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State of South Carolina  
County of Florence

Court of Common Pleas

**RECEIVED**

MAY 20 2016

**SC Court of Appeals**

Jacqueline Buie )  
 )  
 Plaintiff, )  
 v. )  
 Walmart, Incorporated, )  
 et al. )  
 )  
 Defendants. )

Transcript of Record  
14-CP-21-2504

September 28, 2015  
Florence, South Carolina

**B E F O R E:**

The Honorable Thomas A. Russo, Sr., Judge.

**A P P E A R A N C E S:**

J. David Murrell, Esquire  
Attorney for the Plaintiff

Regina Hollins Lewis, Esquire  
Attorney for the Defendant

Stacy L. Sheppard, RPR  
Circuit Court Reporter

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I N D E X

WITNESSES                      DIRECT   CROSS   REDIRECT   RECROSS

(There were no witnesses.)

E X H I B I T S

NO.                              DESCRIPTION                      ID.   EVD.

(There were no exhibits.)

1 (The following proceedings were held on  
2 September 28, 2015.)

3 **THE COURT:** I'm going to skip over 12 and hear  
4 13, even though it's the same case. The case is  
5 Buie versus Walmart. It's kind of the same  
6 situation that I had with Mr. Barr and Mr. Love's  
7 case. I've got a motion to be relieved and I've got  
8 a motion for summary judgement.

9 **MS. LEWIS:** Yes, Your Honor. Counsel did  
10 respond filing opposition to the motion for summary  
11 judgement. I'm happy to proceed in whichever manner  
12 counsel would like. He may want to argue the  
13 summary judgment and then the withdrawal. I'm happy  
14 either way.

15 **MR. MURRELL:** And I'd be fine to argue in  
16 opposition of summary judgement, and then afterwards  
17 we can take up the motion to be relieved, Your  
18 Honor.

19 **THE COURT:** And, ma'am --

20 **MR. MURRELL:** This is Ms. Buie, the plaintiff.

21 **THE COURT:** Yes, ma'am.

22 **MS. BUIE:** Your Honor, I don't wish for a  
23 motion to -- him to be relieved. I don't have a  
24 lawyer. And I never requested that. I made it in a  
25 statement in reference to the deposition, which I

1 requested to be disputed, and they refused.

2 **THE COURT:** All right. Here's what I want to  
3 do: First of all, just so that the record's clear,  
4 that's Ms. Buie that just addressed the Court.

5 **MS. LEWIS:** I am Regina Hollins Lewis, Your  
6 Honor. I'm here on behalf of Walmart.

7 **MR. MURRELL:** And I'm David Murrell. I'm the  
8 plaintiff's counsel.

9 **THE COURT:** Just so the record's clear on the  
10 parties and the folks that are present.

11 All right. Let's proceed then with regards to  
12 the motion for summary judgment. Let me hear from  
13 both sides regarding that, and then, of course, I'll  
14 hear from anyone who would like to address the issue  
15 regarding being relieved as counsel.

16 **MR. MURRELL:** All right. Thank you.

17 **MS. LEWIS:** Thank you, Your Honor. May it  
18 please the Court.

19 **THE COURT:** Yes, ma'am.

20 **MS. LEWIS:** The defendant has filed a motion  
21 for summary judgment on the two claims that have  
22 been filed by Ms. Buie in this action, that being  
23 defamation in the first instance and assault. Just  
24 as a brief overview, Your Honor, of the facts of the  
25 matter, Ms. Buie worked part time for Walmart as an

1 overnight stocker, and she'd worked there for a  
2 period of about five years. This incident occurred  
3 on November 2nd of 2012. During that time, as I  
4 indicated, she worked weekends, Friday nights  
5 overnight and Saturday night overnight stocking  
6 shelves, so that was her job.

7 On November 2nd of 2012, she reported to work.  
8 Her testimony -- everything that I'm telling you now  
9 is based on her deposition testimony, which is cited  
10 in our memo and included in the memo. She appeared  
11 for work at 10:15 P.M. She went to her locker. She  
12 was then called to the office by the manager in  
13 charge of the store that night whose name is Kathy  
14 Roller, the Walmart manager. The manager told her  
15 that there had been six people who had called out  
16 that night so she needed everybody to, you know, put  
17 their best foot forward, work as fast as they can so  
18 that they could cover the areas that weren't going  
19 to be covered by the employees who were out.

20 Ms. Buie testified that she went to her  
21 assigned area, which was the infant's department,  
22 and she began stocking diapers. At some point after  
23 that, another associate -- Walmart calls its  
24 employees associates -- another associate who was  
25 leaving, on her way to clock out, stopped in the

1 area where Ms. Buie was working and the two began  
2 talking. Ms. Buie indicated that she continued to  
3 work, but she was talking with the other associate.

4 The manager, Ms. Roller, walked by and told the  
5 two of them to get back to work. Ms. Buie testified  
6 that they laughed, didn't really respond to  
7 Ms. Roller and continued to work and talk as they  
8 were.

9 Once Ms. Roller got back to the office, she  
10 apparently sent another associate, Amber Barnhill,  
11 who was an associate manager, to ask Ms. Buie to  
12 come to the office. Ms. Barnhill went to get  
13 Ms. Buie, asked her to come to the office. And on  
14 the way to the office, Ms. Buie apparently said, and  
15 testified that she said, All of this stop --  
16 something to the effect of, All of this stopping and  
17 starting, you know, I don't want to do this. If  
18 they want me to clock out and go home, I can clock  
19 out and go home, but I'm sick of being stopped and  
20 started all this time.

21 So Ms. Buie goes to the office, and Ms. Roller  
22 tells her that she needs to get back to work.  
23 Ms. Buie, of course, doesn't agree that she's not  
24 working, so there's a dispute about that.

25 Ms. Barnhill apparently reports to Ms. Roller

1 what Ms. Buie has said, and Ms. Buie takes issue  
2 with that, refuses to sit down, ultimately leaves  
3 the office during the meeting and goes to the break  
4 room, sees a number on the wall to call Walmart's  
5 corporate office, which she does. At this time,  
6 it's after -- it's probably close to 11 o'clock.  
7 She makes a call, leaves a voice message for  
8 Walmart's corporate office that she is being  
9 assaulted by two Walmart managers.

10 She then asks if she can call the store  
11 manager, who is not working that night, who lives in  
12 North Carolina. They told her, No, you can't call  
13 the store manager. We're not going to, you know,  
14 wake her up in the middle of the night for this.

15 Ms. Roller asks her to go back to the office  
16 with her. She refused to go back to the office.  
17 And, at some point, Ms. Roller said to her, Listen,  
18 you said you wanted to clock out and go home, clock  
19 out and go home.

20 Ms. Buie doesn't clock out and go home. She  
21 goes back to where she was stocking and continues to  
22 take items off of the pallet to stock the shelves.  
23 Ms. Roller then goes out and, according to  
24 Ms. Buie's testimony, tried to move the pallet from  
25 her. So there's an altercation going on about her

1 not stopping work as she was directed.

2 Ultimately, Ms. Roller calls the police. The  
3 police respond. They ask Ms. Buie to go to the  
4 back. They say to her, Listen, you don't want to  
5 get in trouble for insubordination. We think it's  
6 best that you just get your things and go home.

7 Officers walked with Ms. Buie to the middle of  
8 the store. Ms. Buie testified that she told the  
9 officers, Look, I don't have my keys; I forgot my  
10 keys. They said, No problem, go back and get your  
11 keys. She went back and got her keys and exited out  
12 of another direction because she didn't want to go  
13 out and be -- and go out with the officers.

14 At that point, that was the end of the  
15 incident. And this is the extent of the incident  
16 that has given rise to this lawsuit.

17 With regard to the defamation claim, Your  
18 Honor, this is not a case where Ms. Buie was accused  
19 of theft. So there was no false or defamatory  
20 statement at all made with regard to Ms. Buie. The  
21 sole impetus for her claim is that because  
22 Ms. Roller, who acted within her rights, called the  
23 police, that she gave an -- she gave the impression  
24 that Ms. Buie had somehow stolen. And that's a  
25 leap.

1           There is, under the law, Your Honor, a  
2           defamation by insinuation or deposition -- I'm sorry  
3           -- defamation by insinuation, but it requires that  
4           there be a plain meaning to the defamation. And in  
5           all of the cases that the appellate courts that I  
6           have reviewed, and I could find none with this fact  
7           pattern where there was an altercation between an  
8           employer and employee and the police were called,  
9           there are no cases I can find that says that that  
10          call in and of itself could give rise to a claim of  
11          defamation.

12           The cases where there has been a ruling by the  
13          appellate court saying that an inference or an  
14          insinuation can give rise to a claim of defamation  
15          is a case where, Tyler versus Macks Stores, where  
16          the employee was given a polygraph test. So there  
17          was definitely -- while they didn't say, oh, we  
18          think you stole, they said, come, let's take this  
19          polygraph test, and the court said, well, that's  
20          enough to give an implication that possibly he'd  
21          stolen. And he's terminated after that.

22           In this case, when the police came, Ms. Buie --  
23          Ms. Roller did everything she could to try to  
24          facilitate the situation, even told Ms. Buie, I'll  
25          pay you for the entire shift, just go home. And she

1 did pay her for the entire shift.

2 Ms. Buie testified she went back to work the  
3 next day. She wasn't terminated. She wasn't  
4 arrested. She didn't lose any time from work for  
5 that night. So it's just -- it does not give rise  
6 to a claim of defamation just based on the fact that  
7 Ms. Roller called the police.

8 There is also, Your Honor, a conditional  
9 privilege that I think the Court --

10 **THE COURT:** Just interrupt for a moment.

11 **MS. LEWIS:** Yes, sir.

12 **THE COURT:** Ms. Roller called the police  
13 because she had asked Ms. Buie to leave the store  
14 and she wouldn't leave the store?

15 **MS. LEWIS:** That's correct. That's why she  
16 called the police.

17 **THE COURT:** Okay.

18 **MS. LEWIS:** So, in that, Your Honor, even  
19 aside, I don't think she has enough on defamation.  
20 But there is a conditional privilege that, you know,  
21 unless there's some bad faith if the call is made,  
22 you know, in this context by a store manager,  
23 there's a limited purpose for making the call, it's  
24 made in good faith and there's no evidence that it  
25 wasn't, then it's protected by the conditional

1 privilege. And when the facts aren't in dispute, as  
2 they are not in dispute here, then it's for the  
3 Court to decide as a matter of law whether that  
4 privilege applies. I don't think the Court has to  
5 get to the privilege because I don't think she's  
6 stated enough of a claim to sustain a defamation  
7 claim in the first instance.

8 Now, there -- what I think Ms. Buie has tried  
9 to do is create a factual dispute with her own  
10 deposition testimony. She testified in her  
11 deposition, and I had a significant challenge in  
12 getting Ms. Buie to talk about this, but she  
13 ultimately testified that, Yeah, she told me to  
14 clock out and go home. She was using my own words  
15 against me.

16 She obviously disagreed with the manager  
17 telling her to clock out and go home. Be that as it  
18 may, the manager has a right to do that if she feels  
19 like she's being insubordinate and not following the  
20 rules. And Ms. Buie didn't agree with that. I get  
21 that and I understand it, but -- but Ms. Buie  
22 essentially testified that she understood that she  
23 was being told to clock out and go home and that she  
24 refused to clock out and go home. And that is cited  
25 in her testimony.

1           And in addition to that, Your Honor, Ms. Buie  
2 sent an e-mail about three days after the incident  
3 to HR because she was upset about the incident. And  
4 she says, in pertinent part, that they would not --  
5 she would not call Kay -- I'm quoting now -- Then  
6 said, You have already called the head office; you  
7 said you wanted to clock and go home, clock and go  
8 home. And her next sentence is, I went back to work  
9 and she called the police.

10           So that's in her e-mail of November the 5th,  
11 which would have been three days later.

12           On examination by her own counsel in the  
13 deposition, of course, Ms. Buie changes her  
14 testimony. And she says, Well, I didn't think she  
15 was making me go home. I thought she was telling me  
16 I could go back to work. She, at no time, really  
17 directly told me to go home.

18           And then I questioned her about that again.  
19 And she said, Well, she maybe indirectly told me to  
20 go home.

21           But the bottom line is she has acknowledged  
22 that she was told to go home, whether it be directly  
23 or indirectly, and she didn't go home, and that's  
24 what led to the police being called. Nobody accused  
25 her of stealing anything. And if she had just

1 followed the orders of Ms. Roller to begin with,  
2 none of this would have happened.

3 So, Your Honor, as a matter of law, she has not  
4 sustained her claim sufficient to get to a jury on  
5 defamation and we would ask that summary judgment be  
6 granted as to that claim.

7 With regard to the assault claim, Your Honor,  
8 which is her second claim, there are basically two  
9 responses to that on Wal-Mart's behalf. One is that  
10 the claim is barred by the exclusivity provision of  
11 the South Carolina Workers' Compensation Act. If,  
12 in fact, she is claiming she was assaulted and that  
13 assault arises out of her employment, which there's  
14 no question but that the alleged assault arises out  
15 of her employment or arose out of her employment  
16 with Walmart, her exclusive remedy is to file a  
17 Workers' Comp claim. It's not to file a civil  
18 proceeding. So that claim is barred.

19 Even if it were not for that procedural defect,  
20 substantively, there's not a scintilla of evidence  
21 of anything having to do with an assault. I  
22 questioned Ms. Buie about it twice in her  
23 deposition. In the first instance where she -- I  
24 asked her about the e-mail that she wrote to HR  
25 saying she was being assaulted -- no, no, no. She

1 told me -- strike that, Your Honor.

2 She told me that when she called corporate, she  
3 left a message that she was being assaulted by two  
4 managers. And I said, Well, how were you being  
5 assaulted? She said, I misspoke when I said that.  
6 I meant insulted by two managers and assaulted was  
7 the wrong word.

8 So then when I go back and question her about  
9 it later about the allegations in her complaint,  
10 after some back and forth, she ultimately says, I  
11 didn't feel physically threatened at all, but they  
12 mentally abused me that night.

13 Now, in her response, she says, she felt  
14 assaulted by the police officers because she was in  
15 fear of being arrested and that the officer gestured  
16 her to go to the back room. But there was, you  
17 know, no evidence -- from her own testimony, what  
18 the officer did was asked her to go to the back  
19 room, said, Ma'am, you know you don't want to get in  
20 trouble for insubordination. Why don't you just go  
21 home like they've asked you to?

22 And so for those two reasons, the procedural  
23 reason being that it's barred by the exclusivity  
24 provision, in addition to the fact that there's just  
25 no evidence in the record to support the claim of

1 assault, we're asking that summary judgment be  
2 granted on that cause of action as well.

3 **THE COURT:** All right. Thank you, ma'am.

4 **MS. LEWIS:** Thank you.

5 **THE COURT:** Yes, sir.

6 **MR. MURRELL:** Thank you, Your Honor.

7 We do have two causes of action in this  
8 complaint, Your Honor, defamation/slander per se and  
9 civil assault. Under slander and defamation, there  
10 is a dispute about whether Ms. Buie was asked to go  
11 home.

12 Many of the facts that were recited by  
13 Ms. Lewis are correct as far as her coming to work  
14 that night, they were short staffed, they had a  
15 meeting, there was a dispute between her and a  
16 supervisor that led to a meeting with the manager,  
17 and there was a disagreement and some arguing about  
18 the work situation and what was going on and what  
19 was not going on.

20 My client does admit that the manager said,  
21 Well, you said you want to clock out, and if you  
22 want to clock out and go home, then you can go home.

23 Now, Ms. Buie says, I did not say that. She  
24 testifies to that in the deposition. She said, I  
25 didn't -- she tells the manager, I did not say that.

1           What I was saying is all this starting and stopping,  
2           I may as well go home because y'all aren't letting  
3           me do my work. I'm not saying I want to clock out  
4           and go home.

5           So there is a factual dispute there as to  
6           whether that was actually said or the manager says  
7           she said that. So that's our first factual dispute,  
8           Your Honor. And, of course, as the Court knows,  
9           summary judgment is only proper when there's no  
10          genuine issue of material fact.

11          **THE COURT:** Well, explain to me how that's  
12          slander in any way or defamation in any way.

13          **MR. MURRELL:** Well, what that created, Your  
14          Honor, was a situation where the manager allows  
15          Ms. Buie to return to work. She goes back to her  
16          work station. She's there 25, 30 minutes when the  
17          police show up with the manager and they escort her  
18          from the store -- through the store back to the  
19          manager's office in front of her co-workers, in  
20          front of customers. And it's this implication of  
21          that Ms. Buie was being arrested on the job because  
22          the manager's in front of her, she's behind the  
23          manager, two police officers are behind her and  
24          they're all, you know, herding her into the  
25          manager's office.

1           And South Carolina law recognizes that you can  
2           have defamation by insinuation; it doesn't have to  
3           be in a direct manner. And it's this insinuation or  
4           this portrayal to her co-workers and to the  
5           customers that she was being arrested and that she  
6           had stolen. So they go into their --

7           **THE COURT:** Where does stealing come from?

8           **MR. MURRELL:** Sorry?

9           **THE COURT:** Where does stealing come from?

10          **MR. MURRELL:** Well, it comes into play, Your  
11          Honor, because they -- after the meeting, the  
12          officers escort her halfway through the store when  
13          she says, uh, I don't have my keys. And they say,  
14          You can go get your keys and we'll wait here for  
15          you, which she does.

16          And then she testifies in her deposition, she  
17          was embarrassed and humiliated. So she went out  
18          another door so that she wouldn't have to be, you  
19          know, escorted out by the police further.

20          Now, she also testified that her co-workers  
21          came up to her the next day and said, What did you  
22          steal; why were you being arrested; what did you do  
23          wrong; why did the police arrest you? And so she  
24          had to tell them, I didn't do anything wrong; I  
25          wasn't being arrested. So her co-workers were under

1 the belief that she had stolen, that she was being  
2 arrested.

3 And she also testified that there were around  
4 25 to 30 customers that just stopped and were  
5 staring at her as they were escorting her to the  
6 office and then escorting her halfway out of the  
7 store. And -- now, this happened later at night,  
8 but this is a 24-hour Walmart and my client  
9 testified that there are a lot of people that come  
10 even late at night to shop.

11 So that's where this came from. It was from  
12 her co-workers, you know, asking her, What did you  
13 do; what did you steal; why were you being arrested?  
14 That's where that came from. And she was  
15 humiliated. She was embarrassed. And she testified  
16 to all of this in the deposition, Your Honor.

17 So, as I said, summary judgment's only proper  
18 when there are no genuine issues of a material fact,  
19 and the evidence has to be viewed in favor of  
20 Ms. Buie, the nonmoving party. So there is a  
21 dispute as to whether she was directed to go home or  
22 she was --

23 **THE COURT:** Put your hand down, Ms. Buie. You  
24 have a lawyer that is speaking on your behalf and  
25 that's who I'm going to hear from. I'm going to

1 hear from your attorney. If he needs to take a  
2 break and y'all talk and then he can address the  
3 Court, but -- go ahead, sir.

4 **MR. MURRELL:** All right. Thank you, Your  
5 Honor.

6 So, based on that argument, Your Honor, we  
7 would move that the Court not grant summary judgment  
8 as, at a minimum, there are genuine issues of  
9 material fact as to whether she was directed to  
10 leave the store or whether she was allowed to remain  
11 at work.

12 Our second cause of action is assault. And  
13 this is assault based on the actions of Walmart in  
14 calling the police to get her and escort her through  
15 the store.

16 My client testified that the police -- she was  
17 fearful that they were going to grab her, they were  
18 going to put handcuffs on her, you know, that they  
19 were going to physically touch her in order to  
20 arrest her. And so she testified to that in her  
21 deposition as well.

22 I asked her, Were you afraid that the police  
23 officers were going to arrest you? Yes, sir. I  
24 said, Were you afraid they were going to, you know,  
25 put their hands on you, put handcuffs on you? And

1 she said, Yes, I was scared; I thought I was going  
2 to be, you know, touched in that manner to be  
3 arrested. So, again, we ask the Court not to grant  
4 summary judgment on assault.

5 **THE COURT:** Why isn't that barred under the  
6 Workers' Comp Act?

7 **MR. MURRELL:** Because it's being accomplished  
8 by the police officers. It's not what her  
9 manager --

10 **THE COURT:** It still arises out of the course  
11 of employment, doesn't it?

12 **MR. MURRELL:** It does arise out of the course  
13 and scope of employment in that it's surrounding the  
14 employment, but the actions were being accomplished  
15 by a third party, the police, and --

16 **THE COURT:** Does that take it out of the  
17 Workers' Comp Act?

18 **MR. MURRELL:** I would argue that it would, Your  
19 Honor, because it's --

20 **THE COURT:** I felt I was --

21 **MR. MURRELL:** I felt threatened by what my  
22 employer was doing by this third party.

23 And one last argument and point of factual  
24 information, Your Honor, my client also testified  
25 that the next day she met with the store manager,

1 this Ms. Roller was an assistant manager, and so she  
2 met with the store manager who's over the entire  
3 store. And the store manager -- let's see -- yeah,  
4 Ms. Lyles is the store manager.

5 She had a meeting with Ms. Buie. And she told  
6 Ms. Buie in the meeting that the assistant manager  
7 was wrong, that she should not have called the  
8 police in this situation and that Ms. Buie didn't do  
9 anything wrong. She was not going to be terminated,  
10 she was not going to be reprimanded or written up  
11 and she would be allowed to keep her job and her  
12 position, but that the store manager disagreed with  
13 what the assistant manager had done. And so for  
14 those reasons, Your Honor, we would ask summary  
15 judgment not be granted.

16 THE COURT: Well, I'm strongly concerned about  
17 this Workers' Comp issue.

18 MR. MURRELL: Yes, sir.

19 THE COURT: And your only position is that it  
20 was created by a third party. My law clerk, while  
21 working for another employer -- this was several  
22 years ago -- she was injured by a third party while  
23 she was performing her duties at her work, and that  
24 was strictly a Workers' Comp claim. So your  
25 argument that because the assault occurred from a

1 third party while she's at work and arising out of  
2 her scope of her employment, just doesn't seem to  
3 address the issue.

4 **MR. MURRELL:** Well, I would also argue that it  
5 was more of an intentional act on the part of the  
6 assistant manager to bring the police into the work  
7 setting to create this fear of assault.

8 **THE COURT:** Okay. Still, how does that take it  
9 out of the Workers' Comp Act? That's all I'm trying  
10 to figure out. Is there a provision in the Workers'  
11 Comp code that precludes an action where the injury  
12 was caused by the intentional act of the employer?

13 **MR. MURRELL:** Carried out on behalf of the, you  
14 know, by a third party, that's what we would argue  
15 that takes it out of the scope of the Workers' Comp  
16 setting. But I -- Your Honor, I am not aware of a  
17 statutory reference that I can cite for that.

18 **THE COURT:** All right. Anything further?

19 (Pause.)

20 **THE COURT:** Keep in mind we're not trying the  
21 case right now.

22 **MR. MURRELL:** I understand. Nothing further,  
23 Your Honor.

24 **THE COURT:** Ms. Lewis, in your argument, you  
25 argue that their assault claim is barred by the

1 exclusivity provision of Workers' Comp. Why aren't  
2 both of them barred by that?

3 **MS. LEWIS:** Because defamation claims, the  
4 courts have held, are not slander. If you can  
5 establish a prima facie case of slander or libel,  
6 Your Honor, then those -- the courts have held that  
7 those expressly are not barred by the exclusivity  
8 provision. I would have liked to argue that, but  
9 the case law didn't support me on that.

10 But with regard to the assault, Your Honor,  
11 your observation is correct, it is whether or not --  
12 the test is whether or not it arises out of the  
13 employment. It does not matter whether the person  
14 who is accused of the assault is actually an  
15 employee or whether it's a patient or a vendor or  
16 anybody else who comes onto the premises. The claim  
17 is wholly barred if it arises out of the employment.

18 The only other thing I would say, Your Honor,  
19 is, briefly on the defamation, is that Ms. Buie  
20 cannot create an issue of fact by whether or not she  
21 understood she, you know, she wanted to go home or  
22 she thought she was told to go back to work. She  
23 has admitted in her testimony and in her e-mail that  
24 she was told to clock out and go home. She decided  
25 she wasn't going to do that. She was going to go

1 back to work and finish doing what she was going to  
2 do. And that's what gave rise to the call to the  
3 police.

4 I do not think absent something more, that  
5 we're looking at you for theft, that that in and of  
6 itself, even if you take everything Ms. Buie says is  
7 true, let's say -- let's say she thinks she was told  
8 to go back to work, if Ms. Roller called the police,  
9 she has to show that that inference has a plain  
10 meaning that someone is saying that she stole. And  
11 without more, Your Honor, a call to the police by a  
12 manager after an altercation with an employee is not  
13 enough to establish that. As a matter of -- it  
14 simply is not.

15 In the Tyler versus Macks Store case, as I've  
16 said, there was a polygraph. In every other case  
17 that I have read where there has been an allegation  
18 or a defamation by insinuation, there is some type  
19 of connection to an actual theft, money has been  
20 missing, other people were fired for missing, so  
21 then this person was fired.

22 And by the way, Ms. Buie was never fired. She  
23 was never arrested. She came back to work the next  
24 day. So if her employ -- her associates asked her  
25 about, oh, well, you -- well, they saw she wasn't

1 arrested. She came back to work the next day. They  
2 knew she wasn't accused of stealing anything to the  
3 extent that we -- the Court accepts the testimony  
4 that she was asked that.

5 It cannot be the law that a manager directs an  
6 employee to clock out and go home, they decide they  
7 want to go back to work -- and she knows -- Ms. Buie  
8 knows that she had been directed to clock out and go  
9 home. She can paint it any way she wants to.

10 Her own testimony, if you read her deposition  
11 testimony, says that she went back to work and the  
12 assistant -- the manager came out and tried to move  
13 the pallet from her. Why is Ms. Roller coming back?  
14 So they get into an altercation. Ms. Roller has  
15 told her to go home. She has indicated she's not  
16 going home. She isn't going to go. Bound and  
17 determined to do what she's going to do.

18 So by her own testimony, she said that Ms.  
19 Roller came and tried to move the pallet from her to  
20 keep her from stocking because -- you know why she  
21 did it? Because she told her to go home and  
22 Ms. Buie wasn't going home.

23 And if Ms. Roller can't call the police, the  
24 police -- there was no handcuffing, there was none  
25 of that. The police came, by Ms. Buie's own

1 testimony, and said to her, Ma'am, you don't want to  
2 get in trouble for insubordination; you need to go  
3 ahead and go home. That was the extent of it.

4 And it just cannot -- that has to be, if at  
5 all, if the Court is inclined to think that there's  
6 any scintilla there that gives rise to defamation,  
7 it has to be protected by the conditional privilege  
8 because there's no evidence that the manager acted  
9 in anything other than good faith for the limited  
10 purpose of having Ms. Buie go home as she asked her  
11 to do. And so for that reason, Your Honor, summary  
12 judgment is appropriate on both of these claims.

13 If there's any further questions, that would  
14 conclude my argument.

15 Your Honor, I'm sorry, if I may, just one more.  
16 There was a claim in there as well in the complaint  
17 for libel per se. And there's been no evidence of  
18 any type of writing. So to the extent that -- the  
19 two were kind of clumped together in one cause of  
20 action, but I did want to bring that to the Court's  
21 attention that there was no evidence of a written  
22 statement of any sort to support a libel claim.

23 (Pause.)

24 **THE COURT:** All right. As to the assault  
25 charge, I am going to grant the motion. I think --

1 I haven't heard anything that causes me to believe  
2 that it should be taken outside of the exclusivity  
3 of the Workers' Compensation Act.

4 And as to the claim for libel, I'm going to  
5 grant the motion. There is no evidence in the case  
6 at all that there was a writing to any effect.

7 **MR. MURRELL:** That's right. If libel was -- it  
8 may have been that we just used it incorrectly.  
9 It's a defamation claim.

10 **THE COURT:** Sure.

11 And then as to the defamation claim, I'm going  
12 to take it under advisement to give me an  
13 opportunity to read the transcript. I've got it  
14 here in the file, but I haven't had a chance to read  
15 it. So if you would -- at this point, I'm going to  
16 take that issue under advisement to give me that  
17 opportunity, okay.

18 **MS. LEWIS:** Thank you, Your Honor.

19 **MR. MURRELL:** Thank you, Your Honor.

20 **THE COURT:** All right. Now, with regards to,  
21 Mr. Murrell, the -- now, Ms. Lewis, do you have any  
22 position to -- do you have any position regarding  
23 the motion to be relieved?

24 **MS. LEWIS:** I do not have a position  
25 regarding --

*anything  
writing*

1           **THE COURT:** So I'll just hear from Mr. Murrell  
2 and Ms. Buie on that.

3           **MS. LEWIS:** Yes, Your Honor. And before you do  
4 that, if I may approach. I have a complete copy of  
5 the transcript. I think that my associate may have  
6 included the pages that were cited in the memo. But  
7 if the Court's inclined -- wants the entire  
8 document, we do have the entire deposition.

9           **THE COURT:** Thank you. I would appreciate  
10 that. Thank you very much. Thank you, ma'am.

11           All right. Now, as to the motion to be  
12 relieved, Mr. Murrell.

13           **MR. MURRELL:** Yes, Your Honor. Did the Court  
14 receive my brief in opposition? We e-mailed that on  
15 Friday.

16           Did you get one?

17           **MS. LEWIS:** I did. I have a copy of that as  
18 well if the Court needs that.

19           **MR. MURRELL:** We had attached the deposition  
20 transcript as well just in case. I just wanted to  
21 make sure that you did receive it. We e-mailed it  
22 to your --

23           **THE COURT:** You e-mailed it to us?

24           **MR. MURRELL:** Yes, sir.

25           **THE COURT:** Yeah, we got it.

1           **MR. MURRELL:** Now, as to the motion to be  
2 relieved as counsel, Your Honor, essentially, it  
3 flows from just a breakdown of the attorney/client  
4 relationship. Ms. Buie did ask me to no longer  
5 represent her and I told her that if that was her  
6 wish, then I would step aside. She may have changed  
7 her mind about that. But there's been an  
8 unfortunate just breakdown of our relationship, and  
9 I just felt like it would be better for her to get  
10 other counsel.

11           **THE COURT:** Ms. Buie, be happy to hear from  
12 you, ma'am.

13           **MS. BUIE:** No, sir, I do not request a motion  
14 of relief. I request that the deposition be  
15 disputed because over half of it is incorrect, sir.  
16 I wish you would request the recording and listen to  
17 that and then listen to the deposition. It's not  
18 collaborating. It's exaggerated. And it's not what  
19 I said.

20           And I have two key witnesses that have not had  
21 statements taken.

22           **THE COURT:** Mr. Murrell, does the deposition  
23 appear to be inaccurate?

24           **MR. MURRELL:** Not to me, Your Honor. And we  
25 provided Ms. Buie with a copy of her deposition.

1 And I made some notes during the deposition and it  
2 seems to -- I mean, I didn't write down everything,  
3 but, you know.

4 **THE COURT:** Ms. Buie, did you ask Mr. Murrell  
5 to step aside as your attorney?

6 **MS. BUIE:** No, sir. All the -- on the  
7 deposition, they have me a complete argument. We  
8 never argued, Your Honor. And her story is a lie,  
9 incomplete.

10 And my witness was Kathena {phonetic} Smith.  
11 She was right there when the whole incident  
12 occurred. It was fabricated. And it was an  
13 incident that should not have happened. And there  
14 was an in-store investigation, everything she said,  
15 and I was found innocent.

16 **THE COURT:** I understand what you're saying,  
17 and I understand that as a result of this, you were  
18 not fired, you retained your job, nothing prevented  
19 you from continuing to work there. But the purpose  
20 of the hearing here today is really not to try the  
21 case, it was simply to deal with the legal issues,  
22 okay.

23 But with regards to this matter of  
24 Mr. Murrell's motion to be relieved as counsel, I  
25 mean --

1           **MS. BUIE:** I was, Your Honor, given this letter  
2 that we -- he be relieved and I should call  
3 Ms. Lewis. And, no, sir, I don't wish for him to be  
4 moved because I'm a full-time student, I work three  
5 part-time jobs. I don't have the strength to go  
6 through another case. I'd rather keep him --

7           **THE COURT:** Well, at some point, did you ask  
8 him to step aside from your case?

9           **MS. BUIE:** No, sir.

10          **THE COURT:** So he just made that up?

11          **MS. BUIE:** No. I asked him to step aside  
12 because he would not dispute the deposition and  
13 that --

14          **THE COURT:** Why would he dispute the deposition  
15 if he doesn't feel that it's inaccurate?

16          **MS. BUIE:** Because the statements in there, we  
17 argue in the office. It's a whole long  
18 conversation. Nothing never happened in the office,  
19 sir, nothing. But in the deposition, they have me  
20 in a full discussion. That is incorrect, sir. The  
21 only thing that's said --

22          **THE COURT:** Do you recall that -- and, again,  
23 it's about the facts, I'm not dealing with those,  
24 but as far as the deposition and during the time  
25 that the deposition was being taken, do you recall

1 that testimony and those questions?  
2 **MR. MURRELL:** Yes, sir, I do.  
3 **THE COURT:** I mean --  
4 **MR. MURRELL:** And, you know, like I said, Your Honor, I made some notes during the deposition. I  
5 looked through my notes just to see -- just to make  
6 sure that that was being reflected in the deposition  
7 and it was. I read through it and, you know,  
8 everything I said in there is correct. And I  
9 provided a copy to Ms. Bute.  
10 I even asked the court reporter if they could  
11 give the recorded version, but the court reporter  
12 said they didn't want to do that --  
13 **THE COURT:** They can't do that.  
14 **MR. MURRELL:** -- because there was a lot of  
15 back and forth and all kind of on-the-record,  
16 off-the-record recordings, so they didn't want to do  
17 that. I shared that with Ms. Bute as well. I got a  
18 letter from the court reporter just kind of  
19 explaining why they didn't want to provide the  
20 recording and -- but I don't have a dispute about  
21 the deposition, Your Honor. It does -- in my view,  
22 it seems to be an accurate deposition of her  
23 testimony.  
24 **THE COURT:** Ms. Lewis, is that your  
25

1 recollection of the deposition? You've read through  
2 it.

3 **MS. LEWIS:** Yes, Your Honor. The deposition is  
4 accurate.

5 **THE COURT:** Well, here's my concern, Ms. Buie,  
6 is the relationship between your lawyer and  
7 yourself, because here's the thing: I understand --  
8 and I fully appreciate where you're telling me, you  
9 know, you don't want to have to go through the  
10 trouble of finding another attorney at this stage  
11 and all like that.

12 But the concern I have is whether or not there  
13 is a relationship between the two of you that can  
14 proceed and prosecute your claim effectively and  
15 whether or not you're able to work with Mr. Murrell  
16 if this case were to continue -- I don't know at  
17 this point; like I said, I've taken that matter  
18 under advisement -- but if the case were to  
19 continue, whether you'd have a relationship with  
20 Mr. Murrell that can -- you continue to work with  
21 him and proceed in prosecuting your claim or if  
22 you'd be in a better position to have someone else.

23 But you disagree with him about the deposition,  
24 you've asked him to step aside because he wasn't  
25 willing to fight that battle, and now you're telling

1 me that you're just too tired to have to deal with  
2 getting another lawyer. But that -- I don't know if  
3 that's a good reason for him to stay on your case if  
4 you don't have any faith or trust in him.

5 **MS. BUIE:** I have faith and trust in him and I  
6 have a contract with him that I'm really asking we  
7 should go through a motion of mediation, which is  
8 where we were when this was blowed {sic} up. We  
9 were supposed to have mediated on the 15th of August  
10 and that's where I want to be. And I just wish that  
11 we could move to a motion of mediation.

12 **THE COURT:** Why didn't it get mediated?

13 **MS. LEWIS:** Your Honor, we didn't because this  
14 motion was pending and I just thought it better that  
15 we get this resolved because Ms. Buie had started  
16 calling my office, I didn't want to take her calls  
17 and negotiate, obviously, for obvious reasons. And  
18 so we thought it would be prudent to simply wait for  
19 this ruling and then proceed.

20 **THE COURT:** I agree with you.

21 **MR. MURRELL:** Your Honor, also, Ms. Buie did  
22 not want to mediate and so she instructed me not to  
23 do that, so we -- that was another kind of breakdown  
24 area that we had. She didn't want to do that. It  
25 was all about the deposition and we had to, you

1 know --

2 **THE COURT:** Ms. Buie, what about that?

3 **MR. MURRELL:** Then she -- then she now has said  
4 she does want to mediate, which I'm glad to hear,  
5 but early on that was another one of our areas where  
6 we were breaking down and we just couldn't get  
7 things going.

8 **MS. BUIE:** We didn't agree on the mediation  
9 amount, but I did want to mediate, Judge, that's  
10 what I wanted to do.

11 **THE COURT:** Well, here's the concern I've got:  
12 He wouldn't argue or fight for the deposition issue  
13 and you wanted to let him go over that. Now you're  
14 telling me that you just want to get it to a  
15 mediation, but then Mr. Murrell's telling me that he  
16 wanted to get it to mediation, you didn't want that,  
17 you didn't want to deal with mediation.

18 **MS. BUIE:** I did want to mediate. We couldn't  
19 agree on the amount to mediate, sir.

20 **THE COURT:** The amount to mediate. I'm not  
21 understanding that.

22 **MS. BUIE:** Well, I wanted to make an offer. He  
23 wanted to make his offer. And I felt like his offer  
24 was too low. *25,000*

25 **THE COURT:** Well, it doesn't sound like the two

1 of y'all are on the same page. I mean, it sounds to  
2 me like you'd be better off with somebody who sees  
3 the matter as you see it or, you know --

4 **MS. BUIE:** I feel like the defamation time is  
5 -- the time limit is at hand and it's been since  
6 2012. And I really, sir, would prefer to just  
7 mediate and really get it over with.

8 **THE COURT:** But you'd have to mediate with  
9 Mr. Murrell as your attorney representing your  
10 interest.

11 **MS. BUIE:** Mr. Murrell is a good attorney. I  
12 don't have a problem with him. I have two witnesses  
13 that he has not interviewed that would contract --  
14 tell a different story than she does and Walmart  
15 does. And the fact that my two key witness has not  
16 had a statement, a deposition, has not been  
17 interviewed or anything, I felt like why has that  
18 not happened?

19 **THE COURT:** Well, it doesn't sound like you're  
20 happy with him. It doesn't sound like that you're  
21 happy with your lawyer. He hadn't gotten the  
22 witnesses you want, he won't -- he won't fight your  
23 battle with regards to the deposition transcript, he  
24 doesn't agree with the value in the case the same  
25 way you value the case. I don't know that you're on

1 the same page with him on anything.

2 **MS. BUIE:** I feel, sir, that, at this point in  
3 time, being a full-time student and working, it will  
4 be too emotionally trauma for me to try to start all  
5 the way over, sir. I just -- I have a full plate  
6 and I can't start over. I just would like to go  
7 ahead and mediate and get it over with. I'm a  
8 full-time student and --

9 **THE COURT:** I tell you what I want to do, I  
10 want to withhold the decision on the motion to be  
11 relieved. Let me review everything that's been  
12 presented, let me review what's in the file and then  
13 I'll make a decision as to these matters at that  
14 time.

15 **MR. MURRELL:** All right. Thank you, Your  
16 Honor.

17 **MS. BUIE:** Thank you.

18 **MS. LEWIS:** Thank you, Your Honor.

19 **THE COURT:** Thank you, folks.

20

21

END OF PROCEEDINGS

22

23

24

25

## C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Florence County, South Carolina, on the 28th of September, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 29, 2016

A handwritten signature in cursive script that reads "Stacy L. Sheppard". The signature is written in black ink and is enclosed within a large, hand-drawn oval.

Stacy L. Sheppard, RPR  
Circuit Court Reporter

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