Fed. Bank FSB*, 32 Cal.4th 350, 7 Cal.Rptr.3d 803, 81 P.3d 244 (2004).

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, 826 S.E.2d 609, 2019 WL 1372359 (2019) (emphasis added). Based on this precedent, the Walmart Defendants contend that summary judgment is warranted as to all of Plaintiffs’ causes of action as more fully set forth below.

ARGUMENT

I. Plaintiff’s claim of assault and battery against the Walmart Defendants fails as he admits that no Walmart employee touched, detained, or threatened him during his lawful detention and arrest by Florence Police Department.

There is no genuine issue of material fact as to Plaintiff’s claim for assault or battery because it is undisputed that the Walmart Defendants did not detain, touch, or threaten Plaintiff in any manner. Accordingly, Walmart is entitled to summary judgment as to his cause of action for assault and battery.

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

748, 754 (Ct. App. 1984). It is well established that mere words do not support a claim for assault or battery, unless the words are accompanied by an actual threat of physical violence. *Mellen*, 377 S.C. at 277-78, 659 S.E.2d at 245. Further, a lawful arrest based upon probable cause cannot serve as the basis for a civil claim of assault and battery. *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).

Plaintiff explicitly testified that on the date of his arrest, law enforcement officers arrived at the store and explained that he was being detained on the charge of financial card theft. *See* Exhibit C, Pl.'s Dep. Tr. 18:19 – 24:21. As to the actions of any Walmart employee on the date of his arrest, Plaintiff did not recall having any interaction with named co-Defendants Emily Ek, Ginny Wright, or Joey Barefoot in relation to the alleged incident. *See* Exhibit C, Pl.'s Dep. Tr. 16:7 – 18:10. Plaintiff could only recall that an unidentified female Walmart employee was present while law enforcement talked with him, and “she was agreeing with the cop” and began crying. *See* Exhibit C, Pl.'s Dep. Tr. 27:11 – 33:6. Plaintiff admitted that he was never touched by any Walmart employee during his detention and arrest at the store. *See* Exhibit C, Pl.'s Dep. Tr. 33:10-20.

Plaintiff's claim of assault and battery fails because by his own testimony, he concedes that Walmart Defendants never physically contacted him or threatened him with physical violence. Law enforcement detained him, and the only Walmart employee that was present during his detention merely agreed with law enforcement and then began crying. Further, law enforcement's arrest of Plaintiff was lawful because it was supported by probable cause as discussed more fully below. *See 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).

Therefore, the Walmart Defendants are entitled to judgment as a matter of law on Plaintiff's claim of assault and battery.

II. Plaintiff's claim of civil conspiracy fails because the record is devoid of any evidence that Walmart and the Florence Police Department conspired together to injure Plaintiff.

Plaintiff cannot present any evidence that Walmart, through its employees, and officers of Florence Police Department agreed to take actions to injure Plaintiff. Thus, this Court should grant summary judgment in favor of the Walmart Defendants as to Plaintiff's claim of civil conspiracy.

"[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).

In the present case, Plaintiff fails to proffer any evidence of an agreement between Walmart employees and the Florence Police Department to injure Plaintiff. Indeed, it is undisputed that McClellan reported the theft of her financial cards on July 28, 2019, and Florence Police Department assigned the investigation to Officer Glenda Oliver. Because the theft occurred at Walmart, Walmart employees cooperated in the investigation as requested by the investigating law enforcement officers. Thereafter, Florence Police Department continued investigating the matter and a Magistrate Court determined probable cause existed to arrest Plaintiff. Finally, Florence Police Department ultimately decided to drop the charge against Plaintiff.

Even if, viewing the evidence in a light most favorable to the Plaintiff, Walmart employees mistakenly identified the suspect on surveillance video as being Plaintiff, Officer Oliver testified in her deposition that she and her supervisor both agreed the suspect in the surveillance video

looked like Plaintiff based on the photographs she had obtained of Plaintiff from Facebook and the DMV. Thus, any alleged good faith misidentification of the suspect by Walmart employees does not establish evidence of any agreement between Walmart and law enforcement in support of a claim of civil conspiracy. Florence Police Department's arrest of Plaintiff was lawful and based upon its independent investigation of the crime although ultimately it decided to drop the charge. Accordingly, Plaintiff's cause of action for civil conspiracy fails and this Court should grant summary judgment in favor of the Walmart Defendants. *See Ellis v. Davidson*, 358 S.C. 509, 527 (Ct. App. 2004) (finding that the circuit court did not err in granting summary judgment on plaintiff's claim of conspiracy as plaintiff failed to prove that co-defendants engaged in a civil conspiracy in order to purposely injure plaintiff).

III. Plaintiff's claim of false imprisonment against Walmart fails as a matter of law as there is no evidence that the Walmart Defendants instigated his arrest, which was based upon probable cause from law enforcement's independent investigation into a crime.

There is no genuine issue of material fact as to Plaintiff's false imprisonment claim because he cannot show the Walmart Defendants caused law enforcement to unlawfully arrest him. Thus, the Walmart Defendants are entitled to summary judgment as to this claim as a matter of law.

To prevail on a claim for false imprisonment, "the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006). However, it is undisputed Plaintiff was not restrained by the Walmart Defendants but by law enforcement for the theft of a third-party's financial cards. Further, a witness is not required "to conduct their own investigation into the offense committed in order to verify the information they provide [to law enforcement]." *Huffman v. Sunshine Recycling*, 426 S.C. 262, 274, 826 S.E.2d 609, 615 (2019). Imposing such a duty "would improperly subject witnesses and victims, who act in good faith when assisting law

enforcement, to civil liability.” *Id.* Similar to *Huffman*, discussed in a section above, summary judgment should be granted in this instance “because there is nothing in the record that provides a reasonable inference that [Walmart] or any of its employees induced, caused, instigated, or procured [the plaintiff’s] arrest simply by cooperating with law enforcement and relaying information [Walmart’s employees] believed to be true at the time.” *Id.* at 616-617; *see, e.g., Brice v. Nkaru*, 220 F.3d 233, 238–39 (4th Cir. 2000) (“[W]e are aware of no authority supporting the novel proposition that a witness, by honestly providing information to a law enforcement official, may be held responsible for the official’s execution of his independent duty to investigate.”)

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

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

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

In the instant case, Walmart did not report any crime to law enforcement and the crime did not involve Walmart merchandise. The crime involved a third-party’s belongings that happened to be stolen while she was on shift at Walmart. Plaintiff fails to show any evidence that the Walmart Defendants induced officers to unlawfully arrest him. Much like the defendant in *Huffman v. Sunshine Recycling*, here, Defendants cooperated with law enforcement upon law enforcement’s request by providing surveillance camera footage and still frames. Even if Plaintiff was mistakenly believed to be the suspect seen on surveillance video, law enforcement was well aware that the Walmart employees providing information were not eye witnesses to the crime, and the law

enforcement officers were in the same if not superior position to observe whether Plaintiff looked like the suspect based upon the entirety of law enforcement's investigation. *See Huffman*, 826 S.E.2d at 615. Significantly, a magistrate court found probable cause existed to arrest Plaintiff based upon the independent investigation conducted by law enforcement. *See Exhibit B, Arrest Warrant for Plaintiff dated September 6, 2019.*

Ultimately, Plaintiff was arrested by the law enforcement officer's own volition after an independent investigation. The Walmart Defendants cannot be improperly subjected to liability under the theory of false imprisonment simply by assisting law enforcement.

IV. Plaintiff's claim of intentional infliction of emotional distress fails as a matter of law because Plaintiff fails to establish any evidence that the Walmart Defendants conduct was so extreme and outrageous that it permits recovery.

Plaintiff fails to present any genuine issue of material fact as to each element of intentional infliction of emotional distress; thus, Walmart is entitled to summary judgment as a matter of law.

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.*

Plaintiff fails to present any evidence to support a claim for intentional infliction of emotional distress beyond the conclusory allegations of his Complaint. As argued in other sections of this Memorandum, it is undisputed that the Walmart Defendants did not report a crime and merely provided information to law enforcement upon request during the course of law enforcement’s independent investigation into the theft of a third-party’s property. Further, a Magistrate Court found probable cause existed for Plaintiff’s arrest; thus, the Walmart Defendants alleged conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency. Accordingly, the Walmart Defendants are entitled to summary judgment as to this cause of action.

V. Plaintiff’s claim of malicious prosecution against Walmart fails as a matter of law because there is no evidence that the Walmart Defendants instituted or continued judicial proceedings against him with malice as the only evidence reflects that Plaintiff’s charge was supported by probable cause generated as a result of law enforcement’s independent investigation into a crime reported by a third-party.

There is no genuine issue of material fact as to Plaintiff’s malicious prosecution claim where the Walmart Defendants only provided information to law enforcement. To sustain an action for malicious prosecution, “a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Law*, 368 S.C. at 435, 629 S.E.2d at 648. “It is in the

interest of good order that criminals be brought to justice, and malicious prosecution action are not encouraged.” *Elletson v. Dixie Home Stores*, 231S.C. 565, 571, 99 S.E.2d. 384, 387 (1957).

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

In the instant case, the Walmart Defendants simply provided surveillance video and information to law enforcement in the course of law enforcement's investigation into the theft of a third-party's financial cards. Indeed, it is undisputed that the Walmart Defendants did not report the crime to law enforcement, and the Walmart Defendants did not participate in any criminal prosecution against Plaintiff following his arrest pursuant to a lawful arrest warrant; thus, there is no evidence that the Walmart Defendants instituted the proceedings against Plaintiff or acted with malice. Law enforcement conducted an independent investigation in which the investigating officer went to multiple locations, interviewed people, obtained surveillance video, and compared photographs of Plaintiff that the investigating officer found with the surveillance video. The

investigating officer and her superior assessed that Plaintiff looked like the person in the surveillance video and the Magistrate Court determined probable cause existed to issue an arrest warrant.

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

Witnesses are not held to the same standard as law enforcement. The law does not “require a witness or victim to conduct their own investigation into the offense committed in order to verify the information they provide” to law enforcement. *Id.*, 426 S.C. at 273, 826 S.E.2d at 615. Such a requirement “would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability.” *Id.* The Walmart Defendants did nothing more than cooperate with law enforcement’s criminal investigation, which cannot be grounds for the tort of malicious prosecution. Accordingly, the Walmart Defendants are entitled to summary judgment as a matter of law as to Plaintiff’s claim of malicious prosecution.

VI. Plaintiff’s claims of defamation fail as a matter of law as there is no evidence that the Walmart Defendants communicated to anyone beyond law enforcement officers during the course of law enforcement’s independent investigation into the theft of a third-party financial cards, and further, there is no evidence that any statement made by Walmart employees was false.

There is no genuine issue of material fact because the Walmart Defendants’ communications did not defame Plaintiff, and the Walmart Defendants’ statements to law

enforcement are privileged. Thus, this Court must grant summary judgment to Walmart as a matter of law.

To prove defamation, “the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 559–60, 698 S.E.2d 845, 852 (Ct. App. 2010). “In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege.” *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Under a qualified privilege defense, “one who publishes defamatory matter concerning another is not liable” if there is a conditional privilege that is not abused. *Id.* It is the duty of the court to determine if the statement is privileged as a matter of law. *Murray v. Thornton*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001).

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

Here, the only Walmart communications in evidence were to law enforcement during the course of law enforcement’s independent criminal investigation into a third-party’s financial card theft. Thus, the Walmart Defendants’ communications are privileged as a matter of law. Plaintiff has shown no evidence that the Walmart Defendants abused or exceeded the scope of the privilege. Moreover, Plaintiff cannot show the Walmart Defendants published any defamatory statement about him as merely providing information to police cannot rise to the level of a defamatory

publication. Based on the foregoing, the Walmart Defendants are entitled to summary judgment as to Plaintiff's claim of defamation.

VII. Plaintiff's claim of negligence against Walmart fails as a matter of law as Walmart did not breach any duty owed to Plaintiff and it is well-established that witnesses cannot be held liable for good-faith cooperation with law enforcement.

There is no genuine issue of material fact as to Plaintiff's negligence claim because the Walmart Defendants did not owe him a legally-recognized duty of care that was breached and that caused any damage. Accordingly, the Walmart Defendants are entitled to summary judgment as to Plaintiff's claim of negligence, negligent supervision, and/or gross negligence.

To establish a cause of action for negligence "a plaintiff must show ... three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 474, 377 S.E.2d 343, 348 (Ct. App. 1988). No South Carolina authority has ever imposed a duty on a witness to perform its own investigation before assisting law enforcement with their criminal investigation. In fact, the South Carolina Supreme Court specifically rejected the creation of such "an unprecedented duty." *Huffman v Sunshine Recycling*, 426 S.C. at 273, 826 S.E.2d at 614-15 (The law does not "require a witness or victim to conduct their own investigation into the offense committed in order to verify the information they provide" to law enforcement.). The Walmart Defendants are not responsible for investigating and analyzing evidence; that is the job of law enforcement.

Assuming, *arguendo*, this Court should find the Walmart Defendants owed Plaintiff a duty, there is still no evidence of any breach that caused Plaintiff damage. The Walmart Defendants did not report the theft, and the theft did not involve any Walmart merchandise. Walmart employees were simply acting as third-party witnesses during law enforcement's independent investigation

into the theft of a third-party's personal property. The *Huffman* court explicitly stated that it "serves no purpose" and is against public policy to subject witnesses to liability for misidentifying a criminal suspect. *Id.*, 826 S.E.2d at 616. Moreover, subsequent police investigation and decision to arrest Plaintiff is the superseding and proximate cause of Plaintiff's alleged damage. See *Richardson v. Rent-A-Ctr. E., Inc.*, 2012 U.S. Dist. LEXIS 6617, at *14-15 (D.S.C. Jan. 20, 2012) (granting summary judgment and explaining police caused a plaintiff's arrest).

There is no genuine issue as to any material fact from which this Court could reasonably infer Plaintiff is entitled to relief from the Walmart Defendants under any theory of negligence. The Walmart Defendants cannot be culpable for simply relaying information to law enforcement. The Walmart Defendants are not responsible for investigating and analyzing evidence in the same manner as law enforcement, particularly where the crime does not involve any Walmart merchandise. Based on the foregoing, the Walmart Defendants are entitled to summary judgment as to this cause of action.

CONCLUSION

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

(Signature on following page)

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*

**Excerpts from Deposition Transcript of Glenda Oliver:
Exhibit A to Walmart Defendants' Memorandum in Support to
Motion for Summary Judgment**

August 9, 2022

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.

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 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 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 them 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 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 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 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 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. [REDACTED] 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 [REDACTED] Street.
13 I think it came back to a [REDACTED] 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.

Arrest Warrant issued September 6, 2019:

**Exhibit B to Walmart Defendants' Memorandum in Support of
Motion for Summary Judgment**

August 9, 2022

ARREST WARRANT
2019A2120201679

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

THE STATE
against



TRAVIS WILLIAM JACOBS
Address: [REDACTED]
Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: B Height: [REDACTED] Weight: [REDACTED]
DL State: [REDACTED] DL#: [REDACTED]
DOB: [REDACTED] Agency ORI#: SC0210100
Prosecuting Agency: FLORENCE MUNICIPAL COURT
Prosecuting Officer: OLIVER
Offense: FINANCIAL TRANSACTION CARD THEFT
Offense Code: 0348
Code/Ordinance Sec. 16-14-0020

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)
Date: _____
Time: _____

RETURN

A copy of this arrest warrant was delivered to
defendant TRAVIS WILLIAM JACOBS
on 09/06/19
[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURT

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
FLORENCE)

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 616

Personally appeared before me the affiant GLEND A OLIVER who
being duly sworn deposes and says that defendant TRAVIS WILLIAM JACOBS
did within this county and state on 07/28/2019 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of FLORENCE)
in the following particulars:
DESCRIPTION OF OFFENSE: 16-14-0020 / FINANCIAL TRANSACTION CARD THEFT

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
ON OR ABOUT 07/28/2019, THE DEFENDANT, TRAVIS WILLIAM JACOBS STOLE THE VICTIM'S WALLET CONTAINING HER BANK OF AMERICA
DEBIT CARD (#3251) CREDIT CARD (#3739), WELLS FARGO DEBIT CARD (#4017) AND HER STATE FARM BANK CREDIT CARD (#9141) FROM HER
PURSE THAT WAS IN AN EMPLOYEE ONLY AREA OF WAL-MART LOCATED AT 230 N BELTLINE DR FLORENCE, SC IN THE CITY LIMITS. THE
DEFENDANT THEN USED THE CARDS AT VARIOUS LOCATIONS THROUGHOUT THE CITY AND COUNTY OF FLORENCE, SC AND TO MAKE
ONLINE PURCHASES. THE DEFENDANT WAS CAPTURED ON THE STORE'S SURVEILLANCE VIDEO.

Signature of Affiant

[Signature]

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
FLORENCE)

Affiant's Address FLORENCE POLICE DEPT., 324 W. EVANS
FLORENCE SC 29501
Affiant's Telephone 843-665-3191

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/28/2019 defendant TRAVIS WILLIAM JACOBS
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of FLORENCE) as set forth below:
DESCRIPTION OF OFFENSE: FINANTC / FINANCIAL TRANSACTION CARD THEFT

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

Sworn to and subscribed before me)
on 09/06/2019)
Date [Signature] Time _____) (L.S.)
DEBRA O. JACKSON
Judge Code: 6919

Judge's Address 324 W. EVANS STREET, ROOM 103
FLORENCE SC 29501
Judge's Telephone 843-665-3148
Issuing Court: Magistrate Municipal Circuit

Case: 2019-006996

ORIGINAL

**Excerpts from Deposition Transcript of Travis Jacobs:
Exhibit C to Walmart Defendants' Memorandum in Support to
Motion for Summary Judgment**

August 9, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF FLORENCE) CASE NO.: 2020-CP-21-02572
 Travis William Jacobs,)
)
 Plaintiff,)
)
 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
 TRAVIS W. JACOBS
 VIA ZOOM VIDEO CONFERENCE

Wednesday, December 29, 2021
 10:08 a.m. - 11:46 a.m.

The deposition of TRAVIS W. JACOBS 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.

1 Walmart, did you also shop there as a customer?

2 A. Yeah, I did. I did.

3 Q. Since that time have you shopped at Walmart as a
4 customer?

5 A. I went to Neighborhood Walmart. I don't really
6 go to that one no more.

7 Q. Okay. Can you recall if you interacted with
8 Emily Ek on July 28th, 2019?

9 A. I don't remember. I just really don't.

10 Q. Okay. Was Emily someone who you typically would
11 interact with while doing your job?

12 A. No.

13 Q. And what was her position at that time?

14 A. I think she was the HR lady, I believe. I think.

15 Q. And do you remember if you had any interaction
16 with her during the month of August or early
17 September?

18 A. No, I -- no, I don't remember having any kind of
19 reaction with her after that.

20 Q. And prior to this incident, had you ever had any
21 type of issue with her or anything like that?

22 A. No. Never.

23 Q. And did you interact with Ginny Wright on July
24 28th, 2019?

25 A. No. I never knew who she was.

1 Q. Okay. Do you -- what was her job at that time?

2 A. I really don't know what her job was around that
3 time.

4 Q. So is it correct to say that she was not someone
5 who you typically interacted with?

6 A. No.

7 Q. And do you know if you'd had any interaction with
8 her in the month of August 2019?

9 A. No.

10 Q. And what about Joey Barefoot, did you interact
11 with him on July 28th, 2019?

12 A. Joey Barefoot? I'm trying to remember who Joey
13 Barefoot is because, honestly, I never really
14 reacted with most of these people you're talking
15 about, you know, because most of time, once I
16 started working, all I did was clock in and go
17 straight to work. I really -- only person I
18 probably familiar with is Emily, because I think
19 she was HR lady at the time, and she was helping
20 me with the orientation. That's the only time we
21 really reacted, and that was it. Anything else,
22 I never reacted with any of the other two people.
23 Q. Okay. And is it fair to say that you typically
24 wouldn't see Joey Barefoot while you were doing
25 your job?

1 A. No, not really, no, I didn't.

2 Q. And have you ever met Belva McClellan?

3 A. No.

4 Q. Okay.

5 A. No.

6 Q. Do you know what her position at Walmart was?

7 A. Huh-uh. No, ma'am.

8 Q. And is there any interaction that you've ever had
9 with her that you can call to mind?

10 A. No. Huh-uh.

11 Q. Okay. So the incident that we're here to discuss
12 today, do you know when that took place?

13 A. As in the incident of what happened, I don't.
14 The only thing I remember is that they talked
15 about the person did it at Walmart in the back of
16 the store where you clock in at, and similar area
17 where the woman left her pocketbook. That's the
18 only thing they talked to me about.

19 Q. Okay. Can you say in as much as detail as you
20 can remember kind of what you understood the
21 allegations against you to be?

22 A. Well, only thing I really understood is that they
23 came to me and asked me, my name is Travis
24 Jacobs, and I told them my name, and they said
25 that they wanted to speak to me. And they said I

1 was being detained, which I never knew for what.
2 They took me there and -- took me to the security
3 room and asked me do I know what I was being
4 charged with? And I said no. And then she told
5 me what I was charged with, financial card theft,
6 and I said I've never done some -- thing in my
7 life, I never would put myself in any position
8 like that. So that's really how it went down
9 with everything, you know, being embarrassed and
10 everything. You know, it's just traumatizing,
11 you know, to have anything like that happen to
12 me.

13 Q. Okay. Just a couple follow-up questions on that.
14 So did a Walmart associate ever accuse you to
15 your face of stealing the wallet?

16 A. No, never.

17 Q. And can you recall what day you were arrested or
18 all of this took place?

19 A. I believe it was on September the 8th. I believe
20 that's when it was, September the 8th.

21 Q. And the year was 2019; is that correct?

22 A. 2019, yes, ma'am.

23 Q. And where were you when someone first approached
24 you about these allegations?

25 A. I was working. I was working on a vehicle.

1 Q. So you -- is it correct to say you were in the
2 TLE department?

3 A. Yes.

4 Q. And how crowded was the TLE department at this
5 time?

6 A. It was pretty crowded.

7 Q. And when you say that "they" came up to you, who
8 is "they"?

9 A. I think the officer that was serving the papers,
10 and two other officers was escorting her to the
11 back where I was.

12 Q. And when you say officers, are you talking about
13 police officers?

14 A. Yes, the one police -- I think -- well,
15 undercover. I think that was Ms. Glenn -- I
16 don't know her name by heart. And the other cop
17 that was there with her I guess to arrest me.

18 Q. Okay. Just so I make sure I have this right.
19 Two police officers and one Walmart manager --

20 A. Yeah.

21 Q. -- associate?

22 A. Uh-huh.

23 Q. And were all of them female? Were any of them
24 male? Can you remember?

25 A. One -- the female was the undercover cop. And

1 there was a male police officer. And the other
2 one was -- I guess she was the manager there.
3 She was escorting the police where I was.

4 Q. Okay. So when you say undercover cop, is it your
5 understanding that the person worked for the
6 police department?

7 A. No, I never -- I mean, honestly, I don't really
8 know too much about that kind of stuff. So,
9 yeah, I guess that's who she was, was the police
10 department, that served papers for people, you
11 know, the warrants.

12 Q. Okay. And was that the person who did most of
13 the talking to you when you were in the -- when
14 they were explaining what was going on?

15 A. Yes.

16 Q. Okay. So did they have this conversation with
17 you in the TLE department?

18 A. No.

19 Q. So what happened after they -- did one person
20 come over and talk to you in the TLE department,
21 or how did you get to a different location?

22 A. Okay. They walked back there, all three
23 together. You know, she was escorting them to
24 where I was. So they say, Hey, your name is
25 Travis Jacobs? I said, Yes, this is me. So once

1 they said, Can you come talk to us, and I told
2 them yes, and then the other cop put me in
3 handcuffs and was escorting me out of TLE. And,
4 you know, the cop asked her, Hey, do you think we
5 should walk him outside around to the security
6 room? And the other cop said, No, we could walk
7 through Walmart, it's okay. And that day it was
8 very busy. Everybody was in there. And, you
9 know, any -- then they walked me through Walmart
10 where everybody was like, Oh my god, what he do?
11 You know, just all this at once, and that's when
12 they took me to the security room and --

13 Q. Let me -- I'm going to stop you right there.

14 We'll pick back up in a second. I have a couple
15 questions. So the person who suggested you walk
16 on the outside, was that person one of the police
17 officers, or is that person one of the Walmart
18 people?

19 A. The police officer.

20 Q. Okay.

21 A. One of the police officers.

22 Q. And who was the person that said, No, we should
23 walk him through Walmart?

24 A. That was the police officer that was serving the
25 warrant.

1 Q. And did they put anything over the handcuffs when
2 they were walking you?

3 A. No.

4 Q. And can you estimate for me about how many
5 customers were present in that area, that you
6 saw, when you were walking through the store?

7 A. Probably about at least 20 to 30.

8 Q. And the office that you were walking to, was it
9 in the front of store or the back of the store?

10 A. Front.

11 Q. Front? Okay. And where in this particular store
12 is the TLE department located?

13 A. It's located in the back of the store.

14 Q. Is it in the back corner, or just back?

15 A. Back corner. Back corner.

16 Q. Okay. And when you were walking through Walmart,
17 did you see anyone who you knew or any
18 acquaintances?

19 A. No.

20 Q. Okay. And so can you describe for me what
21 happened after you got to the office?

22 A. Okay. After we got to office, they sat me down.
23 They had police -- two police officers, the
24 security lady, and she asked me did I know what I
25 was being charged with. And I told her no, and

1 she told me, Well, you're being charged with
2 financial card theft. You went into a woman's
3 purse and stole her credit cards and was using
4 them all over a variety of places in Florence.
5 And I told her, No, I did not do no such thing,
6 that is not me. And she got a picture off my
7 Facebook page that I took in 2017, took it and
8 compared it with the picture that she took from
9 the camera where the guy was going to the back
10 room. And she said, This is you, right, on
11 Facebook? I like, Yes, that is me, but that's
12 not me in the video. And she was trying to
13 convince me, Yes, that is; yes, that is. I said,
14 No, that is not me.

15 Q. This person -- this is -- I'm sorry, I'm going to
16 keep clarifying because we don't have names, so
17 sorry.

18 A. Okay. I'm sorry. Right.

19 Q. You're good. So is this person a Walmart person?

20 A. That was asking me the questions? No, that was
21 the woman that was serving the warrant.

22 Q. Okay. I'm going to -- and you mentioned video;
23 is that correct?

24 A. Yes.

25 Q. And did she show you any video when you were in

1 to walk back there where I know only employees go
2 to.

3 Q. Okay. If someone who doesn't personally know you
4 and know your character is looking at this video,
5 how could they identify that this is not in fact
6 you?

7 A. Well, the -- his body shape and the way he walks,
8 he's walking with an urge of something that is up
9 to no good. And you can't really get no facial
10 recognitions because the picture is too far away.

11 Q. Let me stop sharing it. And did -- when you were
12 in the office with the officers, were any Walmart
13 employees in the office?

14 A. The only employee that was there was the security
15 lady.

16 Q. Security lady? Okay.

17 A. Uh-huh.

18 Q. And was she the same lady who had been walking
19 with you through the store?

20 A. Yes.

21 Q. And can you remember anything about the security
22 lady?

23 A. Really only thing I remember was when we was in
24 the office, and she was agreeing with the cop,
25 the warrant -- the lady that was serving the

1 warrant, saying that was me. And she started to
2 cry because -- I guess because I told them it
3 wasn't me, you know, it wasn't me. I wouldn't,
4 you know -- she started crying, you know?

5 Q. Do you why she started crying?

6 A. No. Huh-uh. No, she started crying. Literally.

7 MR. CLARK: I'm sorry. I kind of lost connection.

8 Who is she -- who started crying, if you don't me
9 mind asking, Sara?

10 THE WITNESS: The security lady. The --

11 MR. CLARK: From Walmart?

12 THE WITNESS: Yeah.

13 MR. CLARK: Okay. Thank you, Sara, I'm sorry.

14 MS. BRAKMANN: You're fine.

15 Q. So what happened -- what did -- did the police
16 react when she started crying?

17 A. No. You know, what she did was -- the police
18 officer just kept telling me it was me, it was
19 me, and then that's when she called for I guess
20 the police transport truck to take me to jail.
21 So that's when -- it was all said and done after
22 that, you know?

23 Q. And you said that the Walmart lady agreed with
24 the officer. Did she --

25 A. Uh-huh.

1 Q. -- ever outright say to you, "I know you were
2 stealing," or accuse you of stealing?

3 A. No, she wasn't saying that I was stealing, she
4 was accusing -- she was saying that that was me
5 on the video.

6 Q. Okay. We have some audio --

7 MR. CLARK: And who was that? I'm sorry. Who are you
8 talking about?

9 THE WITNESS: The security lady.

10 Q. This is the Walmart security lady; is that
11 correct?

12 MR. CLARK: Okay. Thank you.

13 A. Yes.

14 Q. Okay. So we have an audio recording --

15 A. Uh-huh.

16 Q. -- from this time. I'm going to play a segment
17 of it for you. And I'm going to ask you some
18 questions about it, okay?

19 A. Okay.

20 MS. BRAKMANN: And y'all let me know if you're unable
21 to hear this. This is going to be Defendants'
22 Exhibit 2. And this is the audio interview,
23 Bates stamped Jacobs-A-066, that was produced by
24 law enforcement.

25 (Defendants' Exhibit 2 was identified.)

1 (Audio playing.)

2 MS. BRAKMANN: Can everyone hear that?

3 A. Yes.

4 (Audio playing.)

5 Q. So we just heard a small segment of that. I
6 stopped it at timestamp 1:22. Can you remember
7 who we just heard talking in that audio?

8 A. That's the lady with the warrant. That's her.

9 Q. And is that the woman who did most of the
10 speaking to you?

11 A. Yes. Uh-huh.

12 (Audio playing.)

13 Q. Is that you speaking in the background?

14 A. Yes.

15 Q. And that woman who was talking just now, that is
16 the same officer; is that correct?

17 A. Same. Uh-huh.

18 MR. PLYLER: Sara? We're not going to know -- can you
19 please -- when you pause it, will you please read
20 out the timestamp so we'll know what portions he
21 listened to and which portions he hadn't listened
22 to?

23 MS. BRAKMANN: Yes, sir. So I just stopped it at
24 2:31.

25 MR. PLYLER: All right. So you played 1:22 to 2:31?

1 MS. BRAKMANN: That's correct.

2 Q. Okay. I am starting at -- again -- and this time
3 I'm skipping ahead a little bit. I'm going to
4 start at 5:16. The whole recording is 13 minutes
5 long. I do not intend to play it for the entire
6 13 minutes.

7 A. Okay.

8 Q. I'm starting it -- sorry, it's playing but no
9 sound is coming out. One moment.

10 MR. PLYLER: Hey, Sara? While you get this set up,
11 can we take a quick restroom break please?

12 MS. BRAKMANN: Of course. We'll go off record for
13 about five minutes or so while I get this fixed
14 then.

15 (Off the record from 10:44 a.m. to 10:50 a.m.)

16 Q. All right. We're back on the record. I'm going
17 to restart the audio of the interview. And I'm
18 going to start it actually at the timestamp of
19 7:30. And I'll play a short segment now. Can
20 you hear me, Mr. Jacobs?

21 A. Yes, ma'am.

22 (Audio playing.)

23 Q. So that -- and I just stopped at 7:40. That
24 person -- or the woman we just heard speaking,
25 who is that woman, if you can remember?

1 A. I couldn't really hear. It was kind of like low
2 a little bit.

3 Q. Okay. Let me see if I can turn it up. I've
4 restarted it at 7:30.

5 (Audio playing.)

6 Q. Okay. I've stopped it at 7:41.

7 A. That's the security lady right there.

8 Q. That's the Walmart security lady?

9 A. Yeah. Uh-huh.

10 Q. I'm going to keep playing it, so at 7:41 I'm
11 going to keep playing it a couple more seconds.

12 (Audio playing.)

13 Q. Okay. I've stopped it at 8:10. It sounds as if
14 there's someone crying. Is that the -- who is
15 that?

16 A. That was me.

17 Q. That was you?

18 A. Uh-huh.

19 Q. And you earlier stated that someone from Walmart
20 was also crying. Did she cry also during this
21 time, or was she crying --

22 A. She started -- she was crying a little after I
23 started crying. But she wasn't crying as like I
24 was, with tears just coming from her eyes.

25 Q. Okay. That is all I'm going to share from that,

1 and so I stopped it at 8:10 for the record's
2 sake. While you were in the office, was the
3 office door open or closed?

4 A. It was closed at first, and then I think somebody
5 kept coming in and out, some man. I think he
6 left the door open one time during the session.

7 Q. At that point did you feel free to leave while
8 you're in that office?

9 A. Huh-uh. No.

10 Q. And then -- okay. And did any Walmart employee
11 put their hands on you?

12 A. No.

13 Q. Other than applying the handcuffs, did any member
14 of law enforcement put their hands on you?

15 A. When he put -- that's it, that's just the
16 handcuffs. That was it.

17 Q. Okay. And why do you believe that you were
18 identified as a suspect?

19 A. I really don't have no answer for that. I don't
20 know.

21 Q. Okay. And do you have any knowledge that any
22 Walmart employee knew you were allegedly innocent
23 but still reported you?

24 A. Possibly be that. Don't know. I really don't
25 know.