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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, Judge

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.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did Appellant abandon his causes of action for assault and battery, criminal conspiracy, malicious prosecution, defamation, and negligent supervision by failing to provide any reference, argument, or supporting authority related to them?

- II. Did the trial court properly grant summary judgment to Respondents as to Appellant's causes of action for assault and battery, criminal conspiracy, defamation, false imprisonment, intentional infliction of emotional distress, malicious prosecution, and negligent supervision where no genuine issue of material fact existed such that a reasonable jury could find in favor of Appellant?

STATEMENT OF THE CASE

This case arises from the theft of a Walmart employee's personal property, which occurred on July 19, 2019, at the Walmart store located at 230 North Beltline Drive, Florence, South Carolina. The City of Florence Police Department conducted a criminal investigation into the theft and ultimately determined probable cause existed to arrest Appellant Travis William Jacobs (hereinafter "Jacobs"). After Jacobs' arrest, the City of Florence Police Department consented to drop the charge against Jacobs. Jacobs 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. (R. 36-41). At mediation, Jacobs settled with the Florence Police Department.

On August 9, 2022, after extensive discovery, Walmart Stores East, LP d/b/a Wal-Mart Supercenter #630, Emily Ek, Joey Barefoot, and Ginny Wright (hereinafter, "Walmart") filed a Motion for Summary Judgment pursuant to Rule 56, SCRPC. (R. pp. 53-54 and App. R. pp. 1-74). On April 3, 2023, following a hearing in which both parties presented oral argument and memoranda, the Court granted summary judgment in favor of Walmart as to all of Jacobs' causes of action and dismissed Plaintiff's Amended Complaint in its entirety. (R. pp. 1-11).

Jacobs filed his Notice of Appeal on May 2, 2023.

STATEMENT OF FACTS

Belva McClellan ("McClellan") contacted the Florence Police Department on July 29, 2019, reporting that her wallet had been stolen from her purse while she was working a shift at the subject Walmart. (R. pp. 94-95; Oliver Dep. Tr. 34:2 – 36:7). McClellan discovered the theft when she received a fraud alert via her telephone alerting her that her credit and/or debit cards had been used at various locations without her permission. (R. pp. 94-96; Oliver Dep. Tr. 34:2 – 36:20). At the time of the theft, McClellan's purse, which had contained her wallet, was in a restricted, employee-only area at the back of the store. (R. p. 100; Oliver Dep. Tr. 40:6-19).

Florence Police Department assigned the theft investigation to Officer Glenda Oliver (hereinafter, "Officer Oliver"), who began her typical investigation in response to a report of stolen financial cards. (R. p. 133; Oliver Dep. Tr. 73:3-17). Officer Oliver went to the subject Walmart store where the crime occurred and spoke with an employee, Ginny Wright, to obtain McClellan's contact number. (R. pp. 97-98; Oliver Dep. Tr. 37:3 – 38:8). Officer Oliver thereafter spoke with McClellan about the theft and requested additional information and documentation from McClellan. (R. p. 98; Oliver Dep. Tr. 38:4-20). Officer Oliver returned to the subject Walmart on August 2, 2019, to secure surveillance video of the area where McClellan had left her purse during the time of the theft. (R. pp. 98-99; Oliver Dep. Tr. 38:21 – 39:15). Officer Oliver reviewed surveillance video while at the store and testified that at least one employee at Walmart stated that the suspect in the surveillance video, believed to be the person that took McClellan's wallet, looked like a new employee with the subject store, who was later identified as Jacobs. (R. pp. 99, 101-102, 142-144, 146-147; Oliver Dep. Tr. 39:4-9, 41:7 – 42:2, 82:24 – 84:21, 86:24 – 87:10). Officer Oliver conceded that she did not obtain a formal identification from Walmart employees, and she further conceded that none of the Walmart employees were eyewitnesses to the crime. (R. pp. 141-

144; Oliver Dep. Tr. 81:20 – 84:21). Officer Oliver requested that the store print a still frame from the surveillance video that showed the suspect. (R. pp. 142, 146-147; Oliver Dep. Tr. 82:16-23, 86:24 – 87:10). Officer Oliver proceeded with her investigation by subpoenaing records from McClellan's bank, Wish.com, and other places where McClellan's financial cards had been used without her permission. (R. p. 102; Oliver Dep. Tr. 42:3-17). Officer Oliver also visited a local Pilot gas station, where one of McClellan's financial cards was used without her permission, and she spoke with the manager and secured surveillance video. (R. pp. 102, 104, 144-146; Oliver Dep. Tr. 42:18-25, 44:2-12, 84:22 – 86:6). In reviewing surveillance video from Pilot, Officer Oliver determined that the same person was seen in both the Pilot surveillance video and Walmart surveillance video based on the clothing worn. (R. p. 103; Oliver Dep. Tr. 43:1-20).¹ Officer 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. (R. pp. 107, 148-149; Oliver Dep. Tr. 47:19-22, 88:12 – 89:1). Officer Oliver thereafter returned to the subject Walmart a third time to retrieve additional surveillance video. (R. pp. 107-108; Oliver Dep. Tr. 47:24 – 48:4). At the police station, Officer Oliver conducted a comparison of the suspect on the surveillance videos with photographs of Jacobs that Officer Oliver obtained from Facebook and the DMV, and she determined that the suspect looked like Jacobs based on similar physical characteristics and the similarity of earrings worn. (R. pp. 109-110, 149; Oliver Dep. Tr. 49:22 – 50:10, 89:2-16). Officer Oliver's co-workers and supervisor agreed that the person in the surveillance video looked like Jacobs based on Jacobs' photographs from Facebook and the DMV, and the supervisor directed Officer Oliver to obtain an arrest warrant for Jacobs. (R. pp. 109-110;

¹ Contrary to Jacobs' allegations set forth in his "Facts" section, Oliver did not show the surveillance video from Pilot to Walmart employees. (R. p. 105; Oliver Dep. Tr. 45:5-19).

Oliver Dep. Tr. 49:22 – 50:10). Officer Oliver presented her investigation to the Magistrate Court, and the Magistrate Court issued an arrest warrant based upon probable cause. (R. p. 108 and App. R. p. 57; Oliver Dep. 48:5-8). Officer Oliver admitted that at the time she obtained the arrest warrant for Jacobs, she had not personally met with or interviewed Jacobs. (R. p. 108; Oliver Dep. Tr. 48:13-22). After obtaining the arrest warrant, Officer Oliver called the Walmart store and asked if Jacobs was working, and the store answered in the affirmative. (R. p. 149; Oliver Dep. Tr. 89:17-21). Officer Oliver and another law enforcement officer, Officer Kelly, arrived at the Walmart store, and Officer Kelly handcuffed and detained Jacobs. (R. pp. 150-152; Oliver Dep. Tr. 90:1-17, 91:20 – 92:3). The law enforcement officers guided Jacobs to a private area at the store, Mirandized him, and began asking questions. (R. pp. 152-154; Oliver Dep. Tr. 92:4 – 94:18). After her interview with Jacobs at the store, Officer Oliver decided to arrest Jacobs. (R. p. 154; Oliver Dep. Tr. 94:16-18). After Jacobs' arrest, Officer Oliver received a response to a subpoena she previously issued, which included a document reflecting that a purchase was made by someone with an email address other than Jacobs. (R. pp. 110-114; Oliver Dep. Tr. 50:18 – 54:19). Shortly thereafter, Officer Oliver abandoned the charge against Jacobs. (R. pp. 114, 156-159; Oliver Dep. Tr. 54:9-19, 96:12 – 99:9). Officer Oliver agreed that she had no evidence to show that Walmart associates knowingly or purposely provided false information to her during her independent investigation into the theft. (R. pp. 160-161; Oliver Dep. Tr. 100:13 – 101:3).

STANDARD OF REVIEW

“An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP.” *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 651, 780 S.E.2d 263, 272 (Ct. App. 2015) (quoting *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009)). “Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Id.* (quoting *Bovain*, 383 S.C. at 105, 678 S.E.2d at 424); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023) (holding that the “mere scintilla” standard does not apply under Rule 56(c), and the correct standards is the “genuine issue of material fact” standard). 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); *Rumph v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 392, 593 S.E.2d 183, 186 (Ct. App. 2004). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004); *Rumpf*, 357 S.C. at 393, 593 S.E.2d at 186.

ARGUMENT

I. JACOBS ABANDONED HIS CAUSES OF ACTION FOR ASSAULT AND BATTERY, CRIMINAL CONSPIRACY, MALICIOUS PROSECUTION, DEFAMATION, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AND NEGLIGENT SUPERVISION.

As a threshold matter, Jacobs abandoned his causes of action for assault and battery, criminal conspiracy, malicious, prosecution, defamation, and negligent supervision as he fails to provide any reference, argument, or supporting authority as to those causes of action. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating appellant was deemed to have abandoned issue for which he failed to provide any argument or supporting authority); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) (ruling that an issue is deemed abandoned if argument in appellate brief is only conclusory). Thus, this Court should affirm the trial court's grant of summary judgment as to those causes of action because it is the law of the case. *See First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance").

II. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF WALMART AS TO JACOBS' CAUSE OF ACTION FOR FALSE IMPRISONMENT BECAUSE HE FAILED TO PRESENT ANY GENUINE ISSUE OF MATERIAL FACT.

To the extent that Jacobs argues the trial court erred in granting summary judgment to Walmart as to his cause of action for false imprisonment, *see* App. Br. p. 3, Jacobs fails to identify any evidence in the record that raises a genuine issue of material fact as to two elements: (1) whether his arrest was lawful and (2) whether Walmart instigated his arrest. Thus, this Honorable Court must affirm the trial court's ruling as set forth more fully below.

False imprisonment consists of depriving a person of his or her liberty without lawful justification. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006). "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." *Id.* "The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest." *Id.* at 441, 629 S.E.2d at 651. "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise." *Id.* While "it is 'well settled that where a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment," 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).

In the present case, there is no dispute that the Florence Magistrate Court issued a facially valid warrant for Jacobs based upon the evidence presented by law enforcement through its independent investigation; thus, Jacobs does not have a viable claim in this matter for false arrest. *Carter v. Bryant*, 429 S.C. 298, 306, 838 S.E.2d 523, 528 (Ct. App. 2020) ("It has long been the law that one arrested pursuant to a facially valid warrant has no cause of action for false arrest."); *see also Cannon v. Haverty Furniture Co.*, 179 S.C. 1, 17-19, 183 S.E. 469, 476, 479-80 (1935); *Watkins v. Mobil Oil Corp.*, 281 S.C. 79, 80, 313 S.E.2d 641, 642 (Ct. App. 1984); *Manley v. Manley*, 291 S.C. 325, 330, 353 S.E.2d 312, 314 (Ct. App. 1987); *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 444, 853 S.E.2d 508, 510 (Ct. App 2020). Accordingly, this Court must affirm the trial court's grant of summary judgment in favor of Walmart.

Assuming, *arguendo*, that a facially valid warrant and the existence of probable cause does not end the analysis, which Walmart argues it does, the South Carolina Supreme Court has ruled that “[w]here a person merely directs the attention of a police officer to what he supposes to be a breach of the peace, 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, even though it is made without a warrant.” *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 527, 30 S.E.2d 307, 310 (1944). Additionally, “[w]here 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.” *Wingate*, 204 S.C. at 527, 30 S.E.2d at 310). “[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).

The South Carolina Supreme Court affirmed this precedent in *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 274, 826 S.E.2d 609, 615 (2019), holding that to find otherwise would risk chilling public cooperation with law enforcement investigations. Although an individual who acts in bad faith or knowingly reports incorrect information to law enforcement can be held liable for false imprisonment, the Supreme Court found 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. *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 274-275, 838 S.E.2d 523, 616 (2019); *see Reaves v.*

Westinghouse Elec. Corp., 683 F. Supp. 521, 525 (D. Md. 1988) ("The tort of false arrest is predicated upon knowing misconduct."); *Brice v. Nkaru*, 220 F.3d 233, 238 (4th Cir. 2000) ("[T]he critical question is whether the witness provided the police with his honest or good faith belief of the facts."). The Supreme Court found that "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 *Huffman*, 426 S.C. at 274-75, 838 S.E.2d at 616; 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 Ore. 769, 534 P.2d 188, 189 (Or. 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.").

In the present case, it is undisputed that Walmart did not report the theft to law enforcement, and the theft did not involve Walmart property. Walmart associates cooperated with law enforcement by providing surveillance video and still frames. *Id.* at 616-17; 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."). To the extent Jacobs asserts a genuine issue of material fact exists based upon Officer Oliver's testimony that certain Walmart employees stated that they believed the suspect in the surveillance video looked like a new employee with the store, such testimony is hearsay and not admissible for purposes of defeating summary judgment. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) ("Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in

evidence."); *id.* at 175-76, 561 S.E.2d at 657 (holding in a case involving the grant of summary judgment, the appellant's deposition testimony concerning what another individual told him constituted hearsay and was inadmissible to refute a motion for summary judgment); Rule 802, SCRE ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute."). Notwithstanding, Officer Oliver agreed with the Walmart associates when she later compared Facebook and DMV photographs that she procured during her independent investigation. Furthermore, her supervisor also agreed that Jacobs looked like the suspect in the surveillance video. Thus, there is no evidence in the record that Walmart associates were incorrect in their purported statements that the suspect looked like Jacobs.

However, to the extent that Walmart associated relayed incorrect information to Officer Oliver, there is no evidence to establish that such information was provided in bad faith. Indeed, the undisputed evidence in the record reflects that Officer Oliver did not believe Walmart associates knowingly provided her with incorrect information. Accordingly, it would be improper to subject Walmart to civil liability in this matter. *See Huffman*, 426 S.C. at 275-76, 826 S.E.2d at 616-17 (affirming the trial court's grant of summary judgment to defendant because there was nothing in the record that provided a reasonable inference that the defendant or its employees induced, caused, instigated, or procured the plaintiff's arrest simply by cooperating with law enforcement and relaying information that the defendant believed to be true at the time). Accordingly, this court should affirm the grant of summary judgment as to false arrest upon this additional, sustaining basis.

III. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF WALMART AS TO JACOBS' CLAIM OF NEGLIGENCE AND GROSS NEGLIGENCE BECAUSE HE FAILED TO PRESENT ANY GENUINE ISSUE OF MATERIALS FACT AS TO THOSE CAUSES OF ACTION.

Jacobs argues that there are genuine issues of material fact as to whether Walmart acted unreasonably in the identification of Mr. Jacobs as the person committing the theft. *See* App. Br.

5. Walmart disagrees as such a position has been categorically refused by the South Carolina Supreme Court.

In *Huffman*, the South Carolina Supreme Court explicitly declined the plaintiff's request to expand the duty of a witness in a criminal investigation to require the witness to investigate and analyze evidence in the same manner as law enforcement. *See Huffman*, 426 S.C. at 273-74, 826 S.E.2d at 615. The South Carolina Supreme Court ruled that "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." *Id.* at 274, 826 S.E.2d at 616 (citing *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 Ore. 769, 534 P.2d 188, 189 (Or. 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.")). In the present case, it is undisputed that McClellan reported the theft of her personal property, and the evidence in the record establishes Walmart and its associates simply cooperated in good faith with law enforcement during law enforcement's independent, criminal investigation. Indeed, Officer Oliver and her colleagues at the Florence Police Department, who have the resources and expertise to conduct criminal investigations, determined that the person shown in the surveillance video looked like Jacobs. Thus, Walmart did not breach any recognized duty to Jacobs and cannot be subjected to liability simply by cooperating

with law enforcement and relaying information that Walmart associates believed to be true at the time.

Moreover, law enforcement's independent 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 to defendant and explaining that because law enforcement conducted an independent investigation into the underlying crime and determined probable cause existed to arrest plaintiff, plaintiff could not establish that the defendant retailer caused his damages). Accordingly, the Court should affirm the trial court's grant of summary judgment in favor of Walmart as to Plaintiff's claim of negligence and gross negligence.

CONCLUSION

For the reasons set forth herein, Walmart respectfully request that this Honorable Court affirm the trial court's grant of summary judgment in favor of Walmart on all of Jacobs' causes of action and dismissal of Jacobs' Amended Complaint in its entirety.

Respectfully submitted,

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