

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

---

No. 98-60212  
Summary Calendar

---

KELL S. LYON, JR,

Plaintiff-Appellant-Cross-Appellee,

VERSUS

FRED'S INC doing business as Fred's, ET AL,

Defendants,

FRED'S STORES OF TENNESSEE INC.,

Defendant-Appellee-Cross-Appellant.

---

Appeal from the United States District Court  
for the Northern District of Mississippi  
(2:96-CV-141-B-B)

---

March 1, 1999

Before DAVIS, DUHÉ and PARKER, Circuit Judges.

PER CURIAM:<sup>1</sup>

We have conducted a de novo review of the record, and the law, and have carefully considered the written argument of counsel. This study convinces us that the district court was correct in concluding that, as a matter of law, probable cause did exist for an objectively reasonable person to believe that Plaintiff had

---

<sup>1</sup>Pursuant to 5<sup>TH</sup> CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

shoplifted an item of merchandise from the store, and that the bringing of the charge was without malice. Accordingly, we affirm the grant of Judgment As A Matter of Law to Defendant. Having so concluded, we dismiss the Appellee's cross-appeal as moot.

AFFIRMED, CROSS-APPEAL DISMISSED AS MOOT.