

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

ECBIV

NOV 19 2014

Court of Appeals

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman, .....Appellant

v.

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

RESPONDENT SUNSHINE RECYCLING, LLC'S INITIAL BRIEF

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## **STATEMENT OF ISSUES ON APPEAL**

- I. DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT FOR FALSE ARREST?
- II. DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT FOR MALICIOUS PROSECUTION?

## INTRODUCTION

The circuit court's grant of summary judgment in favor of Sunshine Recycling ("Sunshine") should be affirmed because Appellant Meredith Huffman ("Appellant") has failed to present any evidence creating a genuine issue of material fact with respect to the claims asserted.

This case arises out of stolen property and an unfortunate arrest of an innocent person. On May 16, 2010, copper was stolen from the premises of Respondent Aiken Electric. The next day, Aiken Electric's Loss Control and Safety Coordinator, Mark Goss, went to Sunshine's facility with a list of the items stolen to inquire if anyone brought the items in to sell. Goss observed copper and aluminum matching what was stolen from Aiken Electric in a pile on the floor. A Hispanic employee informed the owner of Sunshine, Joseph Rich, that he observed Appellant dropping off the metal Goss observed. The Orangeburg County Sheriff's Department was then called to Sunshine and upon an officer's arrival, Goss showed the officer samples of the metal from Aiken Electric that matched the metal at Sunshine. The officer then reviewed Sunshine's surveillance video and observed Appellant at the payment window. He was also provided a supporting receipt from Sunshine for Appellant's transaction. Another officer returned to Sunshine the next day after receiving a telephone call from Goss, photographed the metal, and returned the items to Goss.

Several days later, a warrant was obtained by the Sheriff's Department for Appellant's arrest in connection with the stolen metal. Appellant turned herself in approximately two weeks later, and informed the arresting officer that although she did sell metal to Sunshine, the metal she sold was not stolen. Appellant was then released on

bond. Subsequent to her release, an officer viewed the surveillance video of the day in question and observed Appellant selling a different type of wire to Sunshine than that which was stolen from Aiken Electric. The charges were dismissed against Appellant.

Appellant filed this lawsuit against Sunshine, Aiken Electric, and the Sherriff's Department<sup>1</sup>, alleging negligence, false imprisonment / false arrest, and malicious prosecution. However, Appellant has failed to present a scintilla of evidence that would create a genuine issue of material fact with respect to these claims against Sunshine. Appellant alleges that because she was misidentified, Sunshine, who is not the victim or the police, falsely imprisoned and arrested her and maliciously prosecuted her. In short, Appellant seeks to hold Sunshine liable for its good faith cooperation and assistance with the police with a criminal investigation.

The circuit court correctly determined that no genuine issues of material fact exist with respect to Appellant's claims against Sunshine. The circuit court's decision should be affirmed.

### **STATEMENT OF FACTS<sup>2</sup>**

This case arises out of an incident involving trespass and stolen property at Respondent Aiken Electric's facility in North, South Carolina on May 16, 2010. Mark Goss, Aiken Electric's Loss Control and Safety Coordinator, testified that this facility has more thefts than any other of Aiken Electric's locations because of its proximity to two recycling centers in the area, Orangeburg Recycling and Respondent Sunshine Recycling.

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<sup>1</sup> The Sherriff's Department is no longer a party to this action.

<sup>2</sup> Respectfully, Appellant has mischaracterized the facts and Sunshine's participation in this investigation and ultimate arrest. The citations referenced by Appellant do not support her version of the facts and attempt to paint Sunshine with actions and intentions it simply did not do or have.

(See Goss Deposition, pp. 29-30, attached as Exhibit A). On or about May 16, 2010, Goss received a call from Aiken Electric's dispatch informing him that someone was under a shed stealing copper on the premises. (See Goss Deposition, p. 31).

Charles Rushton, the manager of the North facility, also received the call from dispatch and both men headed to the facility from their respective houses. Rushton reported the trespass to the Orangeburg County Sheriff's Department and Officer Huggins responded to the report. Goss testified that by the time he arrived at the facility, the thief was already gone and Officer Huggins was on the scene. (See Goss Deposition pp. 32-33). Goss and Rushton were unable to determine what, if anything, had been taken from the facility and had to wait until the following morning for the linemen to arrive to make the determination. On May 17, Goss supplemented the incident report to Huggins, informing him that Aiken Electric was able to determine that approximately \$330.00 of copper and wire aluminum was stolen from its facility and that a white Ford F-150 was seen on the security camera. (See Goss Deposition pp. 34-36, 41).

According to Goss, he went to Sunshine the same morning with the list of stolen items to inquire if anyone tried to sell the items matching those on the list. Goss met with Joseph Rich, the owner of Sunshine, and Rich led Goss to the metal drop-off area and the location of the surveillance video. Goss testified that he observed copper and aluminum matching what was stolen from Aiken Electric in a pile on the floor. (See Goss Deposition pp. 36, 44). According to Goss, Rich spoke to a Hispanic Sunshine employee in Spanish and translated that the employee said "a lady dropped off the metal." (See Goss Deposition p. 48). Goss testified that he informed Rich that the person in Aiken

Electric's surveillance video was a black male in a white Ford pick-up truck. (*See Goss Deposition p. 46*).

Officer Aldridge of the Sheriff's Department responded to a call at Sunshine. Upon Aldridge's arrival, Goss showed him samples of the metal from Aiken Electric that matched the metal at Sunshine. Aldridge then reviewed Sunshine's surveillance video, on which he observed Appellant at the payment window. He was also provided a supporting receipt from Sunshine of Appellant's transaction. (*See Goss Deposition, pp. 53-54*). Aldridge testified Rich advised him he would provide the Sheriff's Department with a copy of the surveillance video.

On May 18, Officer Etheridge of the Sheriff's Department was contacted by Goss, who informed Etheridge that he was at Sunshine at the time Appellant brought the metal in and that he actually spoke with Appellant and identified the stolen metal after Appellant left Sunshine. Thereafter, Officer Etheridge went to Sunshine and met with Goss and Rich. He was given the invoice and receipt of Appellant's transaction. (*See Etheridge Deposition pp. 25-27, attached as Exhibit B*). He testified he photographed the metal and returned it to Goss. Officer Etheridge admitted that he did not observe the surveillance video of the back area of Sunshine. Etheridge testified he wanted to view the video before making a determination in the case, but the video player was malfunctioning. (*See Etheridge Deposition pp. 33-34, 37*). Additionally, Etheridge testified Goss called him several times inquiring what he was doing to further the case along. (*See Etheridge Deposition, pp. 36-37*). Etheridge testified that Goss's employer, Aiken Electric, was the victim in this case. (*See Etheridge Deposition, p. 53*)

Thereafter, on May 21, Officer Etheridge obtained a warrant for Appellant's arrest in connection with the stolen metal. Appellant was unaware of the warrant for several days, but turned herself in on June 2, 2010. Appellant informed Officer Etheridge that she did sell metal to Sunshine, but that the metal she sold was not stolen. Appellant provided Etheridge with samples of the metal and pictures of a trailer owned by her family where she obtained the metal. Appellant was released on bond. (*See Etheridge Deposition, pp. 40-45*).

After Appellant's arrest, Officer Etheridge met with a representative of Sunshine's outside vendor, Palmetto Security Cameras, to review the video of the day in question. According to Etheridge's report, he observed Appellant on the video selling copper similar to the copper that was taken from Aiken Electric, but that Appellant's aluminum was sheeting while the aluminum stolen from Aiken Electric was aluminum wire. (*See Etheridge Deposition p. 45*). Officer Etheridge later dismissed the charges against Appellant. (*See Etheridge Deposition p. 48*). Etheridge has admitted that he did not observe this video until after Appellant was arrested and that had he viewed the video prior to the arrest, he would never have arrested Appellant. (*See Etheridge Deposition pp. 45; 48*)

Etheridge was later contacted by Goss and Sunshine, who informed Officer Etheridge that they reviewed the surveillance video again and observed an unidentified black male in a white pick-up truck at Sunshine's property at the same time as Appellant. The male was later identified by Officer Etheridge as Eugene James with SC Tag Number 6087CM. Officer Aldridge met with Goss on June 11 at Sunshine, at which time Goss provided him with photographs of Eugene James. Officer Aldridge obtained the

surveillance video from Sunshine at that time, but testified he did not view the video. (See Aldridge Deposition, pp. 25-27)

Goss testified that, in his opinion, Sunshine did not do anything wrong in this case. He confirmed that he was the one who identified the stolen metal in the back at Sunshine, and that Rich only relayed the Hispanic employee's identification of "a lady" as dropping off the metal. (See Goss Deposition, p. 86). He also testified that it was normal practice for Sunshine to permit Aiken Electric or investigating officers to view or copy its surveillance videos. (See Goss Deposition p. 91). Goss testified that the false arrest would not have occurred if the investigating officers would have reviewed the surveillance tape prior to arresting Appellant. (See Goss Deposition, pp. 62-63). Likewise, Officer Etheridge testified that Sunshine was not the victim in this case and never pushed for Appellant's arrest or prosecution. Rather, he believed Sunshine cooperated fully in the investigation and was pleasant to deal with. In fact, Officer Etheridge testified that he did not recall speaking to Rich after his initial visit of May 18. (See Etheridge Deposition, p. 51).

Plaintiff brought suit against the Sheriff's Department, Aiken Electric, and Sunshine, alleging causes of action for negligence, false imprisonment, and malicious prosecution. (See *generally*, Complaint)

Both Sunshine and Aiken Electric filed motions for summary judgment in the trial court. In its motion, Sunshine asserted Appellant failed to produce any evidence that would even tend to prove Sunshine was negligent or careless in ignoring that Appellant was not the suspect in the case, failing to conduct a proper investigation, and for any other acts or omissions. (See Motion for Summary Judgment). Sunshine also asserted

Appellant failed to produce any evidence tending to prove that Sunshine maliciously instituted and continued criminal proceedings against Appellant or that criminal proceedings were instituted and continued at the request of Appellant.

The circuit court granted summary judgment to Sunshine and Aiken Electric.<sup>3</sup> (*See* Order Granting Motion for Summary Judgment (“Order”)). In doing so, the circuit court held that imposition of a duty of care on Sunshine and Aiken Electric would be inconsistent to the rights and duties of crime witnesses and victims. It further held that law enforcement, not the victims or witnesses of a crime, have a duty to investigate a crime and determine whether and when to seek a warrant. The circuit court stated that “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.” (*See* Order). Additionally, the circuit court held summary judgment was proper with respect to the false imprisonment claim, finding that Appellant failed to produce any evidence that Sunshine and Aiken Electric deprived her of her liberty in any way.

Finally, the circuit court held that Appellant’s malicious prosecution claim failed because there is no evidence that the proceedings against her were initiated by Sunshine or Aiken Electric maliciously and without probable cause. The circuit court noted that Sunshine and Aiken Electric merely assisted and cooperated with an investigation, and neither instituted the investigation or prosecution, nor did they assist with malice. The circuit court observed that citizens are encouraged, if not obligated, to assist in

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<sup>3</sup> The Order was filed on April 9, 2014.

investigations of potential crimes and Sunshine and Aiken Electric cooperated with law enforcement and discharged their civic and moral duty to cooperate fully and voluntarily with law enforcement. (*See Order*).

The circuit court denied Appellant's motion to alter or amend the Order granting summary judgment on June 16, 2014, finding the motion did not raise any novel issues for the court's consideration. (*See Order Denying Motion to Alter*). Thereafter, Appellant filed a Notice of Appeal.

## **ARGUMENT**

### **I. Standard of Review**

“When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court.” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming*, 350 S.C. at 493-94, 567 S.E.2d at 860.

A motion for summary judgment shall be granted “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.” Rule 56(c), SCRPC (emphasis added). On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. *E.g., Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994); *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “The purpose of summary judgment is to expedite disposition of

cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one party must lose *as a matter of law*.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984) (emphasis added); *see also Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (standard for summary judgment “mirrors” standard for directed verdict).

## **II. The Circuit Court Properly Granted Summary Judgment to Sunshine with Respect to Appellant’s False Imprisonment Claim.**

Appellant contends the circuit court erred in granting summary judgment as to the false imprisonment claim because a genuine issue of material fact exists to support the claim of false imprisonment / false arrest.<sup>4</sup> Appellant contends the circuit court erred in finding neither Respondent deprived Appellant of her liberties, in ignoring the principle that a private person can be liable for the tort of false arrest even if the police effectuate the arrest, and in misconstruing the evidence. For the reasons set forth below, Sunshine submits the circuit court properly granted summary judgment as to this claim, as no genuine issue of material fact exists.

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 Cnty. Sheriff’s Dep’t*, 336 S.C. 611, 619, 521 S.E.2d 163, 166

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<sup>4</sup> Appellant does not appeal the circuit court’s grant of summary judgment to Sunshine with respect to her negligence cause of action.

(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 § 7.

Appellant has failed to produce any evidence that Sunshine deprived her liberty in any way without justification. There has been no evidence presented that Sunshine physically restrained Appellant or, by its words or conduct, constructively restrained Appellant. Furthermore, as discussed above, any misidentification on the part of Sunshine, which may have ultimately led to a later restraint by other parties, was not intentional. Sunshine and its employees merely relayed information and documentation which it believed, in good faith, to be relevant and helpful in assisting law enforcement in solving a crime. At its worst, Sunshine's actions constituted misidentification and mistake. However, this will not support a cause of action for false imprisonment. *See, 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.").

Respectfully, the circuit court did not ignore the legal principle that a private person can be liable for the tort of false arrest even if the police effectuated the arrest. In fact, the court's order makes no mention of the distinction between private citizens and police officers in the context of false arrest / false imprisonment claims. Rather, the

circuit court simply found that Appellant had failed to present even a scintilla of evidence against Sunshine that would support a false arrest or false imprisonment claim. Furthermore, the circuit court did not misconstrue the evidence presented, as Appellant suggests. Rather, the evidence presented leads to only one reasonable inference – that Sunshine cooperated with a police investigation and relayed information that it, in good faith, believed to be true and relevant to the investigation. Thus, the grant of summary judgment was proper and this Court should affirm.

### **III. The Circuit Court Properly Granted Summary Judgment to Sunshine with Respect to Appellant’s Malicious Prosecution Claim.**

Next, Appellant contends the circuit court erred on many levels in granting summary judgment to Sunshine with respect to the malicious prosecution claim. First, Appellant contends the record is “replete” with evidence that she was charged at the instance of Sunshine and Aiken Electric, and it was these entities that initiated the criminal charge. Appellant also contends the circuit court erred in weighing the evidence as it did, and that it erred in concluding probable cause existed to arrest Appellant and improperly invading the province of the jury. Likewise, Appellant maintains the circuit court erred in finding a lack of malice on the part of Sunshine or Aiken Electric. Appellant asserts that malice is inferred as a matter of law due to the lack of probable cause, and that the evidence reveals Sunshine and Aiken Electric acted with legal malice. For the reasons set forth below, Sunshine submits the circuit court properly granted summary judgment as to this claim, as no genuine issue of material fact exists.

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).

The Fourth Circuit Court of Appeals opinion in *Brice v. Nkaru*, 220 F.3d 233 (4th Cir. 2000), is instructive. In *Brice*, the plaintiff filed suit against a security guard for malicious prosecution based upon the security guard’s misidentification of him as a suspect to a crime. The Fourth Circuit, interpreting Virginia law, stated “[w]e find no authority supporting [the] contention that a witness who provides the police with incorrect information during a criminal investigation ipso facto ‘institutes’ or ‘procures’

the prosecution if he provides that information unequivocally.” *Id.* at 238. The court further stated:

[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. *See, e.g., Gramenos v. Jewel Cos.*, 797 F.2d 432, 434 (7th Cir.1986) (“Police often arrest suspects on the basis of oral reports from witnesses, and the state may prosecute against the wishes of all witnesses.”); *King v. Massarweh*, 782 F.2d 825, 828–29 (9th Cir.1986) (injuries from arrest are not proximately caused by private party, absent some showing that private party “had some control” over state officials' decision). In this case, [the security guard] simply provided the police with information within his knowledge, and the police reasonably believed him. *See id.* at 439 (explaining that police have reasonable grounds to believe a guard at a supermarket, because there are inherent safeguards against the making of false charges in the institutional employment setting), *see also* 66 A.L.R.3d 10 Summary § 3 (1975) (normally a malicious prosecution plaintiff must show that defendant did more than merely give information that included an identification, *e.g.*, that he requested the initiation of proceedings, signed a complaint, or swore out an arrest warrant against plaintiff); 52 Am.Jur.2d *Malicious Prosecution* § 23 (1970) (plaintiff must show defendant was affirmatively active in instigating or participating in the prosecution); *id.* § 24 (no liability for mistaken, but reasonable and in good faith, misidentification of perpetrator of crime).

*Id.* at 238-39.

Ultimately, the court rejected the plaintiff's contention that there was sufficient evidence to support an inference that the security guard acted in bad faith in providing law enforcement with information, and concluded, as a matter of law, that the plaintiff could not maintain his claim for malicious prosecution. *Id.* at 241. Indeed, “[m]erely providing information to the police and leaving the decision to bring charges to the sole discretion of the police cannot constitute the initiation of criminal proceedings for purposes of a malicious prosecution claim. *See* 54 C.J.S. *Malicious Prosecution* § 17 (stating a “civilian complainant, by merely seeking police assistance or furnishing

information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for malicious prosecution”),

Here there is absolutely no evidence presented that indicates Sunshine or its employees acted with malice in reporting information and providing documentation to the police. First, it is undisputed that Sunshine did not institute or have instituted the proceedings against Appellant—Sunshine was merely a cooperating witness. Secondly, there is absolutely no evidence of malice on the part of Sunshine in this matter. At Goss’s request, Sunshine permitted Goss to examine the metal and view the surveillance tape. Furthermore, once the Sheriff’s Department arrived, Sunshine relayed information regarding Appellant’s transaction at the yard, permitted the officers to view the surveillance tape, and cooperated with the Sheriff’s Department investigation. In fact, the evidence demonstrates Sunshine had minimal involvement beyond May 18. Finally, assuming the malicious prosecution could lie against a witness, not a victim, there is no evidence Sunshine lacked “probable cause” in doing what it did. Indeed, all evidence indicates Rich spoke with his Hispanic employee and merely translated what the employee told Rich regarding Appellant. The only facts that Sunshine knew or could have known were those which the employee stated and Sunshine’s observation of Appellant at the center.

In short, the only reasonable inference based upon the evidence in this case is that Sunshine cooperated with the Sherriff’s Department in providing information and

documentation, and the Sherriff's Department ultimately exercised its discretion in arresting Appellant, free from any influence or pressure from Sunshine.<sup>5</sup>

Additionally, public policy demands that the circuit court be affirmed. 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:

[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

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<sup>5</sup> Appellant cites to several deposition and incident report excerpts in support of her arguments. Respectfully, however, none of the excerpts cited, and no testimony at all, indicates that Sunshine or its employees or agents initiated or attempted to initiate or continue criminal proceedings against Appellant. In fact, because Sunshine was not the victim in this matter, Sunshine had absolutely no incentive to maliciously attempt to prosecute or have the Sherriff's Department prosecute Appellant for the copper wire, nor does the evidence support even an inference of such.

granted for longstanding public policy reasons. *Id.* In *Campbell v. City of San Antonio*, 43 F.3d 973, 981 (5th Cir.1995), *overruled in part on other grounds by Swierkiewicz v. Sorema*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (1989), the Fifth Circuit Court of Appeals stated: “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).<sup>6</sup>

Although Appellant attempts to lump the actions and assistance of Sunshine into her reprimands of Aiken Electric and Mark Goss, the only inference that can be drawn from the evidence presented is that Sunshine assisted and cooperated with an investigation. It did not institute the investigation or prosecution, nor did it assist with malice. Citizens are encouraged, if not obligated, to assist in investigations of potential crimes. To permit a claim for malicious prosecution to stand against Sunshine in this instance would discourage citizens from relaying information and documentation to police officers and impede the criminal justice system. Thus, Sunshine is entitled to summary judgment as a matter of law in this instance. Furthermore, Appellant has failed

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<sup>6</sup> 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 a weighing of policy considerations, we decline to recognize a cause of action for negligent identification of another as a perpetrator of a crime.

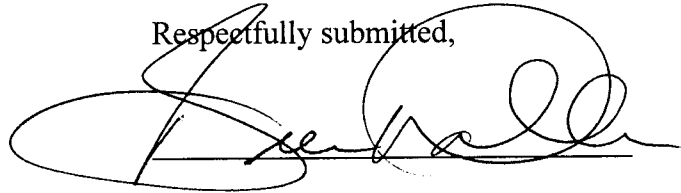
*Id.* at 641.

to present genuine issues of material facts related to the elements of malicious prosecution. Therefore, the circuit court properly granted summary judgment to Sunshine and this Court should affirm.

### CONCLUSION

The circuit court properly granted Sunshine's motion for summary judgment. Viewing the facts in a light most favorable to Appellant, there is no evidence to support an inference of liability on the part of Sunshine with respect to causes of action for false imprisonment and malicious prosecution. Thus, the circuit court properly granted summary judgment to Sunshine and Sunshine respectfully requests this Court affirm the circuit court's grant of its Motion for Summary Judgment.

Respectfully submitted,



Breon C.M. Walker (SC Bar #72030)  
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ATTORNEYS FOR RESPONDENT

November 19, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

NOV 19 2014

Maite D. Murphy, Circuit Court Judge

**SC Court of Appeals**

Case No. 2012-CP-38-00672

Court of Appeals Case No.: 2014-001492

Meredith Huffman, .....Appellant

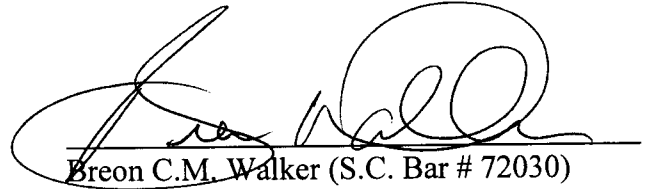
v.

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

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies that the Initial Brief of Respondent Sunshine Recycling, LLC complies with Rule 208(a)(2), SCACR and the August 13, 2007, Order from the South Carolina Supreme Court titled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in the Appellate Court Filings."

(SIGNATURE ON FOLLOWING PAGE)



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**PROOF OF SERVICE**

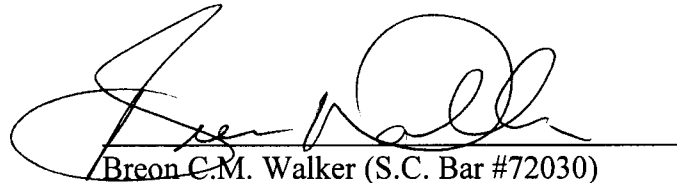
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I certify that I have served Initial Brief of Respondent Sunshine Recycling, LLC, Designation of Matter to be Included in the Record of Respondent Sunshine Recycling, LLC, and Certificate of Compliance on Meredith Huffman, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to the following:

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NOV 19 2014

**SC Court of Appeals**

November 19, 2014

**VIA Hand Delivery**

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

Re: *Meredith Huffman, Appellant vs. Sunshine Recycling, LLC and Aiken Electric  
Cooperative, Inc., Respondent*  
Case No.: 2012-CP-38-00672  
Court of Appeals Case No.: 2014-001492  
GWB File No.: 148-147

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Initial Brief of Respondent Sunshine Recycling, LLC, Designation of Matter to be Included in the Record of Respondent Sunshine Recycling, LLC and Certificate of Compliance. Please return the clocked copies to our awaiting runner.

By copy of this letter, and as evidenced on the attached Proof of Service, I am serving Counsel of Record with the same.

With kind regards, I remain

Very truly yours,

Breon C.M. Walker

Direct Dial: 803-724-1700

E-Mail: [bwalker@gwblawfirm.com](mailto:bwalker@gwblawfirm.com)

BCMW/kae

Enclosures

cc: Robert F. Goldings, Esq.  
J. Todd Rutherford, Esq.  
Pope D. Johnson, Esq.