

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jacob Murdaugh,

Plaintiff,

vs.

Walmart Stores East, LP, Jan Lunsford,  
and John Doe,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2019-CP-15-00949

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

**RECEIVED**

**Feb 09 2022**

**SC Court of Appeals**

This matter came before the Court on November 3, 2021, for a hearing on Defendants Walmart Stores East, LP, Jan Lunsford, and John Doe (“Defendants”) Motion for Summary Judgment pursuant to Rule 56, SCRCF. Thomas Nelson was present as counsel for Plaintiff, and Robert Blain was present as counsel for Defendants. Having duly considered the Motion, the accompanying memorandum of law and exhibits, as well as the oral arguments presented by counsel at the hearing, the Court hereby grants Defendants’ Motion for Summary Judgment.

**FACTUAL BACKGROUND**

This lawsuit arises out of Plaintiff’s allegations that he was arrested by the Walterboro Police Department after he was misidentified as a suspect from a shoplifting incident that occurred at Walmart located at 2110 Bells Highway. On July 24, 2018, at approximately 1:52 AM, Plaintiff Jacob Murdaugh entered the Walmart with Teresa Fletcher and Heyward Harrison. They were inside the store for around twenty-five minutes, but never made a purchase. Plaintiff never spoke with any Walmart employee, and he was not detained, touched, or threatened by any Walmart employee. Plaintiff and his companions exited the store and met with Ariel Avant at her vehicle—a neon green hatchback. Avant and Fletcher left the parking lot in the neon green hatchback, while Plaintiff left the premises in his own vehicle with Harrison.

At approximately 2:20 AM on July 24, 2018, Walmart Manager Jan Lunsford contacted Walterboro Police to report a shoplifting incident. Officer Keith Belanger responded to the call and upon arrival was informed that four unknown suspects were suspected of shoplifting. In his Report, Officer Belanger described that, “[a]n unknown maintenance worker confronted the offenders who left ... the business in a neon green Ford Focus.”

Officer Belanger promptly located and stopped Avant’s neon green vehicle nearby. Fletcher and Avant admitted to being on Walmart property with Harrison. Harrison, Fletcher, and Avant were known to Walterboro Police as having been put on trespass notice from the same Walmart store for previous shoplifting incidents in the months preceding this incident. All three were charged with trespassing.

Officer Belanger returned to Walmart to continue his investigation into the shoplifting incident. Walmart Manager Jan Lunsford provided him with security camera footage and still frames of the shoplifting incident. Lunsford allegedly identified Plaintiff to Officer Belanger as the suspected shoplifter shown on surveillance video. Plaintiff was not detained, questioned, or involved any further until Walterboro Police arrested him over two months later.

Based on information provided by Walmart, Walterboro Police decided to obtain a warrant for Plaintiff’s arrest. Plaintiff was arrested on October 8, 2018 for shoplifting. Over a year later, his criminal case was called before the Walterboro Municipal Court on November 6, 2019. The charge was dismissed with no prosecution and Plaintiff’s criminal record was expunged. Plaintiff filed this lawsuit against Defendants on December 4, 2019 asserting causes of action for false imprisonment, malicious prosecution, defamation, slander, libel, assault and battery, and negligence.

## DISCUSSION

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

Summary judgment is appropriate where “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “[T]he inferences to be drawn from the underlying facts contained in the record must be viewed in the light most favorable to the party opposing the motion.” *Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 69 (Ct. App. 1985). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

### **II. False Imprisonment**

Plaintiff asserts a cause of action for false imprisonment against Defendants. 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.” *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006). A witness or victim is not required “to conduct their own investigation into the offense committed in order to verify the information they provide [to law enforcement].” *Huffman v. Sunshine Recycling*, 426 S.C. 262, 274, 826 S.E.2d 609, 615 (2019) (affirming trial court’s decision to grant summary judgment in favor of similarly-situated defendant on claims for false imprisonment and malicious prosecution). Imposing such a duty “would improperly subject witnesses and victims, who act in good faith when assisting law enforcement, to civil liability.” *Id.* A person cannot be held liable when the arrest is carried out by the police officer’s own volition. *See Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 527-28, 30 S.E.2d 307, 310-11 (1944). “[N]o liability is incurred if a person merely gives information to an officer tending to show that a crime has been committed, even if the informer gives

inaccurate, incorrect, or incomplete information as a result of a good faith mistake.” 32 Am. Jur. 2d *False Imprisonment* § 41 (1995).

In this instant case, it is undisputed Plaintiff was not stopped or detained at Walmart or by Defendants on the night of the incident; police arrested him months later. Defendants made a good faith report of a suspected shoplifting incident and cooperated with law enforcement by providing security camera footage and still frames. Even if Plaintiff was mistakenly identified by Defendants, a victim is not required to conduct its own investigation in order to verify information it provided to police. Defendants providing information to law enforcement is not sufficient to cause an unlawful arrest. Plaintiff was arrested by the police officer’s own volition months after Defendants reported a crime. Defendants cannot be subjected to civil liability simply by reporting reasonable suspicion of a crime and assisting law enforcement. Accordingly, this Court finds that summary judgment is warranted on the Plaintiff’s claim of false imprisonment.

### **III. Malicious Prosecution**

Plaintiff asserts a cause of action for malicious prosecution against Defendants. 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. “It is in the interest of good order that criminals be brought to justice, and malicious prosecution action are not encouraged.” *Elletson v. Dixie Home Stores*, 231S.C. 565, 571, 99 S.E.2d. 384, 387 (1957). “[P]unishing 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.” *Huffman*, 426 S.C. at 274, 826 S.E.2d at 616. The law must protect the victim who reported the

crime and cooperated with law enforcement's investigation; otherwise, it would undoubtedly create a chilling effect on such cooperation. *See Id.*, 426 S.C. at 274, 826 S.E.2d at 615-16.

In the instant case, Defendants merely reported a crime and provided information to assist with Waltherboro Police's criminal investigation. Walmart had a reasonable belief that a shoplifting crime was committed based on an eyewitness report from an unknown maintenance worker that confronted the offenders who left the business in a neon green Ford Focus. Walmart's reasonable belief was supported by video surveillance of the incident. Walmart cooperated with law enforcement. From that point, Waltherboro Police moved the investigation forward by detaining Plaintiff's companions in the neon green Ford Focus and by obtaining a warrant for Plaintiff's arrest. There is no evidence in the record that Defendants acted with malice or instituted the proceedings against Plaintiff. A store manager reporting a theft and cooperating with law enforcement cannot be grounds for the tort of malicious prosecution. Accordingly, this Court finds that summary judgment is warranted on the plaintiff's claim of malicious prosecution.

#### **IV. Defamation/Slander/Libel**

Plaintiff asserts a cause of action for defamation, slander, and libel against Defendants. To prove defamation, "the plaintiff must show (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 caused by the publication." *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 559-60, 698 S.E.2d 845, 852 (Ct. App. 2010). "In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege." *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Under a qualified privilege defense, "one who publishes defamatory matter concerning another is not liable" if there is a conditional privilege

that is not abused. *Id.* It is the duty of the court to determine if the statement is privileged as a matter of law. *Murray v. Thornton*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001).

Communications made in a criminal investigation for the purpose of detecting the suspects are privileged. *Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641, 643 (1946). “Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded.” *Swinton Creek Nursery*, 334 S.C. at 484–85, 514 S.E.2d at 134.

Here, the only Walmart communications in evidence were to Walterboro Police to assist with their shoplifting investigation. Defendants’ communications are privileged as a matter of law. Plaintiff has shown no evidence that Defendants abused or exceeded the scope of the privilege. Merely providing information to police in a good faith report of reasonable suspicion of a crime cannot rise to the level of a defamatory publication. As such, this Court finds that summary judgment is warranted on the Plaintiff’s claim of defamation, slander, and libel.

#### **V. Assault and Battery**

Plaintiff asserts a cause of action for assault and battery against Defendants. The elements of assault are: (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm. *Mellen v. Lane*, 377 S.C. 261, 276, 659 S.E.2d 236, 244 (Ct. App. 2008). “A battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree; it is unnecessary that the contact be by a blow, as any forcible contact is sufficient.” *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230, 317 S.E.2d 748, 754 (Ct. App. 1984).

Defendants merely reported a shoplifting incident to law enforcement, which investigated the crime and arrested Plaintiff over two months later. Defendants’ conduct did not place Plaintiff

in reasonable fear of bodily harm since Defendants did not detain, touch, threaten, or otherwise interact with Plaintiff at any time while he was in the Walmart store or thereafter. Moreover, Plaintiff's claim fails because there is no evidence to show Defendants induced police to undertake any unlawful conduct. Police arrested Plaintiff two months later on their own volition and without direction from Defendants. Therefore, this Court finds that summary judgment is appropriate on the Plaintiff's claim of assault and battery.

## **VI. Negligence**

Plaintiff asserts a cause of action for negligence against Defendants. To establish a cause of action for negligence "a plaintiff must show ... three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 474, 377 S.E.2d 343, 348 (Ct. App. 1988). South Carolina law does not impose a duty on a victim of a crime to perform its own investigation before assisting law enforcement with their criminal investigation. In fact, the South Carolina Supreme Court specifically rejected the creation of such "an unprecedented duty." *Huffman*, 426 S.C. at 273, 826 S.E.2d at 614-15 (The law does not "require a witness or victim to conduct their own investigation into the offense committed in order to verify the information they provide" to law enforcement.). The *Huffman* court explicitly stated that it "serves no purpose" and is against public policy to subject victims to liability for misidentifying a criminal suspect. *Id.*, 826 S.E.2d at 616. Therefore, as a matter of law, Defendants did not owe Plaintiff a duty to investigate and analyze the information Defendants provided to law enforcement. As such, this Court finds that summary judgment is warranted on the Plaintiff's claim of negligence.

**CONCLUSION**

There is no genuine issue as to any material fact from which this Court could reasonably infer Plaintiff is entitled to relief from Defendants under any theory of law. Defendants are not culpable for reporting a crime and relaying information to law enforcement. Defendants are not responsible for investigating and analyzing evidence in the same manner as law enforcement. A store manager reporting a reasonable suspicion of theft to the police cannot be grounds for tort liability.

Based upon the foregoing, it is hereby ordered that the Plaintiff's Complaint and all causes of action against Defendants are dismissed with prejudice pursuant to Rule 56, SCRCR, and Defendants' Motion for Summary Judgment is hereby **GRANTED**.

**IT IS SO ORDERED.**

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The Honorable Bentley D. Price  
Presiding Judge, 14th Judicial Circuit

\_\_\_\_\_, 2021



Colleton Common Pleas

**Case Caption:** Jacob Murdaugh VS Walmart Stores East Lp , defendant, et al

**Case Number:** 2019CP1500949

**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766