

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2016-000982

Jacqueline Buie

Appellant,

v.

Walmart Stores East, LP,

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-2504

JACQUELINE BUIE

WALMART STORES EAST, LP

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Regina Hollins Lewis

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Rule 56, SCRCP
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy Court; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

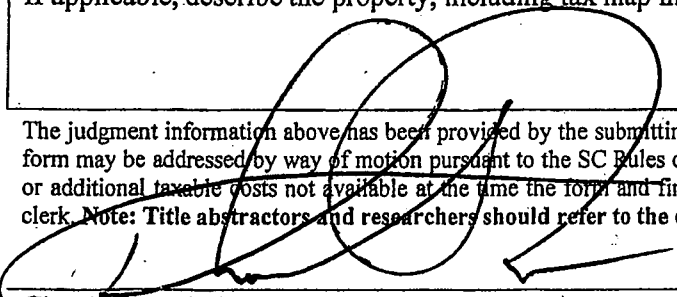
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$ CERTIFIED: A TRUE COPY
		\$ <i>Cassie R. Warren</i>
		\$ CLERK OF COURT C.P. & G.S.
		\$ FLORENCE COUNTY, S.C.
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2141
Judge Code

11/13/2015
Date

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Jacqueline Buie,

Plaintiff,

vs.

Walmart Stores East, LP

Defendant.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-21-2504

OPINION AND ORDER

FILED
NOV 16 PM 3:50
CLERK OF COURT C.P. & S.
FLORENCE COUNTY, S.C.

This matter is before the Court upon the Motion for Summary Judgment of Defendant Walmart, Inc., (hereinafter "Walmart"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and upon the Motion to be Relieved as Counsel of Plaintiff's counsel, J. David Murrell, Esquire. For the reasons set forth herein, the Court finds that Plaintiff has not presented a scintilla of evidence in support of her claim of defamation; therefore, there is no genuine issue of material fact by which Plaintiff can preclude summary judgment. Additionally, Plaintiff's cause of action for assault is barred by the exclusivity provision of the South Carolina Workers' Compensation Act. Therefore, the Court grants Walmart's Motion for Summary Judgment as to all of Plaintiff's claims. Further, the Court finds that Plaintiff's counsel has set forth valid and sufficient grounds to be relieved as counsel, and, thus, the Court grants his Motion to be Relieved as Counsel.

FACTS

After reviewing the evidence in a light most favorable to the Plaintiff, the Court finds the following facts: Buie began working for Walmart as a full-time, overnight stocker in 2008. In 2009, she also became a bus driver for the local school district and as

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Laurie R. Spivey
CLERK OF COURT C.P. & S.
FLORENCE COUNTY, S.C.

a result, transitioned to working part-time at Walmart. During the relevant time frame of 2012, Buie was working as an overnight stocker at Walmart every Friday and Saturday night from 10:00 p.m. until 7:00 a.m. for a total of sixteen (16) hours per week.

The incident that is the subject of this lawsuit occurred on November 2, 2012. At 10:15 p.m. that evening, Buie arrived at the subject store for her shift. She was immediately requested to the office by manager Kathy Roller. Roller explained that six associates¹ had called out from their shift, and, therefore, Roller needed Buie to work quickly because she needed assistance in other areas. Buie understood Roller to mean that if Buie finished her work early, she was to work on the assignments of the associates who did not report for work that night.

Buie then started her shift by stocking diapers in the Infants Department. Another associate, Carthenia Smith, was on her way to clock-out and stopped to chat with Buie. During this time, Roller walked past the two associates and yelled "go back to work" in a rude voice. Buie testified that she and Smith "looked at each other and started smiling and laughed and I continued to stock." The two did not respond to Roller. A few minutes later, assistant manager Amber Barnhill came to the area and told Buie that Roller wanted to see Buie in the office. In frustration at being called to the office, Buie told Barnhill that with all of the stopping and starting work, she (Buie) may as well clock out and go home.

When Buie and Barnhill arrived at the office, Roller and Barnhill told Buie that she needed to go to work and to stop talking. Buie was directed to sit down but "chose to stand." Barnhill accused Buie of insulting her, and Roller told Buie that Buie was not working as expected. Buie testified that they "got in a confrontation, sort of a

¹ Walmart refers to its employees as "associates."

misunderstanding." Buie asked to speak with the store manager, who was not working that evening. Roller was in charge of the store that night and told Buie that she would not call the store manager, who lived in North Carolina and was presumably at home in the late evening.

Buie walked out of the office to the break room, and called a Human Resources telephone number for Walmart's corporate offices that was listed on the wall in the break room. Buie left a voice message indicating that she had "two managers assaulting me, talking to me like a dog, accusing me of not working and I was very well working." Roller then told Buie to go back to the office, but Buie disregarded Roller's instruction and returned to the Infant Department where she continued stocking diapers.

Thereafter, Roller came to the Infant Department and told Buie that because she had previously indicated that she wanted to go home, she should clock out and proceed home. Roller attempted to move the pallet with diapers, but Buie continued to take the merchandise off of the pallet and stock the shelves. Buie then went and retrieved more freight and began stocking it. Buie continued to work and "thought everything was fine" when Roller walked toward her with two police officers.

Buie asked the officers if there was a problem, and the officers requested to speak with her, to which Buie responded, "[a]bout what?" Buie then followed Roller and the officers to the back of the store upon the officer's request. Once in the back of the store, one of the officers explained that Roller had called law enforcement because she wanted Buie to go home. Buie asked for a reason and then informed the officer that Roller told her she may as well go home as she had previously said she was going to clock out and go home. Buie further explained that Roller was using Buie's words against her because

Buie had not done anything wrong. An officer responded, “[M]a’am, you don’t want to get in trouble for insubordination, why don’t you go home and come back in the morning.” Following the officer’s statement, Roller offered to pay Buie for the entire shift. Buie again stated that she had not done anything wrong, and the officers told her to leave. The officers then began walking out into the store with Buie, but Buie recalled that she did not have her keys. She told the officers she needed to get her keys, and the officers told her that they would wait for her. Buie then retrieved her keys and exited the store through another door at approximately midnight. Buie was paid for the entire shift. This lawsuit followed.

STANDARD OF REVIEW

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder.”² “[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”³

In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party.⁴ “Summary judgment is appropriate where 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 judgment as a matter of law.”⁵ “All ambiguities, conclusions, and inferences arising from

² *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

³ *Ellis v. Davidson*, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004); see also *Rumph v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 392, 593 S.E.2d 183, 186 (Ct. App. 2004).

⁴ *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) (emphasis added).

⁵ *Ellis*, 358 S.C. at 517-18, 595 S.E.2d at 821.

the evidence must be construed most strongly against the moving party.”⁶ “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.”⁷ In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.⁸ In the present case, even taking Plaintiff’s allegations as true, she has failed to set forth a scintilla of evidence to allow her claims to proceed to a jury. As such, summary judgment is warranted.

ANALYSIS

Defamation Claim

“A person makes a defamatory statement if the statement ‘tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.’”⁹ “The tort of defamation therefore permits ‘a plaintiff to recover for injury to his or her reputation as the result of the defendant’s communications to others of a false message about the plaintiff.’”¹⁰ “We therefore require a plaintiff to prove the following four elements to state a claim for defamation: ‘(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm

⁶ *Id.* at 518, 595 S.E.2d at 821.

⁷ *Id.* at 518, 595 S.E.2d at 822.

⁸ *Fronenberger v. Smith*, 406 S.C. 37, 46, 748 S.E.2d 625, 629 (Ct. App. 2013).

⁹ *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012) (quoting *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)).

¹⁰ *Id.* (quoting *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006)).

caused by the publication.”¹¹ Slander is spoken defamation, and libel is written defamation.¹²

To establish slander that is actionable *per se*, a plaintiff must show that the defendant’s alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: “(1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one’s business or profession.”¹³ Here, Buie has alleged a single cause of action for defamation but has titled her claim “slander *per se*/libel *per se*.”¹⁴

As a preliminary matter, Buie’s counsel acknowledged that there was no written statement at issue in this case and indicated that the inclusion of the libel claim was an error. Because there is no evidence to support a libel *per se* claim, summary judgment is granted as to that claim.

In support of her slander *per se* cause of action, Plaintiff’s Complaint alleges that Walmart, through its agents and servants, defamed her by “implying and portraying that Plaintiff had stolen from Defendant, which is a crime of moral turpitude.”¹⁵ Buie further alleges that Walmart slandered her by “knowingly publishing a false and defamatory portrayal and statements concerning the Plaintiff, placing Plaintiff in a false light and wrongfully implying, portraying and stating that Plaintiff stole from Defendant, thereby harming the Plaintiff’s reputation.”¹⁶

¹¹ *Id.* (quoting *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664).

¹² *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998).

¹³ *Id.* at 511, 506 S.E.2d at 502.

¹⁴ Compl. ¶ 1.

¹⁵ Compl. ¶ 7.

¹⁶ Compl. ¶ 8.

As our appellate courts have recognized, a defamatory insinuation may be made by actions or conduct as well as by word.¹⁷ Thus, defamation need not be accomplished in a direct manner. To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner.¹⁸ “A mere insinuation is as actionable as a positive assertion *if it is false and malicious and the meaning is plain.*”¹⁹

This case does not involve an alleged false accusation of theft by statement as it is undisputed that Walmart never made a statement that in any way suggested Buie had stolen merchandise. Rather, Buie’s claim of slander *per se* is basely solely upon her contention that Walmart gave the impression that she had stolen or was being arrested when the officers responded to the store following her refusal to take her manager’s instruction to clock out and go home. Buie testified that co-workers asked her what she had stolen and why she was being arrested. However, Buie has failed to set forth any evidence to show that Walmart acted in a false and malicious manner or that the plain meaning of Walmart’s call to the police was that Plaintiff had stolen. Law enforcement may be called for any number of reasons, including the reason for the call in this instance — Buie’s admitted refusal to leave the store when instructed. Moreover, Buie acknowledged that (1) the police officers requested she leave the store to avoid getting in trouble for insubordination, (2) Roller agreed to pay her for the entire shift, and (3) she returned to work the next day.

¹⁷ *Tyler v. Macks Stores of S.C., Inc.*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980).

¹⁸ *Id.*

¹⁹ *Id.* (quoting *Timmons v. News and Press, Inc.*, 232 S.C. 639, 644, 103 S.E.2d 277, 280 (1958)) (emphasis added).

By Buie's own admissions, she was frustrated that she was called to the office for talking, and as a result, made a statement to the effect that if she was going to be interrupted during her work she could simply clock out and go home. The assistant manager, Amber Barnhill, reported Buie's conduct to the manager in charge, Kathy Roller. As Roller attempted to counsel Buie about talking to other associates during a shift, Buie refused to sit down and then left the office during the discussion. Buie called Walmart's corporate offices from the break room, leaving a voice message of complaint. Thereafter, Roller instructed Buie to go back into the office, but Buie ignored the instruction only to return to the department where she was previously working. Roller then called the police to assist her in having Buie leave the premises, which she was legally entitled to do. At her deposition, Buie admitted that Roller directed her to clock out and go home and that she refused to do so. Following the incident, Buie sent an email to Walmart's Human Resources Department, in which she once again admitted that she refused to go home as directed. Thus, Buie has failed to show that Walmart made a false and malicious insinuation that had a plain meaning suggesting that Buie had stolen.

Moreover, Walmart's call to the police was subject to a conditional privilege, which the Court finds applies here.²⁰ The elements of a conditionally privileged communication are: (1) good faith; (2) an interest to be upheld; (3) a statement limited in scope to this purpose; (4) a proper occasion; (5) publication in a proper manner to proper parties. Here, there is no evidence that Walmart's managers acted in anything other than good faith. They had an interest in ensuring that Buie followed the instructions she was

²⁰ See *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 32-33, 282 S.E.2d 599, 601 (1981) (holding that in the absence of a controversy as to the facts it is for the court to say in a given instance whether or not the privilege has been abused or exceeded).

given and that there would be no further altercations or insubordination. There is no evidence that any statement was made to the police other than a request to respond to the store, and, thus, the call to the police was limited in scope to its purpose and made in a proper manner to the proper parties. Plaintiff fails to present a scintilla of evidence to show that Walmart made a false or defamatory statement or that Walmart's alleged call to the police exceeded the scope of the conditional privilege granted to it.

In her opposition to the Motion for Summary Judgment, Plaintiff relies upon her deposition testimony in response to questioning by her own counsel, during which Plaintiff testified she told Roller she did not want to go home and that Roller allowed her to go back to work and then called the police. To the extent that Plaintiff's testimony in response to questioning by her counsel contradicts her earlier testimony, the testimony is insufficient to create a material dispute of fact. Plaintiff acknowledged both in her deposition testimony and in an email she sent to Walmart's Human Resources Department days after the incident that Roller told her to clock out and go home and that she instead went back to work. In short, there is no genuine issue of material fact and Walmart's actions in calling the police to have Buie leave as directed does not give rise to a claim for slander and thus, necessarily, cannot support a slander *per se* claim. Accordingly, summary judgment is granted in favor of Walmart on Plaintiff's claim for slander *per se*.²¹

Assault Claim

Plaintiff next alleges that Walmart, through its agents and servants, committed an assault by creating a reasonable apprehension and fear in her of immediate harmful or

²¹ Notably, even assuming Plaintiff could overcome the hurdles of establishing the publication of a false and defamatory statement through fault of Walmart and without privilege, she cannot establish that she suffered harm to her reputation and thus, the claim fails for this additional, independent reason.

offensive conduct to her person. This claim fails as a matter of law because the claim is barred by the exclusivity provision of the South Carolina Workers' Compensation Act, section 42-1-540 of the South Carolina Code as Plaintiff was an employee of Walmart at the time of the alleged assault, and the alleged assault arose out of her employment at Walmart.

Section 42-1-540 governs the exclusivity of the remedy of workers' compensation and provides in pertinent part that rights of employees under the Workers' Compensation Act are the exclusive remedy for compensation for personal injury that occurs in the workplace. The South Carolina appellate courts have consistently held that personal injuries such as assault and battery that arise out of a party's employment fall within the exclusivity provision of the Act and thus, civil actions such as the subject claim are barred.²² Accordingly, summary judgment is granted on the claim of assault.²³

Motion to Be Relieved by Plaintiff's Counsel

The court also considers here the Motion to be Relieved as Counsel filed by Plaintiff's counsel. At the hearing on the motion, indicated that she did not want her counsel to be relieved. However, she acknowledged that she previously told her counsel that she no longer wanted him as her attorney after he refused to take steps to have her deposition transcript amended. Plaintiff asserts that the deposition transcript does not accurately reflect her testimony, but counsel for Plaintiff indicated that his notes and recollection confirm that the deposition transcript is accurate and that he saw no basis to

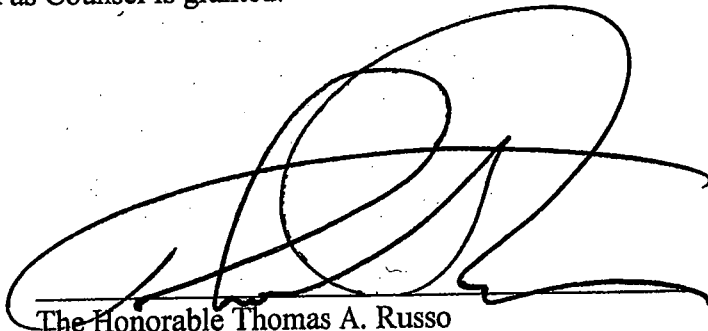
²² See e.g., *Loges v. Mack Trucks*, 308 S.C. 134, 139, 417 S.E.2d 538, 541 (1992) (holding employee's claims of assault and battery and intentional infliction of emotional distress against employer were barred by the exclusivity provision of the Workers' Compensation Act).

²³ Moreover, aside from the procedural bar to Plaintiff's assault claim, the claim fails substantively as a matter of law. Plaintiff admitted that she was not placed in fear of physical harm by Walmart's managers and that the only basis for her assault claim is that she thought she was going to be arrested and that one of the officers made a gesture with his hand for her to go to the back of the store. This evidence is insufficient to sustain Plaintiff's assault claim as a matter of law and summary judgment is warranted.

challenge or seek amendment of the deposition transcript. Walmart's counsel also indicated that based on her recollection, the deposition transcript accurately reflected Plaintiff's testimony at the deposition. Plaintiff also testified at the hearing that she wanted to engage in mediation of the case but that she did not agree with her attorney's assessment of the value of the case. Plaintiff indicated that she is in school and that it would be difficult for her to obtain new counsel.

While the Court appreciates Plaintiff's concerns, the Court agrees with counsel for Plaintiff that the attorney-client relationship has become unworkable and that counsel for Plaintiff cannot effectively proceed with the representation of Plaintiff. For these reasons, the Motion to be Relieved as Counsel is granted.

IT IS SO ORDERED.



The Honorable Thomas A. Russo
Circuit Court Judge

11/13, 2015

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JAMIE REEL-SHEARIN
COCOP & GS
FLORENCE COUNTY, SC

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Jamie Reel-Shearin

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FLORENCE COUNTY, S.C.

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Cornie Ral-Spearin
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FLORENCE COUNTY, S.C.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-21-2504

Jacqueline Buie,

Plaintiff,

vs.

Walmart Stores East, LP

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER, AMEND, AND
RECONSIDER JUDGMENT**

FILED
2016 MAR 20 PM 3:10
CORNIE RAL-SPEARIN
CLERK OF COURT C.P. & GS
FLORENCE COUNTY, S.C.

This matter was before the Court on April 14, 2016, upon Plaintiff Jacqueline Buie's December 8, 2015 Motion to Alter, Amend, and Reconsider Judgment (hereinafter "Motion") pursuant to Rules 52,¹ 59, and 60 of the South Carolina Rules of Civil Procedure, in response to this Court's granting summary judgment in favor of Defendant Walmart Stores East, LP, as memorialized in the Opinion and Order filed November 16, 2015. For the reasons set forth herein, the Court finds that Plaintiff presented no facts or issues that the Court failed to consider or rule upon in granting summary judgment in favor of Defendant. Therefore, the Court denies Plaintiff's Motion to Alter, Amend, or Reconsider Judgment.

FACTS

The incident that is the subject of the underlying lawsuit occurred on November 2, 2012, during which Plaintiff, an associate at Defendant's store in Florence, South Carolina, refused to leave the facility despite her manager's request to do so. Law enforcement responded to the

¹ The present Motion arises from a grant of summary judgment in favor of Defendant; thus, Rule 52, SCRPC, is inapplicable. *Woodson v. DLI Props. LLC*, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014) ("Rule 52, SCRPC, provides that '[f]indings of facts and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56' Thus, such findings and conclusions are not required for appellate review, and, for this reason, we overrule *Bowen* to the extent it is relied upon to vacate and remand orders granting summary judgment.) Accordingly, the Court will address Plaintiff's Motion pursuant to Rules 59 and 60, SCRPC. See *Richland Cnty. v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (When the trial court is able to discern the relief requested, "[i]t is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'" (quoting *Standard Fed. Sav. & Loan Ass'n v. Mungo*, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991))).

subject store and requested that Plaintiff leave. Ultimately, Plaintiff voluntarily exited the store of her own accord.²

Thereafter, Plaintiff filed the present action, alleging defamation and assault against Defendant. Following written discovery and depositions, Defendant filed a Motion for Summary Judgment as to all of Plaintiff's causes of action. Additionally, Plaintiff's counsel filed a Motion to be Relieved as Counsel. After full consideration of all the evidence and arguments presented on the Motions, this Court granted summary judgment on all causes of action in favor of Defendant and, further, in its Order and Opinion filed November 16, 2015 (hereinafter "November 16, 2015 Order"), relieved Plaintiff's counsel of his representation. Subsequently, Plaintiff filed the subject Motion to Alter, Amend, and Reconsider Judgment.

LAW

A Rule 59(e) motion is a vehicle to request the alteration or amendment of judgment as well as a vehicle to seek reconsideration of issues presented at the initial hearing or trial. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); *see, e.g., Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (finding the "purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"). "A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780 (emphasis in original). "A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* (emphasis in original).

² This is an abbreviated recitation of the facts of this case. The Court hereby incorporates by reference the entire fact section from its Order and Opinion granting Defendant's Motion for Summary Judgment, dated November 16, 2015, including citations therein to the record.

Rule 60(a), SCRPC, provides for relief from a judgment or order based upon clerical mistakes. Rule 60(b), SCRPC, provides relief from judgment or order based upon mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, etc. Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992).

ANALYSIS

Plaintiff submits two main issues in support of her Motion: (1) the alleged falsity of Plaintiff's deposition transcript provided at the hearing on Defendant's Motion for Summary Judgment and (2) Walmart's alleged usage of the word "disturbance" in the store's verbal communication to law enforcement. The Court finds, as set forth below, that it fully considered and ruled upon all of the issues and facts raised by Plaintiff in her Motion and argument; thus, Plaintiff's Motion is denied.

I. Deposition Transcript

Plaintiff moves this Court to alter, amend, or reconsider its grant of summary judgment in favor of Defendant based upon the alleged falsity of her deposition transcript, particularly that she did not testify that a manager asked her to clock out and go home, as the transcript reflects. This Court declines Plaintiff's request.

As set forth in the November 16, 2015 Order, Plaintiff acknowledged at the hearing on Defendant's Motion for Summary Judgment that she asked her counsel to withdraw representation following his refusal to request amendment of her deposition transcript. Plaintiff asserted then and continues to assert that the deposition transcript does not accurately reflect her testimony. In fact, Plaintiff avers that the court reporter who transcribed her deposition fabricated the entire transcript. However, as reflected in the November 16, 2015 Order, former

counsel for Plaintiff indicated his notes and recollection confirm that the deposition transcript is accurate and that he saw no basis to challenge or seek amendment of the deposition transcript. Additionally, Defendant's counsel also indicated that based on her recollection, the deposition transcript accurately reflected Plaintiff's testimony at the deposition. Moreover, page three (3) the transcript of Plaintiff's deposition, which was placed into the record during the hearing on the underlying Motion for Summary Judgment, reflects that Plaintiff waived her right to read and sign the deposition transcript. Finally, Plaintiff's own email just three (3) days after the alleged incident states that the manager told her to clock out and go home and that, instead, Plaintiff went back to work. *See* Ex. A to Defendant's Motion for Summary Judgment.

For these reasons, this Court finds that Plaintiff does not present any evidence or issues concerning the deposition transcript that the Court failed to consider in its November 16, 2015 Order. Furthermore, Plaintiff does not show any evidence of fraud pursuant to Rule 60(b), SCRPC. Thus, this Court denies Plaintiff's Motion to Alter, Amend, or Reconsider Judgment on Plaintiff's first ground.

II. Defamation³

Plaintiff contends that the Court should reconsider its judgment on her cause of action for slander *per se* based upon the store's alleged use of the term "disturbance" when describing Plaintiff's behavior to law enforcement. The Court disagrees.

The Court finds that Plaintiff based her request for reconsideration on a document that is not appropriately in the record, as Plaintiff referenced an alleged dispatch record reflecting communications with the subject store. The referenced document was not submitted at the hearing on Defendant's Motion for Summary Judgment; thus, the use of or reliance on a

³ Plaintiff's former counsel conceded in the underlying hearing that Plaintiff could not present evidence to support a cause of action for libel as there was no written statement at issue. Accordingly, this Order does not address the abandoned claim of libel.

document is improper at the Rule 59(e) hearing. Furthermore, Plaintiff cannot now introduce the document as newly discovered evidence as contemplated under Rule 60(b), SCRPC, because such a document could have been discovered by due diligence and admitted for consideration at the summary judgment hearing. Moreover, the Court finds that the document provides no new substantive evidence, which was not considered by the Court in ruling upon Defendant's Motion for Summary Judgment. Plaintiff's desire for the Court to assign some nefarious, false or malicious meaning to the store's alleged use of the term "disturbance" is unfounded and insufficient to warrant reconsideration of its ruling in favor of Defendant as to Plaintiff's slander claim.

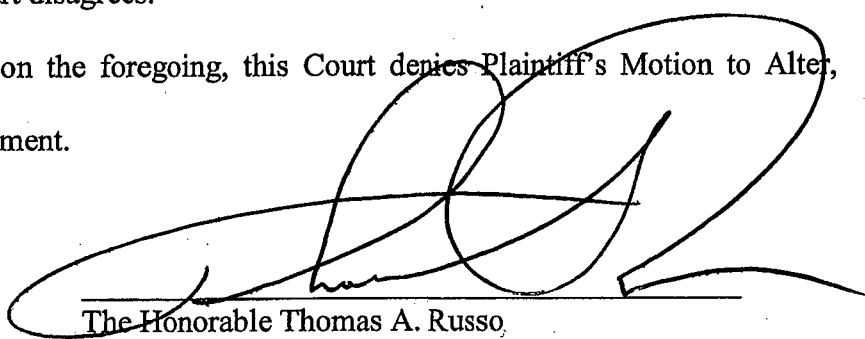
Based on the evidence appropriately in the record and the parties' arguments, the Court finds that Plaintiff presents no evidence or issues that warrant the Court's altering, amending, or reconsidering its grant of summary judgment as to Plaintiff's defamation claim *per se*. Thus, this Court denies Plaintiff's Motion to Alter, Amend, or Reconsider Judgment on this ground.

CONCLUSION

To the extent Plaintiff argues any other facts or issues that the Court allegedly failed to consider or rule upon, this Court disagrees.

Accordingly, based upon the foregoing, this Court denies Plaintiff's Motion to Alter, Amend, or Reconsider its Judgment.

IT IS SO ORDERED.



The Honorable Thomas A. Russo
Circuit Court Judge

May 18, 2016

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

JACQUELINE BUIE,

Plaintiff,

v.

WAL-MART STORES EAST, L.P.,

Defendant.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-21-2504

AMENDED COMPLAINT
JURY TRIAL REQUESTED

CERTIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, S.C.

CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

2014 NOV -3 PM 5:02

FILED

TO THE ABOVE-NAMED DEFENDANT:

The Plaintiff, complaining of the Defendant, alleges as follows:

One: The Plaintiff is a citizen and resident of Charleston County, South Carolina.

Two: The Defendant, Wal-mart Stores East, L.P., is a corporation organized and existing under the laws of the State of Delaware and maintaining premises, agents and/or employees in the County of Florence, in particular at 230 N. Beltline Drive, Florence, SC 29501.

Three: The parties, matters and all things and matters hereinafter alleged are within the jurisdiction of this Court. Furthermore, jurisdiction is also established based upon the provisions of the Code of Laws of South Carolina, § 36-2-802 and 36-2-803, as amended, commonly known as the long-arm statute.

Four: On or around January of 2008, the Plaintiff began working for the Defendant.

Five: On or about November 2, 2012, Defendant, its agents and/or employees, slandered, defamed, libeled and assaulted Plaintiff when Defendant contacted police officers to arrest Plaintiff at work and have her taken from the building in front of co-workers and customers.

FOR A FIRST CAUSE OF ACTION:
SLANDER PER SE/LIBEL PER SE

Six: The Plaintiff repeats and reiterates the foregoing allegations as if repeated verbatim herein.

Seven: That the Defendant, its agents and servants, defamed Plaintiff by implying and portraying that Plaintiff had stolen from Defendant, which is a crime

of moral turpitude.

- Eight: That the Defendant, its agents and servants, have defamed the Plaintiff by knowingly publishing a false and defamatory portrayal and statements concerning the Plaintiff, placing Plaintiff in a false light and wrongfully implying, portraying and stating that Plaintiff stole from Defendant, thereby, harming the Plaintiff's reputation.
- Nine: Defendant, its agents and/or employees' defamation of Plaintiff was unprivileged.
- Ten: Defendant, its agents and/or employees are at fault in publishing the defamatory portrayal, implication and statement as they constitute slander per se.
- Eleven: Defendant, its agents and/or employees are at fault in publishing the defamatory portrayal, implication and statement as it had knowledge that these were false or acted with reckless disregard as to their falsity.
- Twelve: The defamatory portrayal, implication and statement are false and slanderous *per se*, because the meaning of the message or statement is obvious on its face.
- Thirteen: The foregoing defamatory portrayal, implication and statement was specifically and directly concerning Plaintiff and was made with actual malice and with the intent to injure the Plaintiff and her reputation.
- Fourteen: That Defendant, its agents and/or employees negligently, recklessly and intentionally communicated a false message about Plaintiff.
- Fifteen: Due to the acts of Defendant, its agents and servants, the Plaintiff suffered actual and special damages, including loss and injury to her reputation, loss of professional respect in the community, embarrassment and humiliation.
- Sixteen: Defendant's defamation of the Plaintiff was done willfully, wantonly, recklessly, intentionally, and with actual malice, with the specific intent to harm Plaintiff. Therefore, the Plaintiff is informed and believes that she is entitled to recover punitive damages from the Defendant in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION:

ASSAULT

- Seventeen: The Plaintiff repeats and reiterates the foregoing allegations as if repeated verbatim herein.
- Eighteen: The Defendant, its agents and servants, directly and/or indirectly

by its actions created a reasonable apprehension and fear in Plaintiff of immediate harmful or offensive conduct to Plaintiff's person.

Nineteen: Defendant, its agents and servants, intended to bring about in Plaintiff apprehension of immediate, harmful or offensive contact with Plaintiff's person.

Twenty: Plaintiff's apprehension and fear was directly and/or indirectly caused by Defendant, its agents and servants' acts and/or the events set in motion thereby as described in this complaint.

REQUEST FOR RELIEF

Twenty One: Plaintiff reiterates and realleges each and every allegation as if fully set forth herein.

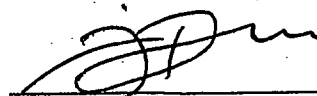
Twenty Two: That by reason of such wrongful acts of the Defendant, the Plaintiff has been damaged in such an amount to be determined by the trier of fact for the defamation per se, and assault. In the alternative, Plaintiff has also sustained damages including, but not limited to, injury to standing in the community and to reputation; embarrassment; personal humiliation; mental anguish and suffering; and wounded feelings caused by injury to reputation.

WHEREFORE, Plaintiff prays for the following relief:

Twenty Three: Judgment in favor of the Plaintiff and against Defendant in an amount of damages which is fair, just and reasonable, and for punitive damages, as may be determined; and,

Twenty Four: Judgment against Defendant for attorney fees, costs of this action and any other relief this Honorable Court deems just and proper under the law.

John Price Law Firm, LLC



J. David Murrell, Esquire
Attorney for Plaintiff
3045 Ashley Phosphate Road
North Charleston, SC 29418
843-552-6011

Charleston, South Carolina
This 30 of October, 2014.

CERTIFIED: A TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Jacqueline Buie,

Plaintiff,

vs.

Wal-Mart Stores East, L.P.,

Defendant.

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-21-2504

DEFENDANT'S ANSWER TO
PLAINTIFF'S
AMENDED COMPLAINT

FILED
2014 NOV 13 PM 3:25
JANIEL REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

TO: J. DAVID MURRELL, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Wal-Mart Stores East, L.P., by and through undersigned counsel, files this Answer to Plaintiff's Amended Complaint in the above-captioned case and states as follows:

FOR A FIRST DEFENSE

1. Each and every allegation in the Plaintiff's Amended Complaint is denied unless specifically admitted herein.
2. Defendant has insufficient information to admit or deny the allegations contained in Paragraph 1 pertaining to Plaintiff's residency and, thus, neither admits nor denies the allegations.
3. The allegations of Paragraph 2 are admitted only to the extent that they allege that Defendant is a business entity organized and existing under the laws of the state of Delaware and maintaining the subject premises in Florence County, SC. Defendant denies the remaining allegations as alleged.
4. The allegations of Paragraph 3 are jurisdictional in nature and do not require a response. To the extent a response is required, Defendant does not contest the Court's jurisdiction.

5. The allegations of Paragraph 4 are denied upon information and belief. Defendant further responds that it is informed and believes that Plaintiff was hired by Wal-Mart on or about November 15, 2008.

6. The allegations of Paragraph 5 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 5.

7. Paragraph 6 incorporates previous allegations; therefore, it does not require a response. To the extent a response is required, the allegations are denied.

8. The allegations of Paragraph 7 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 7.

9. The allegations of Paragraph 8 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 8.

10. The allegations of Paragraph 9 set forth a legal conclusion, which does not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 9.

11. The allegations of Paragraph 10 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 10.

12. The allegations of Paragraph 11 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 11.

13. The allegations of Paragraph 12 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 12.

14. The allegations of Paragraph 13 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 13.

15. The allegations of Paragraph 14 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 14.

16. The allegations of Paragraph 15 are denied.

17. The allegations of Paragraph 16 set forth legal conclusions, which do not require a response. To the extent a response is required, the allegations are denied. Defendant further denies any factual allegations contained in Paragraph 16.

18. Paragraph 17 incorporates previous allegations; therefore, it does not require a response. To the extent a response is required, the allegations are denied.

19. The allegations of Paragraph 18 are denied.

20. The allegations of Paragraph 19 are denied.

21. The allegations of Paragraph 20 are denied.

22. Paragraph 21 incorporates previous allegations; therefore, it does not require a response. To the extent a response is required, the allegations are denied.

23. The allegations of Paragraph 22 are denied.

24. Paragraph 23 contains a prayer for relief, which does not require a response. To the extent a response is required, Defendant denies any allegations contained in Paragraph 23.

25. Paragraph 24 contains a prayer for relief, which does not require a response. To the extent a response is required, Defendant denies any allegations contained in Paragraph 24.

FOR A SECOND DEFENSE

26. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

27. Plaintiff fails to state a claim for which relief may be granted on her cause of action against Defendant for slander *per se*/libel *per se* as Plaintiff cannot establish that Defendant made any statement that is defamatory or actionable. Specifically, Plaintiff cannot prove that Defendant a) made any statement with a defamatory meaning; b) published any statement with actual or implied malice; c) made any false statement regarding Plaintiff; d) published any false statement regarding Plaintiff; and e) Plaintiff cannot show legally presumed or special damages as a result of the alleged slander/libel. Moreover, to the extent any alleged statement was made, it is protected by a qualified or absolute privilege. Finally, any statements made by Defendant about Plaintiff were true. As such, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

28. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

29. Plaintiff fails to state a claim for which relief may be granted on her cause of action for assault as Plaintiff cannot establish that Defendant committed any act that placed Plaintiff in reasonable fear of bodily harm; therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

30. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

31. Defendant at all times acted reasonably, in good faith and with probable cause so as to bar any recovery against Defendant.

FOR A FIFTH DEFENSE

32. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

33. Defendant at all times acted reasonably and in good faith in the exercise of its legal rights and at no time breached any duty, acted with any malice or ill-will toward the Plaintiff, or recklessly or wantonly, or with a conscious disregard for the Plaintiff's rights; thus, the Plaintiff cannot sustain a claim for punitive damages. Further, punitive damages as sought by the Plaintiff are excessive, unconstitutional and violate the Due Process clause of the United States and South Carolina constitutions.

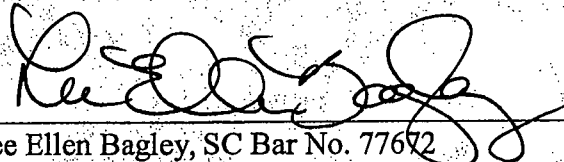
FOR A SIXTH DEFENSE

34. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

35. The facts not having been fully developed, Defendant affirmatively pleads any of the following defenses that may become applicable to this action: superseding intervening act, criminal act of third party, accord and satisfaction, arbitration and award, assumption of the risk, coercion, contract, election of remedies, estoppel, failure of consideration, illegality, laches, license, payment, release, res judicata, satisfaction, statute of frauds, waiver, failure of Plaintiff to mitigate damages or take reasonable steps to avoid damages, and any other matter constituting

an affirmative defense or avoidance.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant prays that the Court dismiss the Complaint and, further, prays for such other and further relief as the nature of Defendant's cause may require.



Lee Ellen Bagley, SC Bar No. 77672
Regina Hollins Lewis, SC Bar No. 68539
GAFFNEY LEWIS & EDWARDS, LLC
3710 Landmark Drive, Suite 109
Columbia, South Carolina 29204
803.790.8838 (office)
803.790.8841 (fax)

Attorneys for Defendant

November 12, 2014

1 State of South Carolina
2 County of Florence

Court of Common Pleas

RECEIVED

MAY 20 2016

SC Court of Appeals

3
4
5 Jacqueline Buie)
6 Plaintiff,)
7 v.)
8 Walmart, Incorporated,)
9 et al.)
10 Defendants.)

Transcript of Record
14-CP-21-2504

11 September 28, 2015
12 Florence, South Carolina

13 B E F O R E:

14 The Honorable Thomas A. Russo, Sr., Judge.
15

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

17 J. David Murrell, Esquire
18 Attorney for the Plaintiff

19 Regina Hollins Lewis, Esquire
20 Attorney for the Defendant
21
22
23
24

25 Stacy L. Sheppard, RPR
Circuit Court Reporter

1

I N D E X

2

WITNESSESDIRECTCROSSREDIRECTRECROSS

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5

(There were no witnesses.)

6

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E X H I B I T S

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NO.DESCRIPTIONID. EVD.

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(There were no exhibits.)

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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
5 Honor, I made some notes during the deposition. I
6 looked through my notes just to see -- just to make
7 sure that that was being reflected in the deposition
8 and it was. I read through it and, you know,
9 everything I said in there is correct. And I
10 provided a copy to Ms. Buie.

11 I even asked the court reporter if they could
12 give the recorded version, but the court reporter
13 said they didn't want to do that --

14 **THE COURT:** They can't do that.

15 **MR. MURRELL:** -- because there was a lot of
16 back and forth and all kind of on-the-record,
17 off-the-record recordings, so they didn't want to do
18 that. I shared that with Ms. Buie as well. I got a
19 letter from the court reporter just kind of
20 explaining why they didn't want to provide the
21 recording and -- but I don't have a dispute about
22 the deposition, Your Honor. It does -- in my view,
23 it seems to be an accurate deposition of her
24 testimony.

25 **THE COURT:** Ms. Lewis, is that your

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. *250,000*

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 dark ink and is positioned above the printed name and title.

Stacy L. Sheppard, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

2 COUNTY OF FLORENCE

COURT OF COMMON PLEAS

3

4 Jacqueline Buie,

5 Plaintiff,

6 vs.

CASE NO. 2014-CP-21-2504

7 Walmart, Inc.,

8 Defendant.

9

10

D E P O S I T I O N

11

12 WITNESS:

Jacqueline Buie

13 DATE:

Wednesday, July 1, 2015

14 TIME:

10:39 a.m.

15 LOCATION:

Ervin Law Office
50 Public Square
Darlington, South Carolina

16

17 TAKEN BY:

Attorneys for Defendant

18 REPORTED BY:

LAURA CHAMBLEE
Registered Professional Reporter

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16 (INDEX AT REAR OF TRANSCRIPT)

1 A Eight years.

2 Q What do you do for the school district?

3 A Transportation. Drive a school bus.

4 Q And while you drove a school bus did you also
5 work at Walmart?

6 A Yes.

7 Q Do you currently still work at Walmart?

8 A Yes.

9 Q That's what I was asking--where are you
10 currently employed. You said you're out for the
11 summer, but are you working for Walmart now?

12 A Yes.

13 Q So you're out from the school district for
14 the summer, but you are currently employed at Walmart,
15 right?

16 A Yes.

17 Q At which Walmart do you work?

18 A At Marion. I transferred maybe two or three
19 weeks ago.

20 Q What do you do there?

21 A Stock at night.

22 Q And how long have you worked for Walmart
23 overall?

24 A Since 2008 also, October of 2008.

25 Q All right. And when you started at Walmart

1 in October 2008 at which store were you hired?

2 A At Florence.

3 Q And what were you hired to do then?

4 A Overnight stocking also.

5 Q Okay. So have you been overnight stocker the
6 entire time you've been at Walmart?

7 A Yes, I have.

8 Q Do you work for Walmart full-time?

9 A At the beginning I did.

10 Q And then did you subsequently become
11 part-time?

12 A Yes.

13 Q When did you become part-time?

14 A When I got the job with the district as a
15 school bus driver.

16 Q Tell me again when you started that.

17 A I started at Walmart --

18 Q I know you started at Walmart in '08, but
19 when did you go part-time when you started with the
20 school district?

21 A In 2009.

22 Q Okay. So for the vast majority of the time
23 you've been at Walmart, you've been driving the school
24 bus and working at Walmart part-time?

25 A Yes.

1 Q When you say you've work there part-time,
2 let's talk about the time period when this incident
3 happened in 2012. About how many hours a week were you
4 working?

5 A Sixteen.

6 Q So it's been sixteen hours pretty
7 consistently since 2009?

8 A Yes.

9 Q The sixteen hours, can you tell me how that's
10 worked?

11 A I go in at 10:00 on Friday and get off at
12 7:00, and I go back at 10:00 on Saturday and get off
13 Sunday morning at 7:00.

14 Q So it's Friday and Saturday 10:00 p.m. to
15 7:00 a.m.?

16 A Yes.

17 Q All right. Who is your current supervisor at
18 Walmart in Marion?

19 A I worked with a Chestnut, Mr. Chestnut.

20 Q And you said you just transferred there when?

21 A On the -- Let me see, I was off this past
22 weekend. So I worked that Saturday -- I worked in
23 Florence that Friday, and I worked in Marion that
24 Saturday. And then I went on vacation this past
25 weekend.

1 that?

2 A There was a case where what would happen is I
3 would change my availability and go out -- When I first
4 started, I was working full-time and they -- It was
5 mostly in the summer. And I would have to change my
6 availability.

7 Q What does that mean?

8 A It means my schedule. I was only doing
9 weekends. So when school started back, they would
10 change my schedule to accommodate school. And there
11 was a time when the supervisor or the store manager
12 didn't sign-off, so it went into my full-time job. So
13 they had to credit me for like 19 days. They gave me a
14 write-up, but they didn't give me a coaching because it
15 was due to a, I guess, their error. It was turned in
16 but it was not signed, so the days counted against me.

17 Q And that would have been when? Back in 2009,
18 2010, something like that?

19 A Yes.

20 Q And since that time have you had any
21 counselings or write-ups or any type of disciplinary
22 actions, coaching?

23 A No, not that I can remember.

24 Q All right. On the day of the incident that
25 we're here for today, what time did you arrive at work?

1 A About 10:15.

2 Q Do you clock in and clock out?

3 A Yes.

4 Q Can you just please tell me in your own words
5 exactly what happened that evening.

6 A They called the police on me.

7 Q Before you get to "they called the police on
8 me," I need you to tell me who you're talking about.
9 And I would like for you to start with, if you can,
10 what led to the calling of the police in your
11 perception.

12 A What led to the calling of the police is the
13 comanager, Kathy Rollin, did not see a pallet of
14 Pampers I had stocked all the way down to the floor.
15 An associate was standing talking and she yelled, y'all
16 get back to work. And we looked at each other and
17 started smiling and laughed and I continued to stock.

18 Q Why did you smile and laugh?

19 A Because we just said, who she talking to? We
20 thought she was talking to somebody else. But she was
21 standing there looking at us 100 feet away and not
22 knowing what she was talking about.

23 Q Okay. Then did something else happen after
24 that?

25 A Two minutes later assistant manager Amber

1 said, Jackie, Kathy wants to see you in the office. I
2 said okay. I walked to the office. And behind her I
3 said, all this starting and stopping is not necessary.
4 Either y'all want me to work or want me to go home.

5 Q What were you referring to when you said "all
6 this stopping and starting"?

7 A When I first entered the building they called
8 me in the office to tell me six people was called out,
9 did not show up for work.

10 Q Okay.

11 A And that she needed me to speed up tonight
12 because she needed help in other areas. And then I'm
13 starting to work, and working fine, just speaking to
14 the associate going home speaking to me. Then she
15 yells at us, and then two minutes later I'm called in
16 the office for no reason.

17 Q Okay. So you came in to work about 10:15,
18 correct?

19 A Yes.

20 Q You clocked in?

21 A Yes.

22 Q Did you -- do you go to find out where you're
23 going to be stocking on a particular night or do you
24 know where you're going and go straight to that area?

25 A We have Taskmaster. It's not necessary. You

1 infants, correct?

2 A Right.

3 Q So what, if anything, else was said during
4 the conversation with regard to the six associates was
5 out? What else was said during that conversation?

6 A She needed us to work hard because she needs
7 help in other areas.

8 Q When you say she, who are you talking about?

9 A Comanager Kathy.

10 Q Was anybody else in there when she said that?

11 A Amber.

12 Q All right. So you went to infants. What did
13 you understand her to mean when she said she needed
14 help in other areas?

15 A The understanding is that if you finish
16 early, the hours or the scheduling for the employees
17 who did not come to work, do their job.

18 Q Okay. So you understood her to mean we have
19 a lot -- we have several people out, six people out; we
20 need you to work quickly because you can cover the
21 slack for them being out if you can finish your area.
22 Is that what you understood her to mean?

23 A Yes.

24 Q Did you have any problem with her saying that
25 to you?

- 1 A No, ma'am.
- 2 Q So then you went to infants?
- 3 A Yes.
- 4 Q And did you say you were stocking Pampers?
- 5 A Yes.
- 6 Q And then Kathy came out?
- 7 A She was walking back in the back.
- 8 Q Okay.
- 9 A To the side of the shoe department, a couple
10 of departments over.
- 11 Q What again did she say?
- 12 A Y'all go back to work, or, stop talking and
13 go back to work. I'm not sure, but she yelled "go back
14 to work" in a rude voice.
- 15 Q All right. And did you respond?
- 16 A We didn't say nothing. I kept stocking
17 Pampers.
- 18 Q Okay. So just laughed with -- Who was with
19 you when she -- when Kathy made that statement?
- 20 A Carthenia Smith. We like, who she talking
21 to, like that.
- 22 Q But you didn't respond to her?
- 23 A Nothing.
- 24 Q You just laughed and kept on working?
- 25 A I wouldn't say laughed. Just like what? Who

1 she -- It was like a shock. The yell was like a shock.
2 And so we looked at each other, who she talking to. It
3 was a surprise. We was caught off guard. We were
4 working and we didn't really know what she was saying
5 or who she was saying it to. Then we looked back and
6 she was staring at us.

7 Q Was there anyone else in the area, any other
8 associates working in the area that she would have been
9 talking to?

10 A There could have been somebody in the shoe
11 department. It's a bin around there. We didn't see
12 around that area.

13 Q But you don't respond or ask, are you talking
14 to us, or anything like that, correct?

15 A Correct.

16 Q All right. And you said about two minutes
17 later Amber came?

18 A Yes.

19 Q And she told you that Kathy wanted to see you
20 in the office?

21 A Yes.

22 Q Then what happened?

23 A I get in the office and they tell me you need
24 to go to work and stop talking. And then she asked me
25 to sit down. I said, I chose to stand. "I said sit

1 down." They were saying all sorts of things. I can't
2 remember --

3 Q I need you to tell me everything that you can
4 remember that they said. Now is the time.

5 A It was just the way their tone was. You need
6 to go to work. I need you to help me. I can't
7 remember exactly all because I just -- I said, y'all
8 can't talk to me like this. I didn't stay listening.
9 I walked out of the office and went to the break room
10 and called home office.

11 Q Let's back up. Now Carthenia was she on her
12 way to leave?

13 A She was but she stood and talked to me.

14 Q All right. So she stood -- She was getting
15 ready to get off, correct?

16 A Correct.

17 Q She stood and talked to you, and you were
18 talking to her, right?

19 A And working.

20 Q You were talking to her and working?

21 A Yes, I was.

22 Q So Kathy said to you, you needed to get back
23 to work. You and Carthenia said you didn't know who
24 she was talking to, and then you got called to the
25 office, correct?

1 A Yes.

2 Q Carthenia was on her way to clock out; she
3 was not stocking in the area with you?

4 A No.

5 Q So you went to the office. How long were you
6 in the office --

7 A About ten minutes.

8 Q -- before you walked out and called
9 corporate?

10 A About a good ten minutes.

11 Q And what, if anything, else can you recall
12 that was said to you besides they told you to sit down,
13 you said you chose to stand up. So you refused to sit
14 down, correct?

15 A The tone. "I said sit down. You are not
16 working and you need to work." Everything that was
17 said was not true. I was working. I said I am -- We
18 got in a confrontation, sort of a misunderstanding.
19 She misunderstood that. I said, "I was working." "You
20 wasn't working. I saw you." I said, "You didn't see
21 me. Carthenia was standing there." Just like that.

22 Q So her perception was that you were carrying
23 on a conversation with Carthenia; you weren't working.
24 And your perception was that you were; you were
25 working?

1 an Amber on the way to the office?

2 A Nothing.

3 Q No conversation?

4 A No.

5 Q You never said anything to her?

6 A I said, I could go home or stay. All this
7 stopping and starting, if you don't want me to work,
8 I'll go home. That's the only thing. She never
9 respond until she walked in the office, and then she
10 said what she said.

11 Q Which was that you had insulted her? She
12 told Kathy that you had insulted her?

13 A Yes.

14 Q So Kathy told her to give you a counseling?

15 A A coaching.

16 Q A coaching. Did she do that?

17 A The next morning when I asked there was no
18 coaching written up on me.

19 Q But at the time you left, right?

20 A Left where?

21 Q Left the office?

22 A Yes. I went to the break room to call. I
23 asked to talk to the manager. I said, what is this
24 about? I'm working. You all are arguing with me. Can
25 I talk to Kay? And they said, we're not calling Kay.

1 She lives in North Carolina.

2 Q Okay. Who is Kay?

3 A The store manager.

4 Q So who was in charge of the store that night?

5 A Kathy Rollin. Comanager Kathy Rollin.

6 Q So you asked to call the store manager, which
7 I assume was at home. It was at night, right?

8 A Yes.

9 Q And they said they weren't going to call the
10 store manager, correct?

11 A Yes.

12 Q And then you left to go call corporate; is
13 that right?

14 A Yes.

15 Q You're still on the clock at this time?

16 A Yes.

17 Q So where did you go to call corporate?

18 A In the break room.

19 Q And tell me about that.

20 A I said, I have two managers --

21 Q Well, who did you speak with?

22 A There was nobody on line. I left a voice
23 message.

24 Q Okay.

25 A I said, I have two managers assaulting me,

1 talking to me like a dog, accusing me of not working
2 and I was very well working.

3 Q When you say they assaulted you, now was
4 there any threat or physical altercation in the office?

5 A Well, insulted me. Wrong choice of word.

6 Q Insulting, not assaulted. Okay. Did you
7 leave anything else on the voice mail?

8 A No.

9 Q What number did you -- Did you call a hot
10 line or an HR number? Who did you call?

11 A I don't know but I thought that was an HR
12 number.

13 Q Do you remember where you got the number
14 from?

15 A Off the break room wall.

16 Q Did you call anyone else that night?

17 A No.

18 Q Then what happened after you made the call?

19 A I went back to work.

20 Q And what happened after you went back to
21 work?

22 A She came up there and tried to remove the
23 pallet. I said okay, she sees that --

24 Q Wait. Wait. I'm sorry. Who came and tried
25 to remove the pallet?

1 A Comanager Kathy came and she tried to remove
2 the pallet.

3 Q What do you mean she tried to remove the
4 pallet?

5 A Where I was stocking there was only three
6 Pamper boxes on the Pamper (sic).

7 Q On the pallet?

8 A On the pallet. So I say she sees I have been
9 working and so maybe everything is cool. She said,
10 just pulling the pallet out. I said, no, I'm stocking
11 them. She's pulling the pallet back, and I kept on
12 stocking.

13 Q Okay.

14 A She pulls the pallet back and I kept stocking
15 and pulled some stuff off another pallet and kept
16 working.

17 Q All right. Was she telling you to stop
18 working at that time?

19 A At that time she said, You said -- She said,
20 you called home office. So you might as well go home.
21 You said you wanted to go home. I said, no, that's not
22 what I said.

23 Q Okay. Did she direct you to go home?

24 A No.

25 Q Did she tell you to stop working?

1 Q When you say she was trying to move it, did
2 you do anything to stop her from moving it?

3 A No. She got the jack and was pulling that
4 pallet out. I took the Pampers that was on it off it,
5 stocked it, and went back and got more freight and
6 started stocking that.

7 Q All right. Then what happened?

8 A I was working. I thought everything was
9 fine.

10 Q Okay. Then what happened?

11 A Two police officers. She came walking
12 through the store escorting two police officers to me.

13 Q All right. And then what happened?

14 A She asked me to go -- she said -- they
15 said -- I said, sir, is there a problem? And they
16 said, can we talk? I said, about what, sir? He said,
17 let's go in the back. So she walks in the back. I'm
18 behind her and two officers behind me.

19 Q This is Kathy you're talking about when you
20 said she?

21 A Kathy Rollin.

22 Q Okay.

23 A Kathy Rollin. We get in the office and we're
24 there. And --

25 Q So at this time there are two officers?

1 A Two police officers there.

2 Q All right. Were they male or female, one of
3 each?

4 A Male.

5 Q Male. All right. So in the office were you,
6 the two officers, and Ms. Roller?

7 A Yes.

8 Q All right. What happened when you were in
9 the office?

10 A She said this: That -- I asked her a
11 question, why am I here? He said that she called. And
12 I said, for what? I said, is there anything -- He
13 said, no. He said, but she said she wanted you to go
14 home. I said, for what reason? I said, all she told
15 me is I said I was going to clock out and go home, so I
16 might as well go home. But she never directly told me
17 to go home. She was using my words against me because
18 there was nothing I did that was wrong.

19 Q Had you told her you were going to clock out
20 and go home?

21 A No. No. No.

22 Q Okay. You never mentioned clocking out and
23 going home?

24 A Never.

25 Q Did you say, if you all are going to keep

1 the morning. And Kathy said, I'll pay you for tonight.
2 And the officers said, just go home. And I said, I
3 haven't done anything. I said, Officer, can you just
4 ask her what did I do. He looked at her. Both did; we
5 all did. She said, nothing, but I'll pay you for
6 tonight.

7 Q Then what happened?

8 A Then the officers told me to leave.

9 Q Then what happened after they told you to
10 leave?

11 A One officer was in front of me, I was in the
12 middle, and then the last one, and they escorted me out
13 of the Walmart store.

14 Q Okay. And you went home?

15 A Yes.

16 Q When you were called to the office and you
17 said to Amber, if they're going to keep stopping me
18 from working -- Is that when you made the comment to
19 Amber, if they're going to keep stopping me from
20 working, I can clock out and go home?

21 A When Amber called me after she said, Kathy
22 wants to see you in the office --

23 Q Right.

24 A -- I said to her, what's wrong with all this
25 starting and stopping? Either I'm going to work, or if

1 that you had been stopped from working since you
2 started that night, right?

3 A Yes.

4 Q And when Amber came and got you, were you
5 annoyed?

6 A I was frustrated.

7 Q All right. And did you voice your
8 frustration?

9 A No.

10 Q Okay.

11 A No.

12 Q You just told her, all this stopping and
13 starting -- if it's going to be all this stopping and
14 starting, I might as well clock out and go home?

15 A Due to the fact I know I was working and I
16 couldn't figure why I was being called in the office,
17 yes.

18 Q Right. So you voiced to her what you just
19 told me, right?

20 A Yes.

21 Q And when you went into office you weren't
22 happy about having been called into the office,
23 correct?

24 A I was frustrated.

25 Q Right. Which means you weren't happy, right?

1 A Well, true.

2 Q So when you get into the office for that ten
3 minutes it was back and forth, Kathy saying you weren't
4 working, you need to be working. You saying, I was
5 working, I'm doing my job. You don't really understand
6 why you're being stopped from doing your work when you
7 were working the whole time, right?

8 A No, that's not true.

9 Q Tell me what happened.

10 A When I walked in the office, Amber says, she
11 insulted me.

12 Q Okay.

13 A She lied. Kathy said I was not working.
14 Another lie. So I'm frustrated because they're telling
15 me things that's not true.

16 Q So you're frustrated for three reasons.
17 First, you got stopped and you were in your groove work
18 mode, right?

19 A For no reason, yes.

20 Q For no reason. Second, because Amber said
21 you insulted her and you didn't insult her, right?

22 A True.

23 Q And third, because Kathy said you weren't
24 working and you were working?

25 A Yes.

1 don't have keys. And they said they would wait for me,
2 go on and get my keys, but I went out another
3 direction. So I don't know whether they stayed or
4 what.

5 Q So they weren't really with you when you
6 actually walked out to go to your car?

7 A No. They walked me down action alley with
8 everybody staring at me like I was a thief.

9 Q Right. But you told them you had to go get
10 something and they didn't keep you from going to get
11 it, right?

12 A Right.

13 Q And they didn't go back with you to get it,
14 right?

15 A They told me to go and they would stay there.
16 Whether they did or not, I didn't go back in that
17 direction, I went another direction.

18 Q Right, but they didn't go back with you to
19 get your keys? The officers didn't stay with you to go
20 get your keys, correct?

21 A Correct.

22 Q And you chose to go another way when you went
23 to walk out, right?

24 A Yes. I was embarrassed.

25 Q So you went another way and you left the

1 premises and that was the end of the incident, right?

2 A Yes.

3 Q You don't recall you said whether you clocked
4 out. And what was your hourly rate of pay at that
5 time, if you recall? Approximately. You don't have to
6 know the exact dollar amount. I assume you've gotten a
7 raise since then.

8 A Ten something. I'm not sure.

9 Q Were you paid for the entire night?

10 A Yes.

11 Q And that's what Kathy told you she was going
12 to do, right?

13 A Yes.

14 Q At any time did you tell Kathy or Amber y'all
15 are going to have to call the police if y'all want me
16 to leave, I'm not going home?

17 A No.

18 Q And what is it you're claiming that Walmart
19 or that Kathy or Amber or anybody else at Walmart did
20 wrong that night?

21 A They called the police officer on me without
22 cause and publicly humiliating me, made me look like a
23 thief.

24 Q How did they make you look like a thief?

25 A Because as the police officers escort me out

1 Q Were there any customers in the store?

2 A Yes, ma'am.

3 Q Did any customers say anything to you about
4 the incident?

5 A They was just staring me down. Everybody was
6 looking.

7 Q How many customers? This is what? By this
8 time it's what, 11:00 o'clock?

9 A I'm not sure of the time.

10 Q Approximately?

11 A I don't know.

12 Q Was it after midnight?

13 A It was around midnight, but the store is open
14 24 hours.

15 Q Right.

16 A They were about 25, 30 customers there.

17 Associates, everybody was just staring at me. So when
18 I went to get my purse, I couldn't walk back through
19 there, I just went another direction.

20 Q Did Kathy or Amber or anyone else at Walmart
21 that night ever accuse you of stealing anything?

22 A No.

23 Q Other than Will telling you -- asking you
24 what did you steal, and Ms. Lewis asking you were you
25 being arrested, did any other associate ever ask you

1 Q I was --

2 A -- escorted out by the -- I was escorted out
3 and told to leave by the police.

4 Q By police officers, period.

5 A Yeah.

6 Q I was stopped from working, asked to go to
7 the office for the fifth time. What do you mean by
8 that?

9 A For the fifth time. There was incidents
10 where she come and told me to go to the office and I
11 wouldn't go. I just continued to work.

12 Q You talking about that night?

13 A That night.

14 Q Okay. So when you called home office, and
15 you went back to work, Kathy came back and asked you to
16 go back to the office again, didn't she?

17 A She did.

18 Q And you refused to do that, correct? You
19 continued to work?

20 A I asked her why. There was no reason.

21 Q You refused to do it, correct?

22 A I wouldn't say I refused.

23 Q Well, let's ask it this way: You didn't go
24 back to the office with her, did you?

25 A No.

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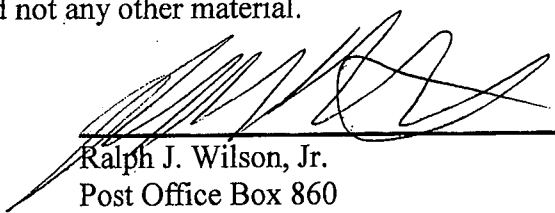
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SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 25, 2016



Ralph J. Wilson, Jr.

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