The Supreme Court of South Carolina

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29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
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April 12, 2019

The Honorable Winnifa Brown-Clark
P.O. Box 9000
Orangeburg, SC 29115-9000

REMITTITUR

Re: Meredith Huffman v. Sunshine Recycling
Lower Court Case No. 2012-CP-38-00672
Appellate Case No. 2016-002080

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

cc: Pope D. Johnson, III, Esquire
Robert Fredrick Goings, Esquire
James Todd Rutherford, Esquire
Breon C. M. Walker, Esquire
Jessica Ann Waller, Esquire
Jessica Lee Gooding, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Meredith Huffman, Appellant,

v.

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

Appellate Case No. 2014-001492

Appeal From Orangeburg County
Maité Murphy, Circuit Court Judge

Opinion No. 5417
Heard May 4, 2016 – Filed June 22, 2016

REVERSED AND REMANDED

J. Todd Rutherford, of The Rutherford Law Firm, LLC, and Robert F. Goings, of Goings Law Firm, LLC, both of Columbia, for Appellant.

Breon C.M. Walker and Jessica A. Waller, both of Gallivan, White & Boyd, P.A., of Columbia, for Respondent Sunshine Recycling, LLC.

Pope D. Johnson, III, of Columbia, for Respondent Aiken Electric Cooperative, Inc.

GEATHERS, J.: In this action for false imprisonment and malicious prosecution, Appellant Meredith Huffman seeks review of the circuit court's order granting summary judgment to Respondents, Sunshine Recycling, LLC (Sunshine) and

Aiken Electric Cooperative, Inc. (Aiken) (collectively, Respondents). Huffman argues there were genuine issues of material fact concerning whether Respondents caused, instigated, or procured her arrest and the extent of Respondents' participation in law enforcement's charging Huffman with receiving stolen goods. We reverse and remand for a trial on the merits of Huffman's false imprisonment and malicious prosecution claims.[1]

FACTS/PROCEDURAL HISTORY

On May 16, 2010, an unidentified black male broke into Aiken's Orangeburg facility. Shortly thereafter, a white Ford F-150 truck was seen leaving the facility's parking lot. The next day, Mark Goss, Aiken's Loss Control and Safety Coordinator, viewed the surveillance video and advised Deputy Maurice Huggins of the Orangeburg County Sheriff's Department that several pounds of solid copper and several pounds of aluminum tie wire had been stolen from Aiken. At that time, Goss estimated the value of the stolen metal to be approximately $330.

On that same day, Goss also checked with Sunshine, a metal recycling business, to see if anyone had tried to sell the stolen metal to Sunshine. Goss discovered the stolen metal at Sunshine and spoke with Sunshine's owner, Joseph Rich. Goss told Rich he was looking for a black male in a white Ford pickup truck.

Officer Ashley Aldridge of the Orangeburg County Sheriff's Department also appeared at Sunshine to investigate the theft. Rich, who claimed to speak Spanish, spoke to an unnamed Spanish-speaking employee working in the metal drop-off area but failed to mention that Goss was looking for a black male in a white Ford pickup truck. Rich's employee allegedly told Rich that a white woman was the first person to drop off metal that morning. Although the individual who stole the metal from Aiken was a black male, Goss testified in his deposition that in the metal industry, "it's not uncommon for girlfriends and wives to bring metal in and drop them off. It happens all the time."

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[1] We decline to address Aiken's additional sustaining ground. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("It is within the appellate court's discretion whether to address any additional sustaining grounds." (footnote omitted)); *id.* at 421, 526 S.E.2d at 724 ("[T]he respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." (footnote omitted)).

Rich told Officer Aldridge and Goss they were welcome to view the receipts documenting the amount paid to customers who had sold metal to Sunshine and the time-stamped video footage of customers waiting at the payment window. Officer Aldridge viewed this video and saw Huffman waiting for her payment. Officer Aldridge also obtained a receipt for the metal sold by Huffman, which indicated a payment of $53 to her.

Subsequently, Goss spoke with Officer James Ethridge of the Orangeburg County Sheriff's Department and told Officer Ethridge that he had spoken with Huffman while she was waiting to get paid for "the items that she had just brought in."[2] Goss also told Officer Ethridge that "he viewed the items after she left and identified them as" belonging to Aiken. Actually, when Goss identified the metal left in Sunshine's drop-off area as the metal stolen from Aiken, he was viewing what had been commingled with the metal left by Huffman. Goss recognized that some of the copper and aluminum in the area had characteristics distinguishable from those of the copper and aluminum stolen from Aiken. Goss admitted in his deposition, "it was all right there in like a big pile kind of, and I don't remember if it was on top of each other or what. It was all right there in one section." When Rich advised Goss that Huffman left the stolen metal, Goss apparently did not mention the distinction he had made between the different types of copper and aluminum in the area. Further, Rich's employee apparently did not tell Rich that a black male in a white Ford pickup truck dropped off metal immediately after Huffman dropped off her metal.

On the next day, May 18, 2010, Officer Ethridge visited Sunshine to photograph the metal identified as stolen. While he was there, he also spoke with Rich, who stated he had not yet obtained a copy of the video showing customers dropping off their metal but he would contact Palmetto Security Cameras to request Alan Price to "burn" a copy of the video for Officer Ethridge. During the next three days, Goss called Officer Ethridge several times, asking him what he was going to do with the case. During this same time period, Officer Ethridge called Rich several times, asking when he could obtain the video of customers dropping off metal.

While still waiting on this video, Officer Ethridge contacted a local magistrate on May 21, 2010, to obtain a warrant for Huffman's arrest for receiving stolen goods.[3]

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[2] In his deposition, Goss denied ever speaking with Huffman.

[3] This offense is considered a "misdemeanor triable in magistrate[']s court or municipal court . . . if the value of the property is two thousand dollars or less." S.C. Code Ann. § 16-13-180 (C)(1) (2015).

After Huffman learned about the warrant, she advised Officer Ethridge that she sold metal to Sunshine but it was not stolen; rather, it was salvaged from a mobile home belonging to her and her husband after they tore down the home. Officer Ethridge instructed Huffman to meet him at the Sheriff's Department at 9:00 a.m. the next morning, June 2, 2010. At that time, Huffman gave a statement to Officer Ethridge, and he formally served Huffman with the arrest warrant. Officer Ethridge then placed Huffman in handcuffs, and she was required to change into a prison jumpsuit and wait for the next bond hearing. She was unable to telephone her home to check on her children, who were not being supervised by an adult, and she was required to appear at the bond hearing handcuffed and shackled. Huffman obtained a personal recognizance bond, and she was finally released at approximately 5:00 p.m.

After Huffman's arrest and release, Officer Ethridge finally was able to view the video of Huffman dropping off her metal at Sunshine. Goss viewed this video around the same time that Officer Ethridge viewed it, although Goss had actually received the video **before** Huffman was arrested. Rich never viewed the video.

In his report, Officer Ethridge stated that he watched "the video of where [Huffman] took the items off of her truck and she did have some copper that resembles what was taken in the back of her truck, but the aluminum was sheeting[,] not wire." He further stated he advised Rich "that after viewing the video, it does not show her with the same items that w[ere] taken. Due to these facts[,] there is not enough evidence to support this case. I will be dismissing these charges on Huffman." Notably, the video also showed that the customer following Huffman was the black male Goss had seen on Aiken's surveillance video, Eugene James, unloading metal from the white Ford pickup truck he was driving.

Near the end of his report, Officer Ethridge noted, "At this time[,] I am not comfortable with this case due to the witnesses gave [sic] me false information the first time." After Officer Ethridge dropped the charge of receiving stolen goods against Huffman, the Sheriff's Department finally located James. James ultimately pled guilty to the charges brought against him.

On May 9, 2012, Huffman filed a complaint against the Sheriff's Department and Sunshine, asserting claims for negligence, false imprisonment, and malicious prosecution. In May 2013, Huffman amended her complaint to add Aiken as a defendant. On or about June 27, 2013, Aiken filed a motion to dismiss Huffman's complaint against it. Huffman later settled her claims against the Sheriff's Department, and the two parties filed a stipulation dismissing the Sheriff's

Department from the action on or about December 18, 2014. Several weeks later, Sunshine filed a motion for summary judgment, and the circuit court conducted a hearing on this motion as well as Aiken's motion to dismiss on March 10, 2014. Upon Aiken's request, the circuit court converted Aiken's motion to dismiss into a summary judgment motion.

On or about April 3, 2014, the circuit court granted Respondents' summary judgment motions. The circuit court later denied Huffman's motion to alter or amend the written order granting summary judgment. This appeal followed.

ISSUES ON APPEAL

1. Were there issues of fact material to whether Huffman's arrest was lawful?

2. Were there issues of fact material to whether Respondents caused, instigated, or procured Huffman's arrest?

3. Were there issues of fact material to whether there was probable cause to charge Huffman with receiving stolen goods?

4. Were there issues of fact material to Respondents' participation in local law enforcement's charging Huffman with receiving stolen goods?

STANDARD OF REVIEW

This court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009). Rule 56(c), SCRCP, provides summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009); *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

Further, "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Id.*

Moreover, "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." *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803. "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). "[B]ecause summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues." *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014).

LAW/ANALYSIS

I. False Imprisonment

Huffman contends the circuit court erred in granting summary judgment to Respondents on her false imprisonment claim because there were genuine factual issues material to the unlawfulness of her arrest and the complicity of both Sunshine and Aiken in the arrest. We agree.

A. Probable Cause

> The essence of the tort of false imprisonment consists of depriving a person of his liberty *without lawful justification*. To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.
>
> The fundamental issue in determining the lawfulness of an arrest is *whether there was probable cause to make the arrest*. Probable cause is defined as a good faith

> belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. *Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.*

McBride v. Sch. Dist. of Greenville Cty., 389 S.C. 546, 567, 698 S.E.2d 845, 856 (Ct. App. 2010) (emphases added) (quoting *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440-41, 629 S.E.2d 642, 651 (2006)).

Here, it is undisputed that Officer Eldridge intended to restrain Huffman's liberty when he arrested her. Therefore, we need only consider whether there was a scintilla of evidence, viewed in the light most favorable to Huffman, **from which a juror could reasonably conclude** that the restraint was unlawful, i.e., made without probable cause. *See Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."). In other words, to send this false imprisonment claim to the jury, the court need only find a scintilla of evidence, viewed in the light most favorable to Huffman, from which a juror could reasonably conclude that Officer Ethridge's belief in Huffman's guilt did **not** rest "on such grounds as would induce an ordinarily *prudent and cautious* man, under the circumstances, to believe likewise." *McBride*, 389 S.C. at 567, 698 S.E.2d at 856 (emphasis added) (defining probable cause) (quoting *Law*, 368 S.C. at 441, 629 S.E.2d at 651)). As we engage in such an analysis, we must "review all *ambiguities*, conclusions, and inferences arising in and from the evidence in a light most favorable to [Huffman]." *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 (emphasis added).

Officer Ethridge relied on the following information in forming his belief in Huffman's guilt: (1) Officer Aldridge's report indicating Rich and Goss told him Huffman brought Aiken's stolen metal into Sunshine's facility; (2) Rich's oral statement to Officer Ethridge that "his employees [who] work in the copper area advised that Huffman was the individual who brought the merchandise in"; (3) a video of Huffman waiting at the payment window in the main office to get paid for the metal she brought in and her presentation of her driver's license to complete the transaction; (4) Goss's oral statement that he spoke to Huffman while she was at Sunshine's main office "waiting to get paid for the items that she had just brought in" and that Goss "viewed the items after she left and identified them as being

theirs," i.e., the metal stolen from Aiken; and (5) the ticket/receipt showing Sunshine's payment of $53 to Huffman for the aluminum and copper she left at Sunshine.

As to the statements made by Rich and Goss to Officers Aldridge and Ethridge, Officer Ethridge knew this information was based on Rich's allegations that (1) an unidentified Spanish-speaking employee stated a "white woman" brought in metal resembling the metal Goss identified as stolen from Aiken and (2) Rich spoke and understood Spanish.[4] Neither the employee nor Rich provided a written statement to police. In a light most favorable to Huffman, this evidence indicates an unreliable ground on which to rest a belief in Huffman's guilt.

Further, the receipt for $53 stands in stark contrast to the $330 estimate of the value of the stolen metal. A juror could reasonably conclude that this anomaly would prevent an ordinarily prudent and cautious man from believing Huffman sold the metal stolen from Aiken. *See Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below."). A juror could also reasonably conclude that an ordinarily prudent and cautious man would have waited to view the video showing Huffman dropping off her metal, which Rich promised was forthcoming, before seeking an arrest warrant.

Probable cause may be decided as *a matter of law* only "when the evidence yields but one conclusion." *McBride*, 389 S.C. at 567, 698 S.E.2d at 856 (quoting *Law*, 368 S.C. at 436, 629 S.E.2d at 649). This is not a case where the sole conclusion to be reached is that there was probable cause to arrest Huffman. The question should have gone to the jury.

B. Respondents' Complicity

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[4] Officer Ethridge's report states that Officer Aldridge observed "the business video surveillance and observed Huffman bringing the merchandise in and selling it to Sunshine." However, the video Officer Aldridge observed merely showed Huffman waiting at the payment window; it does not show Huffman dropping off her metal in the back area of Sunshine's facility.

> [W]here a private person induces an officer by *request, direction or command* to unlawfully arrest another, he is liable for false imprisonment. The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may *cause, instigate or procure* an unlawful arrest.

Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) (emphases added). On the other hand,

> Where a person merely directs the attention of a police officer to what he supposes to be a breach of the peace, or gives to such officer facts indicating such, and the officer, without other direction, arrests the offender on his own responsibility, the person who did nothing more than communicate the facts to the officer is not liable for causing the arrest, even though it is made without a warrant. Where a person has information or knowledge that the law has been violated, he not only has a right, but frequently it is his duty, to communicate such information or facts to the proper officer so as to give such officer the opportunity, if in his judgment it is proper to do so, to take whatever steps may be necessary to apprehend the offender. . . . "Those who honestly seek the enforcement of the law . . . and who are *supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty* of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages."

Id. at 527-28, 30 S.E.2d at 310-311 (second alteration by *Burton v. McNeill*, 196 S.C. 250, 253, 13 S.E.2d 10, 11 (1941)) (emphasis added) (citations omitted) (quoting *Burton*, 196 S.C. at 253-54, 13 S.E.2d at 11).

1. Aiken

The following information was available to Goss prior to Huffman's arrest: (1) Rich's oral statement about what his Spanish-speaking employee told him, i.e., a

white woman was the first person to drop off metal on the morning in question; (2) the metal Goss identified as being stolen was actually commingled with Huffman's metal, a fact Goss apparently did not share with anyone before Huffman's arrest; (3) the video of Huffman and James dropping off metal at Sunshine, although Goss failed to view the video until after Huffman's arrest; and (4) the $53 receipt for Huffman's metal, although Goss did not ask Rich to show him the receipt until after Huffman's arrest. A reasonable juror could conclude that Goss was not "supported by circumstances sufficiently strong to warrant a cautious man in the belief that [Huffman was] guilty of the offense charged." *Wingate*, 204 S.C. at 528, 30 S.E.2d at 310-311 ("Those who honestly seek the enforcement of the law . . . and who are supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages." (alteration by *Burton*) (quoting *Burton*, 196 S.C. at 253-54, 13 S.E.2d at 11)).

Further, Huffman points to the following evidence showing that Goss, as Aiken's agent, induced her arrest: (1) Officer Ethridge stated in his report that Goss called him "several times about moving further with the case" and (2) Officer Aldridge testified that Goss indicated "a sense of urgency" in obtaining a resolution to the case and that he was "eager to see that the [S]heriff's [D]epartment arrest someone for this alleged crime." Officer Aldridge was not certain whether Goss expressed this sense of urgency in May 2010, before Huffman's arrest, or in June 2010, before the Sheriff's Department located James. Aldridge later testified that his "urgency" comment could have referred to arresting either Huffman or James. Officer Aldridge elaborated,

> A And [Goss] told me that he would like to see something done. You said earlier that it's not uncommon for someone to want to see something done, especially within his line of work.
>
> Now, that being said, he also expressed to me that he was a reserve deputy sheriff and he expected something to be done.

Moreover, Officer Ethridge testified,

> I didn't have the video at that point in time so [Goss] wanted to know what I was going to do. Was I going to

try and arrest her, lock her up, you know, speak with a magistrate, what to do. On the 21st, that's what I did is [sic] I went and spoke with a magistrate.

Q Did you feel that [Goss] was urging you to prosecute [Huffman]?

. . .

He was calling me. He was calling me just like any other victim would. You know, what are you doing? You know, what -- I mean, he had people he had to answer to . . .

. . .

Q Okay. And the reason he was calling you is because he wanted --

A To know what I was going to do with the case. Was I --

. . .

-- going to arrest her, yeah.

Officer Ethridge also testified "I had spoke[n] with Sunshine [s]everal times[,] trying to obtain a copy of the video and [Goss] was calling me, wanting to know what I was doing with the case."

This evidence belies Aiken's contentions that Goss was merely providing "factual information" to the Sheriff's Department. A juror could reasonably conclude from the foregoing evidence that Goss induced Officer Ethridge "by request, direction or command to unlawfully arrest" Huffman or "cause[d], instigate[d] or procure[d]" the arrest. *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 ("[W]here a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment. The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may cause, instigate or procure an unlawful arrest."); *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be

granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

2. Sunshine

Officer Ethridge testified that when he visited Sunshine, *"[t]hey* were guaranteeing that the metal that [Huffman] brought in was the metal -- [Goss] was saying this is 100 percent our metal from [Aiken] and the [receipt] was showing the weights, everything, was -- was co- -- everything was looking the same." (emphasis added). It is unclear whether "they" referred to Rich, as Sunshine's agent, or Goss, as Aiken's agent, or both. Therefore, a jury could reasonably infer that either or both men made this representation.

Further, Rich admitted he did not bother to ask his Spanish-speaking employee to identify the second or third person who had dropped off metal on the morning in question. He stated, "That's what the cameras are for." Yet, Rich never bothered to view the video himself despite the fact that he could have obtained a copy of the video before Huffman's arrest.[5]

Moreover, in explaining why he did not view the video of Huffman dropping off her metal before arresting Huffman, Officer Ethridge indicated that he called Alan Price, with Palmetto Security Cameras, several times. The following exchange then occurred:

> Q So either -- you didn't personally see the video or watch the video at Sunshine. You were told by Sunshine that it showed [Huffman] --
>
> A Correct.
>
> Q -- with the -
>
> . . .

[5] Goss was able to obtain a copy of the video before Huffman's arrest. Therefore, presumably, Rich was able to do so as well.

[A] She -- yes, yes.

A juror could reasonably infer from this testimony that Rich, who never bothered to view the video himself, represented to Officer Ethridge that the video would show Huffman dropping off the $330 worth of metal stolen from Aiken. Based on the foregoing circumstances, a reasonable juror could conclude that Rich's representation to Officer Ethridge was not "supported by circumstances sufficiently strong to warrant a cautious man in the belief that [Huffman was] guilty of the offense charged." *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 (quoting *Burton*, 196 S.C. at 253-54, 13 S.E.2d at 11). A reasonable juror could also conclude that Rich "cause[d], instigate[d] or procure[d]" Huffman's arrest. *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311.

In sum, Huffman showed, at the very least, a scintilla of evidence that both Goss and Rich induced Officer Ethridge "by request, direction or command to unlawfully arrest" Huffman or "cause[d], instigate[d] or procure[d]" the arrest. *Wingate*, 204 S.C. at 528, 30 S.E.2d at 311. Therefore, we reverse summary judgment for Respondents on Huffman's false imprisonment claim. *See Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n 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."); *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

II. Malicious Prosecution

Huffman maintains the circuit court erred in granting summary judgment to Respondents on her malicious prosecution claim because there were genuine factual issues material to probable cause as well as the complicity of both Sunshine and Aiken in proceeding with the charge of receiving stolen goods against her. We agree.

"[T]he elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."

McBride, 389 S.C. at 565-66, 698 S.E.2d at 855. "In this cause of action, malice is 'the deliberate intentional doing of a wrongful act without just cause or excuse.'" *Id.* (quoting *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982)). "Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition . . . ." *Law*, 368 S.C. at 437, 629 S.E.2d at 649.

> Malice also may proceed from an ill-regulated mind which is *not sufficiently cautious* before causing injury to another person. Moreover, malice may be *implied* where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person. Malice also may be *implied* in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. In an action for malicious prosecution, malice may be *inferred* from a lack of probable cause to institute the prosecution.

Id. (emphases added). It is the plaintiff's burden "to show that the prosecuting person or entity lacked probable cause to pursue a criminal or civil action against him." *Id.* at 436, 629 S.E.2d at 649.

> Probable cause means "the extent of such facts and circumstances as would excite the belief in a *reasonable mind* acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or *should have been known* to the prosecutor at the time he instituted the prosecution should be considered." In determining the existence of probable cause, the facts must be "regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be." . . . Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion.

Id. (emphases added) (citations omitted).[6]

In the light most favorable to Huffman, there is at least a scintilla of evidence, as highlighted in our discussion of the false imprisonment claim, from which a juror could reasonably conclude (1) Officer Ethridge lacked probable cause to pursue a warrant for Huffman's arrest and (2) this pursuit was "at the instance of" both Respondents. *See supra*; *Law*, 368 S.C. at 437, 629 S.E.2d at 649 ("In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution."); *McBride*, 389 S.C. at 565-66, 698 S.E.2d at 855 (setting forth the elements of a malicious prosecution claim); *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n 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."); *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts."); *id.* ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

Based on the foregoing, we reverse summary judgment for Respondents on Huffman's malicious prosecution claim.

CONCLUSION

When we view all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to Huffman, as we are required to do,[7] we find at least a scintilla of evidence from which a juror could reasonably conclude that Officer Ethridge's pursuit of a warrant for Huffman's arrest and her subsequent

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[6] Notably, the plaintiffs in *Law* were indicted by a grand jury for the offenses for which they were arrested, and our supreme court noted, "South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution." *Id.* However, the offense for which Huffman was arrested, receiving stolen goods, is a misdemeanor triable in magistrate's or municipal court. *See supra* n.2. Charges prosecuted in magistrate's court are exempt from the requirement that an indictment be presented to a grand jury before a criminal charge is prosecuted. S.C. Const. art. I, § 11; S.C. Code Ann. § 17-19-10 (2014).

[7] *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333.

arrest were made without probable cause and that Goss and Rich set these actions in motion. Because this evidence should have gone to the jury, we reverse the circuit court's order and remand for a trial on the merits of Huffman's false imprisonment and malicious prosecution claims.

REVERSED AND REMANDED.

HUFF and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Meredith Huffman, Respondent,

v.

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

Appellate Case No. 2016-002080

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Orangeburg County
Maité Murphy, Circuit Court Judge

Opinion No. 27874
Heard March 6, 2018 – Filed March 27, 2019

AFFIRMED IN PART AND REVERSED IN PART

Breon C. M. Walker and Jessica Ann Waller, both of Gallivan, White & Boyd, PA; and Pope D. Johnson III, all of Columbia, for Petitioners.

James Todd Rutherford, of The Rutherford Law Firm, LLC; and Robert Fredrick Goings and Jessica Lee Gooding, both of Goings Law Firm, LLC, all of Columbia, for Respondent.

CHIEF JUSTICE BEATTY: Following her arrest for receiving stolen goods, Meredith Huffman filed a complaint against the Orangeburg County Sheriff's Department (the Sheriff's Department), Sunshine Recycling, LLC (Sunshine), and Aiken Electric Cooperative, Inc. (Aiken), for negligence, false imprisonment, and malicious prosecution. Huffman later settled her claims against the Sheriff's Department, and the two parties filed a stipulation dismissing the Sheriff's Department from the action.[1] The trial court granted summary judgment in favor of Sunshine and Aiken. The court of appeals reversed. *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 790 S.E.2d 401 (Ct. App. 2016). Both Sunshine and Aiken filed petitions for writs of certiorari to review the court of appeals' opinion. We granted the petitions, and now reverse the court of appeals' opinion as to Sunshine and affirm as to Aiken.

I. Factual and Procedural History

On May 16, 2010, seventy pounds of copper wire and fifty pounds of aluminum tie wire were stolen from Aiken. In total, the stolen wire was worth $463.19.

The following day, Mark Goss, Aiken's Loss Control and Safety Coordinator, and Deputy Maurice Huggins viewed a surveillance video from Aiken that depicted an unidentified black male removing copper and aluminum wiring from Aiken trucks. An Aiken employee also reported seeing a white Ford truck driving out of Aiken's parking lot around the time of the theft. As was Goss's typical practice when Aiken suffered a loss of this nature, Goss checked with local metal recyclers to see if the thief tried to sell the copper and aluminum.

Goss's search led him to Sunshine. Goss testified he arrived at Sunshine the morning following the theft and only two customers had come in. Goss told Sunshine's owner, Joseph Rich, he was looking for stolen copper and aluminum wire believed to have been taken by a black male in a white Ford pickup truck. Rich took Goss into the metal drop-off area to look for the stolen items. Goss identified Aiken's materials which were comingled with other metals. Rich, who claimed to speak Spanish, spoke to an unidentified Spanish-speaking employee

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[1] Based on this dismissal, only the false imprisonment and malicious prosecution causes of action remained as to Aiken and Sunshine.

working in the metal drop-off area. According to Goss, the Spanish-speaking employee informed Rich a white woman had brought the copper and aluminum wire to Sunshine.[2] However, Rich later testified in his deposition the Spanish-speaking employee informed him "that the *first person* in the warehouse that was selling materials in that group was a white woman." (emphasis added.) There is no indication Rich asked the employee about any subsequent customers.

Officer Ashley Aldridge of the Sheriff's Department arrived at Sunshine to investigate the theft. Goss informed Aldridge he believed a black male in a white Ford truck was involved and told Aldridge what Aiken's surveillance video showed, that an Aiken employee saw a white truck leaving Aiken at the time of the robbery, and what the Spanish-speaking employee at Sunshine reported. Rich told Aldridge and Goss they were welcome to view the receipts documenting the amounts paid to customers who sold metal to Sunshine that morning and the time-stamped video footage of customers waiting at the payment window. Aldridge viewed the video, saw Huffman waiting for her payment of $53, and obtained a copy of Huffman's receipt. Rich also informed Aldridge that Sunshine had a video of the metal drop-off area and, although there were issues with the video playback that morning, he would provide Goss and the Sheriff's Department with a copy.

The next day, May 18, 2010, Officer James Ethridge visited Sunshine to photograph the metal identified by Goss as stolen from Aiken. Ethridge testified that when he arrived at Sunshine, Sunshine employees had already pulled copies of Huffman's invoice, receipt, and driver's license. While at Sunshine, Ethridge spoke with Rich, who reiterated the employees working in the drop-off area had informed him Huffman was the individual who brought in the items and she was driving a red truck. Rich also stated he had not yet obtained a copy of the video showing the metal drop-off area but would contact Sunshine's security servicer to request a copy of the video for Ethridge.

Officer Ethridge's report regarding the incident stated Goss contacted Ethridge and claimed he (Goss) had spoken with Huffman at Sunshine on May 17, 2010, while she was waiting to get paid for "the items that she had just brought in." According to the report, Goss also told Ethridge, "He viewed the items after [Huffman] left and identified them as" belonging to Aiken. In his deposition, Goss denied ever speaking to Huffman.

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[2] Goss testified that, "in the metal industry, it's not uncommon for girlfriends and wives to bring metal in and drop them off. It happens all the time."

Over the course of the next few days, Goss repeatedly contacted Officer Ethridge to ask how the case was progressing and whether an arrest had been made. While still waiting to view the video, Officer Ethridge contacted a local magistrate and obtained a warrant for Huffman's arrest for receiving stolen goods[3] based on the information he obtained from Aiken and Sunshine. After learning of the warrant for her arrest, Huffman voluntarily went to the Sheriff's Department and spoke with Ethridge. In her statement, Huffman advised Ethridge she sold metal to Sunshine on the day in question but it was not stolen; rather, it was salvaged from a mobile home belonging to Huffman and her husband that the couple were in the process of tearing down. Huffman provided Ethridge with metal similar to what she took to Sunshine and pictures of the mobile home from which she removed the metal.

Following their discussion, Officer Ethridge arrested Huffman, placed her in handcuffs, and transported her to the detention center where she was required to change into a prison jumpsuit and wait for the next bond hearing. Huffman was not allowed to call to check on her children, who were home alone,[4] and was required to appear at the bond hearing handcuffed and shackled. Huffman obtained a personal recognizance bond, and was released at approximately 5:00 p.m.

After Huffman's arrest and release—more than seventeen days after the theft from Aiken—Officer Ethridge finally viewed the video of Huffman dropping off her items at Sunshine. The video depicted Huffman removing some copper wiring from her red truck that resembled the copper taken from Aiken, and some aluminum siding, not wire. Around the same time, Goss received a copy of the video from Sunshine. Goss testified the video "clearly" showed Huffman unloading "a little small pile of copper," then a black male in a white Ford truck coming in *after* Huffman and unloading "massive [] quantities of copper and aluminum out of his truck." Rich never viewed the video. Ethridge informed Rich "that after viewing the video[,] it d[id] not show [Huffman] with the same items that w[ere] taken. Due to these facts there is not enough evidence to support this

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[3] Receiving stolen goods is a "misdemeanor triable in magistrate[']s court or municipal court . . . if the value of the property is two thousand dollars or less." S.C. Code Ann. § 16-13-180 (2015).

[4] At the time in question, Huffman's two children were approximately six and sixteen years old.

case." Days later, the black male in question was identified as Eugene James. The Sheriff's Department located James, he admitted to stealing the wire from Aiken, and pled guilty.

Huffman filed a complaint against the Sheriff's Department, Aiken, and Sunshine asserting negligence, false imprisonment, and malicious prosecution. The trial court granted summary judgment as to both Sunshine and Aiken and Huffman appealed.

The court of appeals reversed the trial court's rulings and remanded the case to the lower court. *Huffman*, 417 S.C. at 532, 790 S.E.2d at 411. As to Huffman's false imprisonment claims, the court of appeals found there were genuine factual issues material to the unlawfulness of Huffman's arrest and the complicity of both Sunshine and Aiken in her arrest. *Id.* at 523, 709 S.E.2d at 406. The court of appeals found the trial court erred in granting summary judgment to Sunshine and Aiken on Huffman's malicious prosecution claims because there were genuine factual issues material to probable cause as well as the complicity of Sunshine and Aiken in proceeding with the charge of receiving stolen goods against Huffman. *Id.* at 530, 709 S.E.2d at 410.

Following the denial of Sunshine and Aiken's petition for rehearing, we granted Sunshine's and Aiken's separate petitions for writs of certiorari to review the court of appeals' decision.

II. Standard of Review

This Court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Woodson v. DLI Props., LLC*, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014). Summary judgment is properly granted when, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; *Woodson*, 406 S.C. at 528, 753 S.E.2d at 434.

"In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party . . . [who] is only required to submit a mere scintilla of evidence

in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt.*, 381 S.C. 326, 329–31, 673 S.E.2d 801, 802–03 (2009).

III. Discussion

A. Sunshine

Sunshine's argument is twofold. First, Sunshine claims the court of appeals erred in imposing an unprecedented duty on a witness to perform its own investigation before assisting law enforcement with their criminal investigation. Sunshine claims such a duty has never been recognized in this state. Second, Sunshine contends the court of appeals erred in reversing the trial court's grant of summary judgment as to Huffman's false imprisonment and malicious prosecution claims. Specifically, Sunshine maintains that, even if we were to find a witness has a duty to investigate, the court of appeals erred in concluding Huffman offered sufficient evidence to survive Sunshine's motion for summary judgment. We agree and, therefore, reverse the court of appeals' decision as to Sunshine.

1. Creation of an unprecedented duty

False imprisonment consists of depriving a person of his or her liberty without lawful justification. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006). "To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Id.* "The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest." *Id.* at 441, 629 S.E.2d at 651. "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise." *Id.*

To sustain an action for malicious prosecution, "a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Law*, 368 S.C. at 435, 629 S.E.2d at 648. "Malice is defined as 'the deliberate intentional doing of a wrongful act without just cause or excuse.'" *Eaves v. Broad River Elec. Co-Op., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982) (quoting *Margolis v. Telech*, 239 S.C. 232, 238, 122 S.E.2d 417, 419–20 (1961)). This Court has found:

> Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. Malice also may proceed from an ill-regulated mind which is *not sufficiently cautious* before causing injury to another person. Moreover, malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person. Malice also may be *implied* in the doing of an illegal act for one's own gratification or purpose without regard to the rights of others or the injury which may be inflicted on another person. In an action for malicious prosecution, malice may be *inferred* from a lack of probable cause to institute the prosecution.

Law, 368 S.C. at 437, 629 S.E.2d at 649 (emphasis added). It is the plaintiff's burden "to show that the prosecuting person or entity lacked probable cause to pursue a criminal or civil action against him." *Id.* at 436, 629 S.E.2d at 649.

The notion that a private individual may face potential liability for false imprisonment is recognized in South Carolina. *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944) ("The charge of false imprisonment is not confined to the party who unlawfully seizes or restrains another, but it likewise extends to any person who may cause, instigate or procure an unlawful arrest."). As this Court definitively stated in *Wingate*, it is "well settled that where a private person induces an officer by request, direction or command to unlawfully arrest another, he is liable for false imprisonment." *Id.*; *see Whitmire v. Publix Theatre Corp.*, 164 S.C. 487, 162 S.E. 753 (1931) (finding evidence justified the jury's conclusion theater representative's actions caused plaintiff's arrest by requesting police return plaintiff to the theater for an investigation); *Falls v. Palmetto Power & Light Co.*, 117 S.C. 327, 109 S.E. 93 (1921) (holding sufficient evidence from which the jury could conclude power company's general manager acted unreasonably and without ordinary prudence in calling for the arrest of plaintiff who sold similar goods as those stolen from power company).

Although the court of appeals referenced the key language in *Wingate*, its decision effectively expanded the holding to impose a duty on witnesses and victims to investigate and analyze evidence in the same manner as law enforcement. We do not interpret *Wingate*, or its progeny, to require a witness or victim to conduct their own investigation into the offense committed in order to

verify the information they provide. To interpret *Wingate* in such a manner would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability. *See Wingate*, 204 S.C. at 528, 30 S.E.2d at 311 ("Those who honestly seek the enforcement of the law . . . and who are supported by circumstances sufficiently strong to warrant a cautious man in the belief that the party suspected may be guilty of the offense charged, should not be made unduly apprehensive that they will be held answerable in damages." (citation omitted)).

Other jurisdictions have categorically refused to accept such a standard on public policy grounds and we chose to follow suit. *See, e.g.*, *Brice v. Nkaru*, 220 F.3d 233, 238–39 (4th Cir. 2000) ("[W]e are aware of no authority supporting the novel proposition that a witness, by honestly providing information to a law enforcement official, may be held responsible for the official's execution of his independent duty to investigate."); *Lawson v. Kroger Co.*, 997 F.2d 214, 217 (6th Cir. 1993) (stating a reporting victim "may not provide false information with an improper motive, but is not required to investigate offenses against it, nor must it volunteer all information within its knowledge . . . , though it may not withhold information for an improper purpose").

In sum, we find the court of appeals' decision goes too far and risks chilling public cooperation with law enforcement investigations. *See Wingate*, 204 S.C. at 528, 30 S.E. 2d at 311 ("Where a person has information or knowledge that the law has been violated, he not only has a right, but frequently it is his duty, to communicate such information or facts to the proper officer so as to give such officer the opportunity, if in his judgment it is proper to do so, to take whatever steps may be necessary to apprehend the offender."); *Elletson v. Dixie Home Stores*, 231 S.C. 565, 573, 99 S.E.2d 382, 388 (1957) ("[I]t is to be remembered that, while individuals are to be protected against rash and baseless prosecutions, the public interests demand that courts shall not frown upon honest efforts made in attempts to bring the guilty to justice . . . ."); *Turner v. Mellon*, 257 P.2d 15, 17–18 (Cal. 1953) ("The victims of crimes should not be held to the responsibility of guarantors of the accuracy of their identifications . . . . A view contrary to that . . . would, we think, inevitably tend to discourage a private citizen from imparting information of a tentative, honest belief to the police and, hence, would contravene the public interest which must control."), *abrogated on other grounds by Hagberg v. Cal. Fed. Bank FSB*, 81 P.3d 244 (Cal. 2004).

This is not to say any individual who acts in bad faith or knowingly reports incorrect information to law enforcement cannot be held liable for false imprisonment or malicious prosecution. *See Reaves v. Westinghouse Elec. Corp.*,

683 F. Supp. 521, 525 (D. Md. 1988) ("The tort of false arrest is predicated upon *knowing* misconduct."). There is a distinct difference between an individual who, in good faith, reports mistaken or inaccurate information and an individual who *purposely* provides law enforcement with *knowingly false information*. *See Brice*, 220 F.3d at 238 ("[T]he critical question is whether the witness provided the police with his honest or good faith belief of the facts."). However, we find punishing an individual who mistakenly identifies a criminal suspect or unwittingly provides what is later discovered to be incorrect information in a criminal investigation serves no purpose. *See Jones v. Autry*, 105 F. Supp. 2d 559, 561 (S.D. Miss. 2000) (noting "the law allows wide latitude for honest action" by parties who assist law enforcement); *Shires v. Cobb*, 534 P.2d 188, 189 (Or. 1975) ("[P]ublic policy will protect the victim of a crime who, in good faith and without malice, identifies another as the perpetrator of the crime, although that identification may, in fact, be mistaken.").

With the above framework in mind, we turn to Sunshine's argument that the court of appeals erred in concluding Huffman presented the scintilla of evidence required to survive Sunshine's motion for summary judgment on Huffman's claims for false imprisonment and malicious prosecution.

2. False imprisonment

The court of appeals noted Officer Ethridge testified that when he visited Sunshine, "*[t]hey* were guaranteeing that the metal that [Huffman] brought in was the metal -- [Goss] was saying this is 100 percent our metal from [Aiken] and the [receipt] was showing the weights, everything, was . . . everything was looking the same." *Huffman*, 417 S.C. at 529, 790 S.E.2d at 409. The court of appeals concluded this statement demonstrated Sunshine's "complicity" in Huffman's arrest because it was "unclear whether 'they' referred to Rich as Sunshine's agent; or Goss, as Aiken's agent; or both. Therefore, a jury could reasonably infer that either or both men made this representation." *Id.* Further, the court of appeals pointed to Rich's admission that he never asked his Spanish-speaking employee to identify the second or third person who dropped off metal on the morning in question, and Officer Ethridge's testimony that he was "told by Sunshine" that the video of the metal drop-off area showed Huffman dropping off the stolen items as further evidence of Sunshine's culpability. *Id.* at 529–30, 790 S.E.2d at 409–10.

We find the court of appeals misapprehended the record and misapplied the summary judgment standard in coming to its conclusion. Reviewing the entirety of Officer Ethridge's deposition testimony reveals the passage quoted by the court of

appeals was simply a clarification by Ethridge that *Goss* was speaking the entire time. Accordingly, we find the court of appeals erred in morphing Ethridge's testimony into a genuine issue of material fact from which a jury could reasonably infer that Rich, as Sunshine's agent, made the representation. *See Shuler v. Tuomey Reg'l Med. Ctr.*, 313 S.C. 225, 227, 437 S.E.2d 128, 130 (Ct. App. 1993) ("It is not sufficient [to defeat a motion for summary judgment] that one create an inference which is *not reasonable* or an issue of fact that is *not genuine*." (emphasis added)). Additionally, even if the court of appeals was correct regarding the alleged ambiguity in Ethridge's "they" testimony, neither Ethridge's testimony nor the other pieces of evidence pointed to by the court of appeals support Huffman's claim for false imprisonment because there is nothing in the record that provides a reasonable inference that Sunshine or any of its employees induced, caused, instigated, or procured Huffman's arrest simply by cooperating with law enforcement and relaying information Sunshine believed to be true at the time.

3. Malicious prosecution

Sunshine argues the court of appeals misapprehended the law and facts presented in the record regarding Huffman's malicious prosecution claim. Additionally, Sunshine contends Huffman failed to present evidence Sunshine or any of its employees acted with malice in reporting information to and cooperating with law enforcement. We agree.

Pointing to the same evidence discussed above in relation to Huffman's false imprisonment claim, the court of appeals found that, in the light most favorable to Huffman, there was at least a scintilla of evidence from which a jury could reasonably conclude (1) Officer Ethridge lacked probable cause to pursue a warrant for Huffman's arrest, and (2) this pursuit was at the insistence of *both* Sunshine and Aiken.

We find the court of appeals erred in reversing the trial court's grant of Sunshine's motion for summary judgment as to Huffman's malicious prosecution claim because Huffman failed to present a scintilla of evidence that Sunshine instituted the proceedings against her or that the proceedings were instituted at the instance of Sunshine. *See Elletson*, 231 S.C. at 573, 99 S.E.2d at 388 (noting that while individuals are to be protected against "rash and baseless prosecutions," public interests require that courts not punish honest efforts "to bring the guilty to justice"). Accordingly, we reverse the court of appeals' decision as to Sunshine.

B. Aiken

Aiken's primary challenge to the court of appeals' decision is that Huffman's claims should be barred as a matter of law pursuant to article I, section 24 of the South Carolina Constitution (the Victims' Bill of Rights) and section 16-3-1505 of the South Carolina Code (2015).[5] Additionally, Aiken contends the court of appeals erred in relying on inadmissible evidence in reaching its decision. However, unlike Sunshine, Aiken does not directly challenge the sufficiency of the evidence presented by Huffman. We disagree with Aiken's contentions and affirm the court of appeals' decision as to Aiken.

1. The Victims' Bill of Rights and § 16-3-1505 of the South Carolina Code

Aiken argues the court of appeals overlooked, and failed to address and consider whether Huffman's claims were barred by the Victims' Bill of Rights and section 16-3-1505. Aiken argues this oversight is contrary to the court of appeals' duties and responsibilities under Rule 220(b), SCACR,[6] and "waters down the rights guaranteed to victims of crime by the Constitution and statutes regarding victims of crime."

The Victims' Bill of Rights provides that victims of crimes have the right to:

> (1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional right, provided by statute;
>
> . . . .

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[5] Aiken raised this argument in its brief to the court of appeals; however, the court chose not to address the matter pursuant to *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("It is within the appellate court's discretion whether to address any additional sustaining grounds."). *Huffman*, 471 S.C. at 518 n.1, 790 S.E.2d at 404 n.1. Aiken raised the issue again in its petition for rehearing; however, the petition was denied.

[6] "In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Rule 220(b), SCACR.

> (6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;
>
> (7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;
>
> . . . .
>
> (11) a reasonable disposition and prompt and final conclusion of the case . . . .

S.C. Const. art. I, § 24(A)(1), (6), (7), (11).

Section 16-3-1505 encompasses the legislative intent portion of the South Carolina Victim and Witness Service Act and states, in relevant part:

> In recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well-being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants . . . .

S.C. Code Ann. § 16-3-1505.

As to the portion of Aiken's argument regarding the Victims' Bill of Rights, this Court has never interpreted the Victims' Bill of Rights as providing a defense to victims accused of false imprisonment or malicious prosecution, and Aiken has failed to cite any case law in support of its contention. *See Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 253 n.3, 734 S.E.2d 161, 164 n.3 (2012) (stating an issue is deemed abandoned if the argument in the brief is not supported by authority or is

only conclusory). Additionally, the incidents in which the appellate courts of this state have referred to the Victims' Bill of Rights have all occurred in a criminal setting, not a civil one as in the instant case. *See Ex parte Littlefield*, 343 S.C. 212, 221, 540 S.E.2d 81, 85 (2000) (finding once a criminal case has been resolved and the defendant sentenced, the victim loses his or her status under the Victims' Bill of Rights); *Reed v. Becka*, 333 S.C. 676, 683–84, 511 S.E.2d 396, 400 (Ct. App. 1999) (holding solicitors' prosecutorial discretion is not contracted or limited by the victims' rights laws).

As to Aiken's claim regarding section 16-3-1505, we have recognized the primary purpose of the statute is to ensure "victims are informed of their rights and any alternative means that might be available to them if the criminal prosecution is unable to meet their needs." *Ex parte Littlefield*, 434 S.C. at 218, 540 S.E.2d at 84. Further, we have stated that "while the legislative intent section indicates the General Assembly recognizes the importance of the people's civic duty to cooperate with law enforcement, *there is no indication the General Assembly intended this concept to extend outside the context of the ongoing criminal proceeding at the heart of this statute*." *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 246, 786 S.E.2d 385, 388 (2015) (emphasis added). Accordingly, we find Aiken's arguments to be without merit.

2. Inadmissible evidence

Aiken argues the court of appeals' decision was improperly based on inadmissible evidence. Specifically, Aiken argues Officer Aldridge's testimony that Goss "imposed a sense of urgency on the case" when communicating with law enforcement was inadmissible opinion testimony by a lay witness in violation of Rule 701 of the South Carolina Rules of Evidence. Further, Aiken notes the only other evidence relied on by the court of appeals came from Officer Ethridge who testified Goss "wanted to know what I was going to do [with the case]. Was I going to arrest [Huffman], lock her up . . ." and stated Goss was "calling [Ethridge] just like any other victim would."

Rule 701 states, if a witness is testifying as a lay witness

> the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Rule 701, SCRE.

During Officer Aldridge's deposition, the following exchange occurred between Aiken's attorney and Aldridge:

> Q: Do you recall anything that you haven't told us that was said by Mr. Goss of Aiken Electric?
>
> A: The one thing that does stick out in my head as far as my interaction with Mr. Goss was that he imposed a sense of urgency on the case.
>
> Q: All right.
>
> A: I'm not exactly sure what had been done or what conversation had transpired before my interactions with him, but there did seem, to be a sense of urgency on his part to get some resolution of the incident.
>
> . . . .
>
> Q: Is it unusual for victims of crimes to want to see law enforcement take action?
>
> A: Generally, victims are more pressed than not to have law enforcement resolve their issues.
>
> Q: And I would assume law enforcement has to do it at its own pace, but sometimes victims are frustrated by the delay and the process of taking a case forward?
>
> A: Right. Right. And it's completely common.

During Officer Ethridge's deposition, he testified Goss called him "several times about moving further with the case" and "want[ed] to know what [Ethridge] was doing [in regards to the case]." Ethridge further testified:

> I didn't have the video at that point in time so [Goss] wanted to know what I was going to do. Was I going to try and arrest [Huffman], lock her up, you know, speaking with a magistrate, what to do. On the 21st, that's what I did is [sic] I went and spoke with a magistrate.

Q: Did you feel that [Goss] was urging you to prosecute [Huffman]?

. . . .

A: He was calling me. He was calling me just like any other victim would. You know, what are you doing? You know, what -- I mean, he had people he had to answer to . . . .

. . . .

Q: Okay. And the reason he was calling you is because he wanted–

A: To know what I was going to do with the case. Was I . . . going to arrest [Huffman].

We find Officer Aldridge's and Officer Ethridge's testimony was based on their perceptions of their interactions with Goss; did not require special knowledge, skill, experience, or training; and did not stray into the realm of expert testimony. *See* Rule 701, SCRE (noting lay witness testimony is limited to the witness's opinions or inferences which are rationally based on the witness's perception, and that do not require "special knowledge, skill, experience or training"). Accordingly, we find the court of appeals did not err in relying on or basing a portion of its ruling on the two officers' testimony.

IV. Conclusion

Based on the foregoing, we reverse the court of appeals' decision as to Sunshine and affirm the opinion as to Aiken.

AFFIRMED IN PART AND REVERSED IN PART.

KITTREDGE, HEARN, FEW and JAMES, JJ., concur.