

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

Meredith Huffman Appellant

vs.

Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc. Respondents

**INITIAL BRIEF OF RESPONDENT
AIKEN ELECTRIC COOPERATIVE, INC.**

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SC Court of Appeals

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STATEMENT OF THE CASE

The Appellant commenced this action against Orangeburg County Sheriff's Department ("Sheriff's Department") and Sunshine Recycling, LLC ("Sunshine") on May 9, 2012. In her complaint, the Appellant alleged causes of action for negligence, false imprisonment and malicious prosecution arising out of her arrest on June 2, 2010 on an arrest warrant obtained by the Sheriff's Department.

On or about May 24, 2013, the Appellant amended her complaint and joined Aiken Electric Cooperative, Inc. ("Aiken Electric") as a party defendant. Rather than answer, Aiken Electric filed a motion to dismiss supported by an affidavit. Aiken Electric's motion was filed on or about June 27, 2013. On or about June 30, 2013, Sunshine moved for summary judgment. The Appellant settled her claims against the Sheriff's Department and dismissed her action against the Sheriff's Department on or about December 18, 2013. The Respondent's motions were heard by the Honorable Maite D. Murphy on March 10, 2014. Aiken Electric's motion to dismiss was treated as a motion for summary judgment. Judge Murphy granted both motions by an Order dated April 3, 2014. The Appellant filed her Notice of Appeal on July 11, 2014. The Appellant filed a timely motion for reconsideration, which was denied by an Order dated June 16, 2014.

FACTUAL BACKGROUND¹

On May 16, 2010, a thief went onto Aiken Electric's property and stole some copper wire and aluminum wire having a value of \$463.19. (Goss Affidavit, ¶1) Aiken Electric had a video surveillance camera which showed the thief to be a black male. (Goss Affidavit ¶2, Exhibit C) An

1. The Appellant, in an apparent effort to create a genuine issue of material fact, has repeatedly misstated and/or misquoted the record. Aiken Electric therefore provides a more detailed factual background than would ordinarily be provided.

Aiken Electric employee reported seeing a white pickup truck leaving Aiken Electric's property on the night of the theft. (Goss Affidavit, Exhibit D) According to Mr. Goss, Mr. Rushton, Aiken Electric's office manager, met with a Sheriff's deputy who responded to the report of the theft.

"A I got dressed, got in the car and started heading that way. I contacted the manager of that office, Charles Rushton. He was getting dressed, heading that way, because he can get there before I do. The dispatch actually got on the phone with the sheriff's office and by the time that I got there, the person had already left, had already gotten away, and the sheriff's office was there, but the person was already gone." (Goss Depo. p.32, lines 14-21)

Deputy Huggins completed the initial report dated May 16, 2010 which showed Charles Rushton as the complainant and the suspect unknown. The initial report stated:

"On 5-16-10 this deputy responded to the above incident type. Upon arrival I spoke to the complainant (Charles Rushton) and he stated that the security camera showed a unknown subject on the premise at the incident location. This unit conducted a security check of the incident location and did not locate the subject. Complainant stated that it is unknown if any items were taken." (Goss Affidavit, Exhibit B)

On May 17, 2010, 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 and aluminum wire.

"I became involved in the matter on May 17, 2010. When Aiken Electric suffers a theft loss of this nature, I normally check with the metal recyclers in the area to see whether the thief has tried to sell the copper and aluminum. When I went to Sunshine Recycling, LLC on May 17, 2010, I saw the goods which had been stolen from Aiken Electric and sold to Sunshine Recycling, LLC. I had been told that the surveillance camera had filmed a black male in the Aiken Electric building but I had not actually seen the video and I did not have a copy." (Goss Affidavit, ¶4)

Mr. Goss also spoke with Sunshine Recycling's owner, Joseph Rich ("Joe"). According to Mr. Goss, Joe told him that he had talked with his Hispanic employees who had unloaded the copper wire and aluminum wire. A Hispanic employee, speaking in Spanish, told Joe that the Appellant was the person who brought in the copper wire and aluminum wire. (Goss Affidavit, ¶5) According to Mr. Goss, Joe

reported this to the Sheriff's deputy.

Mr. Goss testified that he did not know who was responsible for the theft when he went to Sunshine Recycling on May 17, 2010. He testified:

“Q Okay. And looking at Exhibit E, at this point, on May the 17th, 2010, it lists the subject as unknown, correct?

A Yes, sir.

Q And at this date you didn't know who was the – who was responsible for this theft, did you?

A No, sir.” (Goss Dep. p. 43, line 12 to line 18)

Mr. Goss testified as follows:

“Q What did you tell Joe when you saw him?

A I told Joe that we had a theft that night, that to the best of my knowledge we had a white Ford pickup leaving there with a black male in it and that's what we were looking for, to see if we had anyone come through there like that.

Q You told him the best of your knowledge a white Ford pickup truck –

A And we had --

Q --possibly a black male?

A We had a black male on video – because we reviewed the video that morning, so we were looking for a black male.

Q And at the time that you saw Office Huggins on 5-17-2010, did you tell him that you saw the video and the video showed a black male?

A Yes, sir. If my memory serves me correct, we were looking for a black male and I told him about the video, too, because the white Ford pickup in E, in the Incident Report for E

Q Yes, isr.

A -- that's what I told him about the white Ford pickup, that we actually had an employee that saw the suspect leaving and that we had the video, Because he didn't were a mask or anything. This guy came up under there with nothing on.

Q So you talked to Joe. You said we had a theft last night and he takes you to the back?

A Uh-huh.

Q Where is the back? Describe where that location is.

A They have different places where different items are dropped off and in the back they have got a warehouse-type building back there that people can drive their cars and trucks through and unload the items that they have for copper and aluminum, and different things like that back there, that type of metal. It's got, if I'm not mistaken, another place for cars and appliances and things like that. He's got video back there for all of that stuff right there.” (Goss depo. p.46, line 4 to p.47, line 17)

Mr. Goss testified as follows:

“Q Okay. You saw Joe Rich. He took you to the back. Keep going.

A When we got to the back, the aluminum and the copper were there. Joe spoke to some of the employees back there in the back in Spanish. He speaks outstanding Spanish. And when we came back and was leaving out, he said that one of his employees there had stated that a lady had dropped off all the copper and all that.

Q So he’s telling you what he was told in Spanish by a Spanish-speaking employee?

A Yes, sir.” (Goss depo. p. 48, line 2 to line 12)

Mr. Goss testified as follows:

“Q The name Meredith Huffman is on this document, correct?

A Yes, sir.

Q And she’s marked as the suspect, isn’t she?

A Yes, sir.

Q How did she become the suspect?

A When we went back there where the copper was at, when Joe talked to the employee there in Spanish, he told me that the lady that had come in beforehand was the one that dropped it off. That’s how they got her name right there to go there. Because they went up to the video, up to the window there, and it was only like two people had come in so far that morning. I was there right away when they opened up. It wasn’t very many people that had come through. So the employee in the back that accepted the copper said that a lady had come up there and dropped it all off.

Q Okay. But the information that you gave Orangeburg County Sheriff’s Department linked up the samples that you apparently had with you to the metal that she had brought in, correct?

A That was brought in.

Q That was brought in.

A Yes, sir. I have no way of knowing who brings what in. All I did was verify that the metal there matched the metal that I was looking for. At that time, my video showed a black male in there, but in the metal industry, it’s not uncommon for girlfriends and wives to bring metal in and drop them off. It happens all the time.” (Goss depo. p. 55, line 18 to p.56, line 21)

Mr. Goss testified as follows:

“Q And in order to determine that Meredith Huffman was the suspect, listed as suspect one on the second page of Exhibit E, they obtained her name and the fact that she was a suspect, from information you provided, correct?

A No, sir.

MR. JOHNSON: Object --

Q Okay. What information did they get to link Meredith Huffman up as a suspect to this crime?

A The only information that Meredith Huffman had given to anyone was to Sunshine Recycling. I had no way of getting any information about anyone. My subject at that time was unknown and a black male, that's what I had video to show and that's what I had a witness that saw that night. So when the employee in the back told Joe that the lady that had just drove through dropped all of that off, that's when Ms. Huffman became a suspect.

Q Okay. So you are saying that it's evidence or information -- I say information. It was information from Sunshine Recycling that made Orangeburg County Sheriff's Department determine that Meredith Huffman was a suspect?

MS. WALKER: Object to the form.

A The only way that her name is obtainable is through Sunshine Recycling on the stuff that she gave them and they signed -- they keep great records there, okay, so that's -- I mean, I have no way of having a name or a number, but, you know --" (Goss depo. p.60, line 2 to p.61, line 4)

Sunshine Recycling had a video camera system that recorded what happened in the area where the copper and aluminum wire were dropped off. On May 17, 2010, Joe instructed Alan Price of Palmetto Security Camera to make a copy of the video for the Sheriff's deputy. Joe testified as follows:

"Q Did you ever provide the Orangeburg County Sheriff's Department with a copy of -- of video footage from May 17th, 2010?

A Yes, sir. We did

Q When did you provide that information?

A I don't know when Alan recorded it or when he burned it off of the DVR.

Q Now, who's Alan?

A Alan Price.

Q Who is Alan Price with?

A Palmetto Security Cameras. They're located here in Orangeburg. He actually does a pretty good bit of work for the sheriff's department. So he's one of their trusted sources for video or whatever else. I believe we notified him that day, which is, you know, policy with regards to, you know, sheriff's office needing video, that they were going to need the video. And when he could, to go ahead and burn them a copy of the video.

Q Did you provide Orangeburg County Sheriff's Department with a copy of the ticket that showed Meredith Huffman's name and receipt?

A Yes, sir." (Rich Depo. p.30, line 25 to p.31, line 22)

Deputy Huggins completed a supplemental report dated 5/17/10 which stated:

“On 5-17-10 this deputy spoke to the above complainant (Mark Goss) in reference to Case #2010005803. Complainant stated that an unknown subject stole the following items from the incident location. (1) 60ft cooper, (2) #6 cooper, (1) roll of aluminum. Estimated value of items taken are \$330.00. Complainant stated that a white ford F-150 was seen on the security camera at the incident location. This incident type has been changed to burglary.” (Goss Affidavit, Exhibit E)

Deputy Aldridge completed a supplemental report dated 5/17/10 which stated:

“This unit met with Joseph Rich, owner of Sunshine Recycling, in reference to the subject bringing in metal that had been identified as stolen from the victim. This unit met with Mark Goss of Aiken Electric verify that the metals at Sunshine matched samples that he had brought. This unit observed the subject on video at the payment window, and this unit was also provided with a copy of the receipt. Mr. Rich advised that he would provide OCSO with a copy of the video. The subject was driving a black dodge pickup truck SC Tag: AFB106. This unit will forward this to R/O Dep. Huggins.” (Goss Affidavit, Exhibit E)

Deputy Ethridge, who took over the investigation, did not interview the Hispanic employee or call for an interpreter to interview him. (Ethridge 2nd Depo. p.25, lines 6-22) He did not study the Appellant’s sales receipt and compare it to the stolen goods. Deputy Ethridge did not wait to review the Sunshine Recycling video. Instead he contacted the Appellant to come in. (Ethridge 2nd Depo. p.26, lines 15-24, p.29, lines 9-21) The Appellant met with Deputy Ethridge and denied that she had sold stolen copper wire and aluminum. (Ethridge 2nd Depo. p.29, line 24 to p.30, line 19) The Appellant brought in examples of the metal sheating she had sold to Sunshine. (Ethridge 2nd Depo. p.30, lines 16-19) Notwithstanding, Deputy Ethridge proceeded to arrest her. The Appellant spent the better part of the day at the Orangeburg County Jail being booked and bonded out. (Ethridge 2nd Depo. p.30, lines 20-21) When the Sunshine Recycling video was available to review, Deputy Ethridge admitted that it showed that the Appellant did not bring in the copper wire and aluminum that was stolen from Aiken Electric. Deputy Ethridge dropped the charges against the Appellant. (Ethridge Depo. p.34, line 24 to p.36, line 9)

Mr. Goss never identified the Appellant as a suspect. Mr. Goss testified:

“Q Let me slow it down and break it up for you. Orangeburg County Sheriff’s Department determined that Meredith Huffman was a suspect, correct?

A Yes, sir.

Q And they determined that on the 17 of May 20109, correct?

A Yes, sir.

Q And in order to determine that Meredith Huffman was the suspect, listed as suspect one on the second page of Exhibit E, they obtained her name and the fact that she was a suspect, from information you provided, correct?

A No, sir.

MR. JOHNSON: Object –

Q Okay. What information did they get to link Meredith Huffman up as a suspect to this crime?

A The only information that Meredith Huffman had given to anyone was to Sunshine Recycling. I had no way of getting any information about anyone. My subject at that time was unknown and a black male, that’s what I had video to show and that’s what I had a witness that saw that night. So when the employee in the back told Joe that the lady that had just drove through dropped all of that off, that’s when Ms. Huffman became the suspect.” (Goss Depo. p.59, line 20 to p.60, line 18)

APPELLANT’S INCORRECT FACTUAL STATEMENTS AND REFERENCES TO THE RECORD

The Appellant’s Initial Brief states many incorrect factual statements. The Appellant’s Initial Brief contains references to the record do not support the incorrect factual statements. This has occurred repeatedly in Appellant’s Initial Brief. Misstated facts and incorrect references to the record cannot be used to create a genuine issue of material facts and to defeat a motion for summary judgment.

Aiken Electric calls the Court’s attention to the following:

(1) On pages 2-3 of the brief, the Appellant has stated that Mr. Goss identified a metal that the Appellant brought in as stolen from Aiken Electric. This is a misstatement of the record. Mr. Goss did not identify the metal that the Appellant brought in as being stolen or connected to her to the theft. He merely identified the metal as being from Aiken Electric. (See Goss Depo. P.55, line 18 to p.56,

line 21 quoted above)

(2) On page 3 of the brief, the Appellant states that “from the video, Mr. Goss and Mr. Rich identified the Appellant as the person who sold the stolen metal from Aiken Electric to Sunshine”. This is an incorrect statement. Mr. Goss did not identify the Appellant as the person who sold the stolen metal to Sunshine. See Goss Depo. P.60, line 2 to p.61, line 4 quoted above. Joe did not identify the Appellant as the person who sold the stolen metal to Sunshine. See Rich Depo. p.33, lines 16 – 24 quoted above. According to Mr. Goss, Joe reported that a Hispanic employee had told him that the Appellant was the person who sold the stolen metal.

(3) On page 3, the Appellant’s brief states:

“Additionally, Mr. Goss told the officers that he “actually spoke and carried on a conversation with Huffman while she as waiting to get paid for the items that she had just brought in...[and] viewed the items after she left and identified them as being [from Aiken Electric]”

The reference to page 19 of the second Ethridge deposition does not support this purported factual statement. In fact this yet another misstatement. Deponent Ethridge, on his second deposition on page 19, actually testified:

“Q And did he tell you anything more than he just had a casual conversation with her?

A More or less that he had spoken to her. He had actually saw her there and spoken to her.

Q Do you know what – but at that point, did he – was there any indication that she was the person who was selling the stolen items? I mean, did Mark Goss say I spoke to Ms. Huffman?

A No, I – when he spoke to her, I don’t think, he had knowledge that she was the individual that possibly had taken the metal in.” (Ethridge 2nd Depo. p.19, lines 11-22)

(4) On page 3 of the brief, the Appellant states as follows:

“An employee of Aiken Electric, Charles Rushton, also told the Sheriff’s Department that ‘Mark Goss ha[d] the identity of the woman who sold the wire,’ referring again to Huffman.”

This is a misstatement. No reference is made to this record to support the statement.

(5) On page 3 of the brief, the Appellant states the following:

“Officer Aldridge testified that Sunshine Recycling and Aiken Electric expressed a great ‘sense of urgency’ to arrest Huffman.”

This is a mischaracterization of the record. Mr. Aldridge testified:

“Q You testified that Mr. Goss of Aiken Electric imposed a sense of urgency regarding this case; is that correct?

A That’s correct.

Q Is it – well, explain what you meant by that.

A He just – I’m trying to think of the best way to word this.

When I spoke with Mr. Goss, he expressed to me that he wanted the sheriff’s office to help him conclude this case, probably a little more so than normal. However, it’s not uncommon for someone to be antsy when their job is to recover stolen property.

Now he did say that he’s been trying to work with the sheriff’s office to get this problem resolved as soon as he possibly could.

Q Okay. I guess it’s fair to say he was eager to see that the sheriff’s department arrest someone for this alleged crime; is that correct?

MR. JOHNSON: Object to the form

THE WITNESS: Yes.” (Aldridge depo. p. 56, lines 3 to 24)

(6) On pages 3-4 of the brief, the Appellant states that all Sunshine Recycling and Aiken Electric had to do was to review the video surveillance. Neither had any duty to review it. Judge Murphy granted summary judgment on the negligence claim. Furthermore, the record confirms that Mr. Goss reviewed it. After he reviewed it, he contacted the Sheriff’s Department to report that the Appellant was not the person who brought the stolen goods to Sunshine. (See Goss Depo. p.67, line 1 to p.68, line 1)

(7) On page 4 of the brief, the Appellant has stated the following:

“Based upon accusations of Sunshine Recycling and Aiken Electric, on May 21, 2010, the Sheriff’s Department issued an arrest warrant of Huffman for receiving stolen goods in violation of S.C. Code Ann. 16-13-180. (Ethridge Depo. p.27-28).”

However, Deponent Ethridge testified that it was his responsibility to decide whether or when to seek an arrest warrant.

“Q And as the law enforcement representative with the sheriff’s department, are you the person who is responsible, in this case, for deciding if and whether a warrant would be sought?

MR. GOINGS: Object to the form of the question.

You can answer it.

THE WITNESS: Yeah, I had the final say so whether to go speak with the judge and seeing if we had enough probable cause, yes.

BY MR. JOHNSON:

Q Who is the person, in this case, who had the responsibility for making the decision as to whether to seek a warrant or not?

A I did.” (See Ethridge Depo. p.44, line 20 to p.45, line 8)

(8) On page 5, the Appellant’s Initial Brief states:

“Officer Ethridge’s report stated, “*At this time I am not comfortable with this case due to the witnesses gave [sic] me false information the first time.*” (Offense Report p. 2’ Ethridge Dep. P. 38-39). (emphasis added).” This misstates the record. On deposition, Deputy Ethridge testified:

“Q -- due to the witnesses gave false information the first time. Did Mark Goss give you any false information?

A He was more – no. I mean, he – what he was giving was being relayed from what was at Sunshine. I mean, he – I mean, everything he had given me I would say, you know – because he knew what was taken and all this stuff. I mean, he –

Q He gave you the details on what was taken?

A Correct. I mean – no. I mean, I’m not saying that he -- I would say the only -- the only false information that we’re speaking of is mainly what the individual in the back had –

Q Told.

A --had said that she was the only that actually had brought the metal in, and the video doesn’t show that.

Q Right. And does that—

A I’m not saying anybody lied, or I’m not trying –

Q Right.

A -- I’m just saying what they observed is not the same thing –

Q That the video –

A -- that’s on the video, and the video – if the video supported what they said, we would have been fine.

Q All right. Now let me ask you this, specifically.

A Okay.

Q You learned what the employees of Sunshine said through what Mr. Rich told you, correct?

- A Correct.
Q Not from anything Mr. Goss told you?
A No. It was coming from Mr. Rich.
Q And is it correct that Mr. Goss did not give you any false information?

MR. GOINGS: Object to the form of the question
You can answer it.

THE WITNESS: I mean, besides – I mean what – it’s according to what you’re going to say false, because if he was to tell me that Joel Rich’s people said that that – I mean, you see what I’m saying? I mean, I don’t recall him directly giving me anything that was more or less – I mean, what he – what took place at Aiken Electric – I mean, everything he told me, all that was true. I mean someone had –

BY MR. JOHNSON:

- Q Right.
A -- taken everything, to our knowledge, so. (Ethridge Depo, p. 38, line 6 to p. 40, line 1)

I.

SUMMARY JUDGMENT ON THE NEGLIGENCE CAUSE OF ACTION HAS NOT BEEN APPEALED BY THE APPELLANT AND IS THE LAW OF THE CASE

The circuit court judge granted the Respondents’ motion for summary judgment on the Appellant’s cause of action for negligence. The Appellant has not appealed that ruling. An unappealed ruling, right or wrong, is the law of the case. *Georgetown Cnty League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 357, 713 S.E.2d 287, 291 (2011); *see also Warren v. Yarborough* 2012-UP-401, 2012 WL 10860503 (S.C. Ct. App. July 11, 2012) (the probate court order dated November 20, 2007, wherein the court found Appellant had breached his duty as Trustee was not appealed by Appellant. Thus, the findings of the probate court are the law of the case.). Thus, the ruling on the negligence cause of action and the findings upon which it is based are the law of the case.

II.

THE CIRCUIT COURT JUDGE CORRECTLY GRANTED SUMMARY JUDGMENT ON THE CAUSE OF ACTION FOR FALSE

IMPRISONMENT SINCE THE PLAINTIFF HAD FAILED TO OFFER EVEN A SCINTILLA OF EVIDENCE THAT AIKEN ELECTRIC PHYSICALLY RESTRAINED THE APPELLANT OR BY ITS WORDS OR CONDUCT CONSTRUCTIVELY RESTRAINED HER.

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. An action for false imprisonment cannot be maintained where the Appellant was arrested by lawful authority. *Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (1987).

Quite simply, Appellant has failed to produce any evidence that Aiken Electric deprived her of her liberty in any way. No evidence was produced that Aiken Electric physically restrained Appellant or by its words or conduct, constructively restrained Appellant. Since Appellant has failed to offer even a scintilla of evidence that would support her claim of false imprisonment, Aiken Electric is entitled to summary judgment as a matter of law on the claim for false imprisonment.

The Appellant has argued that the circuit court judge ignored a well established principle that a private person can be liable for the tort of false arrest even if the police effectuated the arrest, citing

Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944). However, the later *Manley* decision makes it clear that false imprisonment cannot be maintained where the person is arrested by lawful authority.

Other language from the *Wingate* case is relevant here. In *Wingate*, the court said:

“If respondent was arrested by the police officers on their own volition, neither the messenger boy nor his employer could be held liable. Where 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. See annotation in Annotated Cases, 1917-E., at page 404. 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. As said in *Burton v. McNeil*, 196 S.C. 250, 13 S.E.2d 10, 11, 133 A.L.R., 603. ‘Those who honestly seek the enforcement of the law *** and who are supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages. At page ___ of 30 S.E.2d.

Here, Aiken Electric provided factual information to the Sheriff’s Department and honestly sought enforcement of the law *** and the circumstances were sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged. Such persons or entities should not be made unduly apprehensive that they will be held answerable in damages. After all, there was a Hispanic eyewitness who identified the Appellant.

In the South Carolina victims of crime have certain rights guaranteed by the South Carolina Constitution and by statute. Act 1 §24 of the South Carolina Constitution provides for the “Victim’s Bill of Rights. Act 1 §24(1) provides protection of victims, who are to be “free from intimidation, harassment or abuse”. S.C. Code Ann. §16-3-1505 which outlines the legislative intent of the statutes

regarding victim's rights, and recognizes "the civil and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecuting agencies [recognizes] the importance of the citizen cooperation to state and local law enforcement efforts"

The Circuit Court Judge, in ruling on the negligence claim, ruled:

"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."

This is now the law of the case.

Here, Mr. Goss, who had not seen the second video, never directed the deputy to arrest the Appellant. Sunshine's owner merely told the deputies that which was told to him by his Hispanic employee. The deputy who obtained the warrant, Deputy Ethridge testified as follows:

"Q And as the law enforcement representative with the sheriff's department, are you the person who is responsible, in this case, for deciding if and whether a warrant would be sought?

MR. GOINGS: Object to the form of the question. You can answer it.

THE WITNESS: Yeah, I had the final say so whether to go speak with the judge and seeing if we had enough probable cause, yes.

BY MR. JOHNSON:

Q: Who is the person, in this case, who had the responsibility for making the decision as to whether to seek a warrant or not?

A I did." (Ethridge 2nd Depo. p.44, line 20 to p.45, line 8)

Aiken Electric did not arrest the Appellant. She was arrested as a result of the arrest warrant taken out by Deputy Ethridge. Aiken Electric's Mr. Goss merely cooperated and provided the information he had. Summary judgment should be affirmed.

III.

THIS COURT WHICH CAN AFFIRM BASED UPON ANY GROUND APPEARING IN THE RECORD SHOULD FIND THAT THE APPELLANT'S CLAIM FOR FALSE IMPRISONMENT IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS.

Rule 220(c), SCACR, provides that the appellate court “may affirm any ruling, order, decision or judgment upon ground(s) appearing in the Record on Appeal”. Here, the alleged false imprisonment occurred on or about June 2, 2010. (Amended Complaint ¶6) The Amended Summons and Complaint which joined Aiken Electric to the action as a party defendant was not filed until on or about May 24, 2013. The statute of limitations for an action for false imprisonment is two years and ran on June 2, 2012. S.C. Code Ann. §15-3-550(1).

This Court should find that the Appellant’s claim for false imprisonment is barred by the two year statute of limitations and affirm judgment in favor of Aiken Electric on the claim for false imprisonment.

IV.

THE CIRCUIT COURT JUDGE, IN GRANTING SUMMARY JUDGMENT ON THE CLAIM FOR MALICIOUS PROSECUTION, CORRECTLY FOUND THAT THE APPELLANT HAD FAILED TO PROVE THE ABSENCE OF MALICE AND THE PRESENCE OF PROBABLE CAUSE.

The elements of malicious prosecution are (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. *McBride v. Sch. Dist. Of Greenville Cnty.*, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2002). An action for malicious prosecution fails if the plaintiff cannot prove each of the

required elements by a preponderance of the 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 or 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 was 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 the plaintiff fails to show the prosecution was instituted maliciously and without probable cause. Finally, “[i]t is in the interest of good order that criminals be brought to justice, and malicious prosecution actions are not encouraged.” *Elletson v. Dixie Home Stores*, 231 S.C. 565, 571, 99 S.E.2d 384, 387 (1957).

In dismissing the malicious prosecution claim, the circuit court judge found the following:

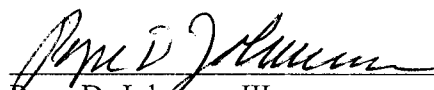
“Plaintiff’s cause of action against defendants for malicious prosecution fails because there is no evidence that the proceedings against her were initiated by the defendants maliciously and without probable cause. Here, the defendants assisted and cooperated with an investigation. They did not institute 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.”

There is no evidence that Aiken Electric acted with malice and it is more than ludicrous to argue to the contrary. This theft involved only \$463.19. The wire was recovered within a day or two of the theft. Aiken Electric and its Mr. Goss did not even know the Appellant to act maliciously towards her. Probable cause was established by the Hispanic employee who told Joe that the Appellant brought the copper and aluminum wire in. Surely having an eyewitness satisfies probable cause. Summary judgment on the malicious prosecution claim should be affirmed.

CONCLUSION

Unfortunately the Appellant, an innocent person, was arrested. The Sheriff's Department could have or should have figured it out prior to obtaining a warrant for Appellant's arrest. The Appellant's receipt could have been compared to the list of stolen items. The Hispanic employee could have been interviewed by the Sheriff's Department's investigator. The video of the items being unloaded at Sunshine Recycling could have been reviewed by the Sheriff's Department. The Sheriff's Department had the duty and responsibility to do these things, not Aiken Electric. All Aiken Electric did was discharge its "civil and moral duty *** to cooperate fully and voluntarily with law enforcement". Aiken Electric, like the Appellant, is innocent in this matter. To hold otherwise would intimidate Aiken Electric and other victims from discharging their "civil and moral" duty to cooperate with law enforcement and would violate their constitutional right "to be free from intimidation, harassment, or abuse". The Order of Judge Murphy should be affirmed.


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**Attorney for Respondent Aiken Electric
Cooperative, Inc.**

Columbia, South Carolina
November 19, 2014

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2014-001492

Meredith Huffman,Appellant

vs.

Sunshine Recycling, LLC and Aiken Electric Cooperative, Inc.Respondents

PROOF OF SERVICE

I, Susan J. Mondello, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Robert F. Goings and J. Todd Rutherford, attorneys for Appellant, and Breon C. M. Walker, attorney for Respondent Sunshine Recycling, LLC, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses this 19th day of November, 2014.

COUNSEL SERVED:

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Goings Law Firm, LLC
P.O. Box 436
Columbia, SC 29202

J. Todd Rutherford, Esquire
The Rutherford Law Firm, LLC
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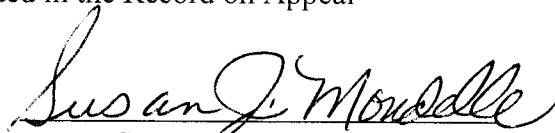
SC Court of Appeals

Breon C. M. Walker, Esquire
Gallivan White & Boyd, P.A.
P.O. Box 7368
Columbia, SC 29202

PLEADINGS:

Initial Brief of Respondent Aiken Electric Cooperative, Inc.

Aiken Electric's Designation of Matter to be Included in the Record on Appeal


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November 19, 2014

(Via Hand Delivery)

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

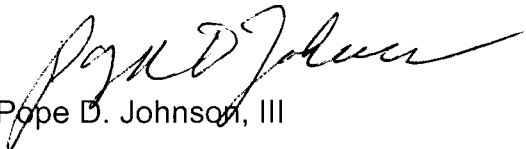
Re: Meredith Huffman v. Sunshine Recycling, LLC and Aiken Electric
Cooperative, Inc.
Appellate Case No. 2014-001492

Dear Ms. Kitchings:

Enclosed herewith are the original and one copy of Respondent Aiken Electric Cooperative, Inc.'s Initial Brief and Designation of Matter regarding the above-referenced action. Please file the original Motion and clock and return the additional copy to me.

With a copy of this letter to Robert F. Goings, attorney for the Appellant, and Breon C. M. Walker, attorney for Respondent Sunshine Recycling, LLC, I am serving a copy of the Motion upon them.

Sincerely,



Pope D. Johnson, III

PDJIII/sjm
Enclosures

cc: Robert F. Goings, Esquire
Breon C. M. Walker, Esquire
J. Todd Rutherford, Esquire

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NOV 19 2014
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