

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 Meredith Huffman, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Sunshine Recycling, LLC and )  
 Aiken Electric Cooperative, Inc., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-38-672

**ORDER GRANTING SUMMARY JUDGMENT**

**RECEIVED**

JUL 11 2014

ATTEST: TRUE COPY

*Wynne B. Clark*

CLERK OF COURT

ORANGEBURG COUNTY, SC

**SC Court of Appeals**

This is an action by the plaintiff to recover damages against Aiken Electric Cooperative, Inc. ("Aiken Electric") and Sunshine Recycling, LLC ("Sunshine Recycling") for alleged negligence, false imprisonment and malicious prosecution arising out of her arrest for selling stolen goods. The action came before the Court on March 10, 2014 on Aiken Electric's motion to dismiss and Sunshine Recycling's motion for summary judgment. Aiken Electric's motion to dismiss was converted into a motion for summary judgment as permitted by Rule 12(b), SCRPC. I find that the defendants' motions for summary judgment should be granted for the reasons set forth below.

**BACKGROUND**

On May 16, 2010, a thief went onto Aiken Electric's property and stole some copper and other wire having a value of \$463.19. Aiken Electric had a video surveillance camera which showed the thief to be a black male. An Aiken Electric employee reported seeing a white pickup truck leaving Aiken Electric's property on the night of the theft. On the following day, Mark Goss, Aiken Electric's Loss Control and Safety Coordinator, began to check with metal recyclers to see whether the thief had tried to sell the copper

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and aluminum wire. When Mr. Goss went to Sunshine Recycling on May 17, 2010, he identified the copper and aluminum wire that had been stolen. Sunshine Recycling's owner, Joseph Rich, talked with his Hispanic employees who had unloaded the copper and aluminum wire. An employee told him, speaking in Spanish, that the plaintiff had brought the copper and aluminum wire in. Sunshine Recycling had a video camera system that recorded what happened when the copper and aluminum wire was dropped off but there was a problem with the camera and the video could not be viewed at the time.

This information was provided to the Orangeburg County Sheriff's Department. The Orangeburg County Sheriff's Department investigator, James Etheridge, did not interview the Hispanic employee or call for an interpreter to interview him. Investigator Etheridge did not wait to review the Sunshine Recycling video but instead contacted the plaintiff to come in. The plaintiff met with Investigator Etheridge and denied that she had sold stolen copper wire and aluminum. Notwithstanding, Investigator Etheridge proceeded to arrest her. The plaintiff spent the better part of the day at the Orangeburg County Jail being booked and bonded out. When the Sunshine Recycling video was available to review, Investigator Etheridge admitted that it showed that the plaintiff did not bring in the copper wire and aluminum that was stolen from Aiken Electric. Investigator Etheridge dropped the charges against the plaintiff. The plaintiff thereafter brought this action. The plaintiff settled her claim against the Orangeburg County Sheriff's Department. It is undisputed that the plaintiff was not involved in selling stolen goods.

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The plaintiff asserted that Aiken Electric is liable to her in damages because Aiken Electric told the investigator that the plaintiff was the person who had brought in and sold the stolen goods and because Mr. Goss pressured the investigator to arrest her. The plaintiff asserted that Sunshine Recycling was liable to her because Mr. Rich told the sheriff's investigator what the Hispanic employee reported to him and offered to testify as to what he had been told. Although this evidence was disputed, the Court has treated the plaintiff's claims as being true for purposes of the motions. I find that even if the plaintiff's claims were taken as true, the defendants are entitled to summary judgment for the reasons set forth below.

#### **STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admission on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). However, "[i]t is not sufficient [to defeat a motion for summary judgment] that one create an inference which is not reasonable or an issue of fact that is not genuine." *Shuler v. Tuomey Reg'l Med. Ctr.*, 313 S.C. 225, 437 S.E.2d 128, 129 (Ct. App. 1993). "In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial." *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (Ct. App. 1995).

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I.

**DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT  
AS TO PLAINTIFF'S NEGLIGENCE CAUSE OF ACTION**

To recover in a negligence action, the plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages. *Moore v. Weinberg*, 681 S.E.2d 875, 383 S.C. 583 (2007). The determination of the existence of a duty is solely the responsibility of the Court. Whether the law recognizes a particular duty is an issue of law to be decided by the Court. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003).

Although the plaintiff argued that a crime victim or a witness to a crime owes a legal duty to use due care in investigating the crime and in communicating information with law enforcement, the plaintiff presented no South Carolina appellate court opinion that imposed such a duty. Although South Carolina has not specifically addressed this issue, other jurisdictions have done so. Their opinions with the underlying reasoning are instructive. In *Lundberg v. Scoggins*, 335 N.W.2d 235 (1983), the defendant, who was the victim of a sexual assault, identified plaintiff as her attacker during a lineup. The plaintiff was arrested and placed in custody until it was determined that he could not have been the person who sexually assaulted the defendant. The plaintiff then brought an action against the defendant, alleging that she negligently accused and misidentified him as her attacker. The Supreme Court of Minnesota affirmed the trial court's dismissal of the complaint:

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“[O]ur decision is controlled by a well-established body of law relating to an analogous claim of malicious prosecution. This action has always been carefully circumscribed, and not favored in law, the reason being that ‘public policy favors prosecutions and affords such protection of another in good faith and on reasonable grounds as is essential to public justice.’ . . .

The public policy limiting malicious prosecution actions applies with especial force to actions which would make witnesses or victims liable for their negligence in assisting criminal investigations or prosecutions. Persons having knowledge of crimes, as a fundamental duty of citizenship, are encouraged, if not obligated, to report and assist in investigation and prosecution of these crimes. . . . A threat of an action, which does not include an element of maliciousness, would serve to further discourage citizen participation in criminal investigations and prosecutions.”

*Id.* at 235-26. Thus, the court held that a complaint of negligent accusation and misidentification of a criminal suspect does not state a claim upon which relief can be granted for longstanding public policy reasons. *Id.*

In *Pokorny v. First Federal Savings & Loan Association of Largo*, 382 So.2d 678 (Fla. 1980), the Florida Supreme Court stated:

“Florida courts have never recognized a separate tort for ‘negligently’ swearing out a warrant for arrest. Such cases may be brought only in the form of civil suits for malicious prosecution. . . . A plaintiff contending that he had been improperly arrested as a result of negligence in swearing out a warrant must bear the burden of establishing malice and want or probable cause. Mere negligence alone is insufficient.”

*See also, e.g., Reaves v. Westinghouse Electric Corp.*, 683 F.Supp. 521, 523 (D.Md.1988)

(“The tort of false arrest is predicated upon *knowing* misconduct . . . . Negligence or other mistake in providing incorrect information to lawful authorities does not give rise to liability.”) *See Ramsden v. Western Union*, 138 Cal.Rptr. 426, 431 (Ct. App. 1977) (no cause of action for negligently reporting a crime to the police); *Campbell v. City of San Antonio*, 43 F.3d 973, 981 (5<sup>th</sup> Cir. 1995), *overruled in part on other grounds by*

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*Swierkiewicz v. Sorema*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (1989) (“To hold ... that [defendant’s] negligent misidentification of [plaintiff] is actionable would in substance convert the Texas tort of *malicious* prosecution into one of *negligent* prosecution. This we decline to do.” (emphasis in original)).

In *Davis v. Equibank*, 603 A.2d 637 (Pa. 1992), a Pennsylvania court reached a similar conclusion:

“It is safe to say that Pennsylvania . . . certainly has an interest in effective law enforcement. We further recognize that the potential of civil liability for the provision of mistaken information to law enforcement agents would have a chilling effect on citizen cooperation and the provision of valuable information by citizens to police. Further, we are in agreement that the public interest in investigation of crime outweighs the recognition of a negligence action for negligent identification of a suspect. . . . Relying upon the weight of authority and weighing of policy considerations, we decline to recognize a cause of action for negligent identification of another as a perpetrator of a crime.”

In addition, imposition of such a duty of care would be inconsistent to the rights and duties of a crime victim and a witness to a crime under S.C. Code Ann. Section 16-3-1505 *et.seq.* Section 16-3-1505 states that the crime victims and witnesses to a crime have a civic and moral duty to cooperate fully and voluntarily with law enforcement. Nothing in the Act suggests that a victim cannot press law enforcement to proceed with an arrest. Law enforcement, not the crime victim and witnesses to a crime, has the duty to investigate a crime and to decide whether and when to seek a warrant.

If a crime victim or a witness to a crime can be sued in negligence for reporting to law enforcement whatever information the victim or a witness to a crime had, such would discourage them from discharging their civil and moral duty which is to cooperate with law enforcement. Accordingly, I find that the defendants are entitled to summary judgment on the negligence cause of action.

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## II.

### SUMMARY JUDGMENT MUST BE GRANTED AS TO THE CAUSE OF ACTION FOR FALSE IMPRISONMENT

Summary judgment should be granted on the claim for false imprisonment since the defendants did not imprison the plaintiff.

False imprisonment is the deprivation of one's liberty without justification. *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 710 S.E.2d 67 (2011). In order to establish a cause of action for false imprisonment, the evidence must prove: (1) that the defendant restrained the plaintiff; (2) that the restraint was intentional; and (3) that the restraint was unlawful. *Id.* False imprisonment is an intentional tort; negligence is not an element. *Gist v. Berkeley County Sheriff's Dep't.*, 336 S.C. 611, 619, 521 S.E.2d 163, 166 (Ct. App. 1999). Although the tort of false imprisonment is not limited to physical interference with a plaintiff's liberty, a plaintiff must demonstrate that she submitted to apprehension of force reasonably to be understood from the defendant's conduct, although no force is used and there is no threat of imminent use of force. *See Zimbelman v. Savage*, 745 F.Supp.2d 664 (D.S.C. 2010); *see also* 8 S.C. Jur.False Imprisonment A§7.

Quite simply, plaintiff has failed to produce any evidence that defendants deprived her of her liberty in any way. There has been no evidence produced that defendants physically restrained plaintiff or by their words or conduct, constructively restrained plaintiff. Since the plaintiff has failed to prove even a scintilla of evidence that would support her claim of false imprisonment, the defendants are entitled to summary judgment as a matter of law on the claim for false imprisonment.

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### III.

#### SUMMARY JUDGMENT MUST BE GRANTED AS TO THE PLAINTIFF'S CLAIM FOR MALICIOUS PROSECUTION

In order to recover in an action for malicious prosecution, the plaintiff must prove: (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by or at the incidence of the defendant; (3) termination of such proceedings in plaintiff's failure; (4) defendant's malice in instituting the proceeding; (5) lack of probable cause for the proceeding; and (6) resulting injury or damage. An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of evidence. *Law v. S.C. Dep't of Corrections*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006). Malice is defined as "the deliberate intentional doing of an act without just cause of excuse." *Id.* at 437, 629 S.E.2d at 649. Malice can also be inferred from lack of probable cause. *Id.* Probable cause

is meant the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged with guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.

*Parrott v. Plowden Motor Co.*, 246 S.C. 318, 322, 143 S.E.2d 607, 609 (1965). Thus, in an action for malicious prosecution, a defendant must be absolved from liability if plaintiff fails to show the prosecution was instituted maliciously and without probable cause.

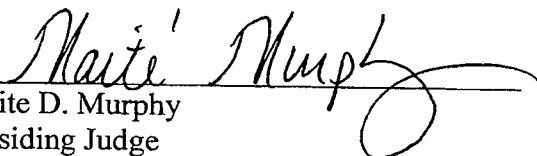
Plaintiff's cause of action against defendants for malicious prosecution fails because there is no evidence that the proceedings against her were initiated by the defendants maliciously and without probable cause. Here, the defendants assisted and

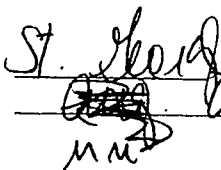
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cooperated with an investigation. They did not institute the investigation or prosecution, nor did they assist with malice. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes. Once the Hispanic employee reported that the plaintiff was the person who brought the stolen goods in for sale, that information would cause a reasonable person to believe that the plaintiff was guilty of the crime charged. In an action for malicious prosecution, a defendant must be absolved from liability unless the plaintiff shows that the prosecution was instituted maliciously. Here, the defendants cooperated with law enforcement and discharged their civic and moral duty to cooperate fully and voluntarily with law enforcement. The Orangeburg County Sheriff's Department, not the defendants, made the decision to take out a warrant and have the plaintiff arrested. There is no evidence that the defendants acted maliciously in connection with the plaintiff's arrest or acted without probable cause. Furthermore, the plaintiff has failed to identify genuine issues of material facts related to the elements of malicious prosecution. I find that there are no genuine issues of material fact and the judgment should be entered in favor of the defendants. Therefore, the defendants are entitled to summary judgment on the plaintiff's cause of action for malicious prosecution. Accordingly,

IT IS ORDERED that judgment is hereby granted in favor of Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc.

AND IT IS SO ORDERED.

  
Maite D. Murphy  
Presiding Judge

 South Carolina  
~~April 3~~ April 3, 2014  
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STATE OF SOUTH CAROLINA )  
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COUNTY OF ORANGEBURG )  
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Plaintiff, )  
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IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT  
CASE NO: 2012-CP-38-672

**ORDER**

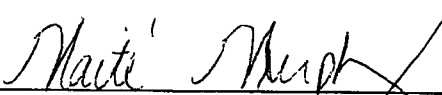
This matter came before this Court by way of Plaintiff's Motion to Alter or Amend the Order Granting Summary Judgment in the above referenced case. The Court reviewed the record, as well as supporting memoranda. Oral argument would not assist the Court in ruling on this motion.

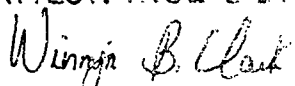
Because the Plaintiff's Motion does not raise any novel issues for the Court's consideration, the Plaintiff's Motion for Relief from Judgment is **DENIED**.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

That Plaintiff's Motion To Alter or Amend this Court's Order granting Defendants Motion for Summary Judgment be, and the same hereby is, **DENIED**.

**AND IT IS SO ORDERED** this 16 day of June, 2014, at St. George, South Carolina.

  
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The Honorable Maité Murphy  
Circuit Judge, At-Large Seat # 15

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CLERK OF COURT  
ORANGEBURG COUNTY, SC