THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No.: 2021-001398

Paulette Lawrence, Appellant,

V.

City of North Charleston, Respondent.

RECORD ON APPEAL

ASHLEY B. CORNWELL
Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
(843) 595-6003
acornwell@cornwellfirm.com

ATTORNEY FOR APPELLANT

ROBIN L. JACKSON
Senn Legal, LLC
Post Office Box 12279
Charleston, SC 29422
(843) 556-4045
robin@sennlegal.com

ATTORNEY FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PAULETTE LAWRENCE, Plaintiff, v. CITY OF NORTH CHARLESTON, Defendant.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO. 2020-CP-10-3999 **ORDER**

This matter came before the court upon Defendant's Motion for Summary Judgment on November 4, 2021. The Plaintiff was represented by Ashley Cornwell, and the Defendant was represented by Robin Jackson. After reviewing the briefs submitted by each party and hearing oral arguments, it is the decision of the court that this motion be granted for the reasons set forth below.

This case arises out of an investigation into forgery performed by the North Charleston Police Department in conjunction with Wells Fargo Bank and their security office. The plaintiff previously sued North Charleston and Wells Fargo, but plaintiff voluntarily dismissed that suit and in September, 2020, refiled only against North Charleston. The City of North Charleston asserts the statute of limitations and Tort Claims Act immunities and further denies that there was a false arrest or imprisonment, malicious prosecution, assault and battery or negligence and asserts that it is entitled to summary judgment.

FACTS

The underlying facts are undisputed. On February 7, 2018, the family of an elderly woman ("victim") reported to the North Charleston Police Department that they had been contacted by Wells Fargo about fraudulent banking activity on the victim's account. Three checks had been deposited into the ATM and immediately the money was withdrawn from the ATM. On February 9, 2018, the family came to the police department to meet with Detective Bousquet and reported that a fourth check for $400 was deposited and withdrawn as well. It appeared that a stranger had convinced the victim to deposit the checks at the ATM after they were refused inside due to the accounts being closed. The only information the victim had about the suspect was that she was a black female. The family had gone to the bank to obtain copies of the deposits and had a phone number that was used to authorize the deposits. The detective requested information on the times and locations where the checks were deposited. The detective called the number and spoke with a person who said that another person was responsible. The second person, Tanisha Simmons, called back a short time later and said that two other people were responsible. She offered to come in and speak with the detective, but never showed up. The detective was unable to reach her again.

On February 26, 2018, Detective Bousquet requested the video of the original incident and other deposits. On February 28, 2018, Danny Conyers from Wells Fargo sent what he identified as still shots of all of the transactions requested. On March 16, 2018, multiple photos from the still shots were sent to SLED for facial recognition. On March 20, 2018, SLED returned a hit for a possible second suspect, who deposited a check on January 29, 2018 – Paulette Lawrence. As of May 3, 2018, no hits were located by SLED for the first suspect. On June 28, 2018, Detective Bousquet sent out a "request for information" and was contacted by Narcotics with the name Tanisha Simmons.

Bousquet asked Conyers for the bank transactions showing how much money was taken out by the suspects. She received that information from Wells Fargo on July 11, 2018, and also discussed the three hour time difference on the video surveillance photos. On July 26, 2018, Det. Bousquet applied for three warrants for Tanisha Simmons and one warrant for Paulette Lawrence.

On August 10, 2018, uniformed officers went to the home of Paulette Lawrence and placed her under arrest. The warrant officers who made the arrest had no information about the underlying charge or the investigation. Lawrence immediately told officers that she had not committed any crimes. (Compl. ¶ 9). After receiving the warrant Ms. Lawrence informed officers that she did not know Ms. Pinckney and had not committed any crimes against her. (Compl. ¶ 12; Deposition of Lawrence, 10:1-8). At the detention center, Lawrence again told officers that there was a mistake and she had not forged any documents. (Compl. ¶ 17). Lawrence was then booked at the detention center. (Compl. ¶ 14). She received a bond hearing and was released from the detention center.

On October 17, 2018, the case was bound over at preliminary hearing. However, immediately after the hearing, Lawrence's attorney looked at the discovery she received from the solicitor's office during the hearing and found that the date on the photos was January 29, 2018. (Compl. ¶ 31). The deposit was actually made on January 26, 2018, but was credited to the account on the 29th. Therefore, the video should have been from the 26th, not the 29th. The bank pulled the video for the date the deposit was credited instead of the date the deposit was made. The detective did not notice the discrepancy. Lawrence's attorney contacted the detective and told her what she had found. The detective then saw it and immediately notified the solicitor who dismissed the charge.

The plaintiff filed a Complaint against several defendants on June 18, 2019. She voluntarily dismissed that Complaint on May 12, 2019 "in response to (NCPD) Defendant's

Motion to Dismiss and Motion to Strike" (Plaintiff's Brief, p. 2). The current matter was filed on September 10, 2020.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A motion for summary judgment shall be granted 'if 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.'" *Id.* (quoting Rule 56(c), SCRCP); *accord Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); *see also Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E. 2d 187, 191 (1997). Summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law," *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), and "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Further, the United States Supreme Court has held that:

> The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact. When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

Scott v. Harris, 550 U.S. 372, 380 (2007) (internal quotations and citations omitted) (emphasis in original).

Rule 56(e), SCRCP, further states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

See also Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Southeast Group, 413 S.C. 630, 640, 776 S.E.2d 434, 439–40 (Ct. App. 2015); *Lord v. D & J Enters., Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014) ("Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial." (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct.App.2004) ("Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." (citing *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545)).

I. THE TWO YEAR STATUTE OF LIMITATIONS HAS EXPIRED.

The allegations in this case are subject to the two-year statute of limitations as set forth in S.C. Code Ann. § 15-78-110 of the Act:

> Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claiming first filed a claim pursuant to this chapter, then the actin for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

A three-year statute of limitations is only available to a party who files a "verified claim". *See* S.C. Code Ann. § 15-78-80 (Supp. 2002); *Flateau*, 355 S.C. 197, 207(Ct. App. 2003); *see also Joubert v. South Carolina Dept' of Soc. Servs.,* 341 S.C. 176, 534 S.E. 2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). The South Carolina Court of Appeals, in *Searcy v. South Carolina Dept. of Educ., Transp. Div.*, 303 S.C. 544, 548, 402 S.E. 2d 486, 488 (1991), stated,

> Sections 15–78–90(b), 15–78–100(a) and 15–78–110 must be read with Section 15–78–80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time affording a governmental entity a measure of protection against fraudulent claims. *See* 73 Am.Jur.2d *Statutes* § 189 at 388 (1974) ("Statutes which are parts of the same general scheme or plan, or are aimed at the accomplishment of the same results and the suppression of the same evil, are ... considered as in pari materia."). When these statutes are so read, the "claim" mentioned in these code sections can only refer to the "verified claim" mentioned in Section 15–78–80. *(emphasis added)*

The Court of Appeals made clear that a prior lawsuit does not count to extend the statute of limitations. This was reiterated by the Court of Appeals in *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 534 S.E. 2d 1 (2000), when it relied on *Searcy* – "§ 15–78–80 expressly requires the person to file a verified claim in order to benefit from the three-year limitations period." The *Joubert* Court went on to say "[i]n order to trigger the three-year statute of limitations under § 15–78–110, a party must follow the procedure outlined in S.C. Code Ann. § 15–78–80". Finally, the *Joubert* Court clearly set out how important compliance with the verified claim requirements is to the extension of the statute.

> Most importantly, our courts have repeatedly held strict compliance with the verified claim statute is mandatory. *See, e.g., Vines v. Self Mem'l Hosp.,* 314 S.C. 305, 307, 443 S.E.2d 909, 910 (1994) ("A claim against a state entity under the Tort Claims Act must be verified to entitle a plaintiff to the three-year statute of limitations. Substantial compliance is not sufficient." The verified claim must set forth the extent and amount of the loss sustained); *Rink v. Richland Mem'l Hosp.,*

> 310 S.C. 193, 196–197, 422 S.E.2d 747, 748–749 (1992) ("[W]hen a plaintiff seeks to sue a political subdivision he 'must fully comply with the prescribed terms and conditions of the statute, and the filing of a claim as required is an essential prerequisite to a right of action.'") (quoting *Cochran v. City of Sumter,* 242 S.C. 382, 386, 131 S.E.2d 153, 155 (1963), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)); *Pollard*, 314 S.C. at 400, 444 S.E.2d at 536 (substantial compliance with the statute is not enough; the "verified claim" procedure must be strictly complied with in order to trigger the three-year limitations period). Accordingly, because [Lawrence] did not comply fully with the statutory mandate, no verified claim was filed, and the statute of limitations on the underlying actions was two years, not three.

Here, it is undisputed that the plaintiff did not file a statutorily compliant verified claim. Instead, the plaintiff argues that her first Complaint qualifies as a verified claim. Although her first Complaint was verified, it did not contain the amount of damages or the extent of damages, which are both required for a verified claim. *Vines supra, Rink supra.* The Courts in both *Vines* and *Rink* dismissed cases where one or both of these elements were missing. Therefore, the first Complaint does not qualify as a verified claim and the statute is not extended to three years.

In the alternative, plaintiff has asserted that the two year statute of limitations did not begin to run until October 17, 2018, when the plaintiff's criminal attorney found the mistake on the photos. However, this is not the law. The arrest in this case occurred on August 10, 2018. The allegations relating to False Arrest, Assault and Battery and Negligence are all tied to the date of arrest, as the plaintiff has testified that she knew when the officers told her they had a warrant for her, that she had not committed any crimes, let alone the crime she was accused of committing. (Depo. Lawrence 9:17-10:8). The Complaint itself asserts that the plaintiff immediately knew that she had not committed the crime and that she went so far as to tell the arresting officers that she did not know the victim and had not committed any crimes against her. (Compl. 12).

The assault and battery claim, based on the plain language of the Complaint, is for the handcuffing and possibly the transport to the police station and detention center. Additionally, the

negligence claim specifically alleges that the investigation was negligent. (Compl. ¶27)[1] It is undisputed that all investigation was done before the warrant was executed and before the plaintiff was arrested.

Plaintiff's argument under *Young v. SC Dept. of Corrections*, 333 SC 714, 511 D.E. 2d 413 (S.C. App. 1999) that she did not "discover" her claim until her preliminary hearing is to no avail. This matter is clearly distinguishable from that case involving a degree or type of injury that required medical evaluation. Here, the information contained in the warrant affidavit provided Lawrence with facts and information related to the crime sufficient for her to know whether or not she committed that crime. Plaintiff acknowledges that she received the warrants at the detention center (Lawrence, 11:15-20; Compl., ¶ 15) and that she claims she told officers that she had not forged any documents (Compl., ¶ 17). This is clear evidence of notice. "Under the Tort Claims Act,{}, the statute of limitations begins to run when the plaintiff should know that [s]he might have a potential claim against another, not when [s]he develops a full-blown theory of liability." *Joubert*, 341 S.C. at 190.

The arrest in this case occurred on August 10, 2018, Ms. Lawrence was released from the Detention Center on August 11, 2018, and this Complaint was filed on September 10, 2020. Therefore, the claims for False Arrest, Assault and Battery and Negligence are all dismissed on the basis that the statute of limitations has expired.

II. SOUTH CAROLINA TORT CLAIMS ACT, S.C. CODE ANN. §15-78-10, *et. seq.*

The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against North Charleston, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994).

[1] In the Complaint there are two consecutive paragraphs numbered 27. Both contain similar information and therefore when paragraph 27 is referenced, the reference includes both paragraphs with this number.

See also S.C. Code Ann. 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. 15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.").

The Act also spells out that the exceptions to the waiver of immunity "must be **liberally construed in favor of limiting the liability of the state**." S.C. Code Ann. § 15-78-20(f) (Emphasis added). Defendant asserts two subsections of the Act that are applicable. Both are absolute immunities to suit.

A. THE CITY IS NOT LIABLE FOR A LOSS RESULTING FROM THE INSTITUTION OR PROSECUTION OF ANY JUDICIAL PROCEEDING.

"The governmental entity is not liable for a loss resulting from . . . .the institution or prosecution of any judicial or administrative proceeding[.]"§ 15-78-60 (23). For a state claim for malicious prosecution, "a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the insistence of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Pallares v. Seinar*, 756 S.E. 2d 128, 131 (S.C. 2014); *see also Huffman v. Sunshine Recycling, LLC*, 826 S.E.2d 609, 615 (S.C. 2019).

South Carolina Courts have repeatedly dismissed the state malicious prosecution claim based upon SCTCA immunity. The first element of this claim requires "the institution or continuation of original judicial proceedings." *Pallares*, 756 S.E. 2d at 131. However, the SCTCA explicitly provides that a "governmental entity is not liable for a loss resulting from" the

"institution or prosecution of any judicial or administrative proceeding[.]" S.C. Code § 15-78-60(23). *See McCoy v. City of Columbia*, 929 F. Supp. 2d 541, 567, N.10 (D.S.C. 2013) (finding the City of Columbia was immune from a state malicious prosecution claim based upon S.C. Code § 15-78-60(23)); *Bellamy v. Horry Cty. Police Dep't*, No. 4:19-CV-03462-RBH-KDW, 2020 WL 2559544, at *5 (D.S.C. Apr. 30, 2020), *report and recommendation adopted*, No. 4:19-CV-03462-RBH-KDW, 2020 WL 2556953 (D.S.C. May 20, 2020) (finding Defendant Horry County Police Department was immune from a state malicious prosecution claim based upon S.C. Code § 15-78-60(23)). *Smith v. Lexington County Sheriff's Office*, 3:19-cv-02155-JMC, 2021 WL 1172692 (2021)(finding the Lexington County Sheriff's Office was immune from a state malicious prosecution claim based on S.C. Code § 15-78-60(23)). As a governmental entity, the City is therefore immune from this claim.

B. THE CITY IS NOT LIABLE FOR A LOSS RESULTING FROM THE ACT OR OMISSION OF A PERSON OTHER THAN AN EMPLOYEE.

"The governmental entity is not liable for a loss resulting from . . . . an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." § 15-78-60 (20). In this case, the person who is not an employee, whose act is important here – is Danny Conyers, the Bank Security employee. The language "including but not limited to" is specifically inclusive of the actions of the bank employee in pulling and providing the wrong video to the detective. The purpose of this section is to give immunity where the acts of non-employees result in loss. That is the situation in this case. The evidence shows that the detective contacted the bank to ask for the records and the "video of the original incident, and the other deposits made into the account." (Detective Notes). The notes go on to show that the bank provided records for the victim showing the activity in her account and provided the detective with still shots from the

video for the times, dates and locations of the deposits. The detective relied on these assertions from the bank employee and moved forward to identify the persons in the still shots. One of those persons was thereafter identified as the plaintiff. At no time did the bank or its employee notify the detective that a mistake was made regarding the date of the video that was pulled and provided. It was only later discovered by the plaintiff and her criminal defense counsel that the dates on the video coincided with the dates the deposit was entered into the system, not the date the deposit was actually made. Plaintiff has provided no evidence that Detective Bousquet purposefully obtained photos for the wrong date or that she realized she had photos for the wrong date before attorney Strowd notified her in October, 2018. It is also undisputed that immediately upon being notified of this information, Detective Bousquet contacted the solicitor's office and the charges were dismissed. Because the information that ultimately proved to be incorrect was provided by Bank employee Danny Conyers, the City is entitled to immunity pursuant to § 15-78-60 (20).

C. GROSS NEGLIGENCE IS NOT TO BE INTERPOLATED INTO THE EXCEPTIONS ASSERTED BY THE CITY IN THIS MATTER.

The plaintiff has asserted that the gross negligence standard should be applied to the immunities asserted by the Defendant. The South Carolina Supreme Court has clearly addressed when the gross negligence standard should be applied to an immunity that does not contain the standard.

> [I]n order for the gross negligence standard from on immunity provision to be read into an immunity provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence standard must first apply to the case. We disavow any suggestion to the contrary . . . In many instances, a governmental entity may initially plead entitlement to immunity pursuant to a subsection containing a gross negligence standard. In many of those instances, that particular immunity may ultimately not apply to the facts of the case. In such a case, the gross negligence standard contained in that immunity is not to be read into applicable immunity subsections that do not contain a gross negligence standard.

Repko v. Cty of Georgetown, 818 S.E. 2d 746, 750 (S.C.2018). Neither of the exceptions asserted by North Charleston, §15-78-60 (20) and (23), contain a gross negligence standard. Additionally, the section asserted by the plaintiff is not applicable to the claim of malicious prosecution. Therefore the gross negligence standard is not to be applied to the exceptions to waiver of immunity asserted by the Defendant under the Tort Claims Act.

III. EQUITABLE TOLLING

Plaintiff asserts that equitable tolling should be applied in this case despite the applicability of the statute of limitations. Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness. *Id*. (internal quotations omitted). The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. *Id.* (internal quotations omitted).

Here, Plaintiff asserts Defendant was given notice of the claims, although not proper notice under the verified claim statute, prior to the filing of this action and did not sleep on her rights while letting the statute of limitations run. Plaintiff asserts the arguments relied on by the court in *Scanwell Logistics (CHI), Inc. v. VIS, LLC* (2018-CP-23-04175), but that case is clearly distinguishable from this matter. The party seeking to toll the statute of limitations bears the burden of establishing facts sufficient to justify its use. *Hooper*, 386 S.C. at 115 (2009). Here,

plaintiff has provided no reason for not filing within the statute of limitations, despite having already filed the case once and putting the defendant on notice that the case would be refiled. Plaintiff has also put forth no acts or omissions by the defendant that prevented her from timely filing. A misunderstanding of the applicable statute of limitations is not sufficient to qualify for equitable tolling.

Plaintiff's counsel also referenced the difficulties presented by the Coronavirus Pandemic as to why equitable tolling should apply. However, while the Supreme Court did extend filing deadlines as a result of the Coronavirus Pandemic, they specifically declined to extend the statute of limitations. *See Operation of Trial Courts During the Coronavirus Emergency,* S.C. Court Order 2020-04-03-01. During the time period applicable to this matter, Charleston County had electronic filing and such was available. Therefore, this is not a basis on which to toll the statute of limitations. Accordingly, equitable tolling does not apply to this matter.

CONCLUSION

The claims false arrest/false imprisonment, assault and battery, and negligence were filed after the expiration of the statute of limitations and are dismissed on that basis. The claim for malicious prosecution is dismissed based on the discussed immunities contained in the South Carolina Tort Claims Act. The City is entitled to summary judgment on all claims. The motion is GRANTED and this matter is hereby dismissed.

AND IT IS SO ORDERED!

Charleston Common Pleas

Case Caption: Paulette Lawrence VS North Charleston City Of

Case Number: 2020CP1003999

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON	)	**CIVIL ACTION NO.: 2020-CP-10-3999**
Paulette Lawrence,	)	
Plaintiff,	)	**ORDER**
v.	)	
City of North Charleston,	)	
Defendant.	)	

This matter came before the Court upon Defendant's Motion to Dismiss. After reviewing the briefs submitted by each party, hearing oral arguments, and for the reasons set forth herein, Defendant's Motion to Dismiss is granted in part and denied in part.

STATEMENT OF FACTS

On August 10, 2018, Plaintiff was arrested by the North Charleston Police Department ("NCPD") on an outstanding arrest warrant for Forgery. The alleged forgery occurred in Charleston County and was investigated by Detective Lisa Bousquet of the NCPD. On October 17, 2018, a preliminary hearing was held regarding the forgery charge pending against Plaintiff. Immediately after the preliminary hearing, Plaintiff obtained the Solicitor's response to the Rule 5 discovery request. Upon review of the evidence, the Ninth Circuit Solicitor's Office agreed and immediately dismissed the charge against her. Plaintiff filed a complaint against Defendant in the Court of Common Pleas for Charleston County on June 18, 2019. On May 12, 2020, Plaintiff gave notice to Defendant that she was voluntarily dismissing the pleadings in order to file an amended summons and complaint regarding the same claims. This action was subsequently filed on September 10, 2020, and properly served on Defendant on September 18, 2020, via certified mail. On

September 24, 2020, Defendant filed a Motion to Dismiss, claiming that the complaint was filed after the statute of limitations had expired and Defendant was entitled absolute immunity on all claims.

STANDARD OF REVIEW

In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court considers only the allegations set forth on the face of the plaintiff's complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). A 12(b)(6) motion should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved on [her] behalf, the complaint states any valid claim for relief. *Id.*

LEGAL ANALYSIS

I. Statute of Limitations

Statute of limitations are primarily designed to assure fairness to defendants. *Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 428 (1965). Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. *Id.* Statutes of limitations embody important public policy considerations in that they stimulate activity and relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. *Id.* Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. *See Pelzer v. State*, 378 S.C. 516, 662 S.E.2d 618 (S.C.App. 2008).

The Tort Claims Act ("Act"), which governs tort claims against governmental entities as detailed in §15-78-10 *et al*. of the South Carolina Code of Laws, states that "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered". S.C. Code Ann. §15-78-110 (Supp. 1998). S.C. Code Ann. §15-78-30 defines a "claim" as any written demand against the State of South Carolina or

a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

In determining the statute of limitations, the discovery rule is applicable to all actions brought under the Tort Claims Act. According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Young v. SC Dept. of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (S.C.App. 1999). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Id*. Reasonable diligence is intrinsically tied to the issue of notice. The *Joubert* Court explicated: "We have interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." *Joubert v. South Carolina Dep't of Social Servs.*, 341 S.C. 176, 534 S.E.2d 1 (Ct.App.2000). Accordingly, the date on which discovery should have been made is an objective, not subjective question. *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995). The statute starts to run upon discovery of such facts as would have led to knowledge thereof if pursued with reasonable diligence. *Burgess v. American Cancer Soc'y*, 300 S.C. 182, 386 S.E.2d 798 (Ct.App.1989). The courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. *Young v. SC Dept. of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (S.C.App. 1999).

In the case at hand, Plaintiff acted with reasonable diligence upon being arrested by hiring an attorney, submitting a standard discovery request, and requesting a preliminary hearing. Plaintiff further acted with reasonable diligence by filing a claim for damages against the NCPD on June 18, 2019, eight months after she discovered the causes of action. This claim was filed through a summons and complaint in the Charleston County Court of Common Pleas and properly served upon the Defendant within thirty (30) days of filing.

II. Immunity and Privilege

In its claim for absolute immunity and privilege under S.C. Code Ann. §15-78-60(23), Defendant admits that it instituted a judicial proceeding against Plaintiff by arresting her. As such, absolute privilege applies to any statements made during those judicial proceedings and cannot be the subject of a defamation action, even if those statements are proven to be false and maliciously made. *See Pond Place Partners Inc. v. Poole,* 351 S.C. 1, 567 S.E.2d 881 (S.C. App. 2002). The burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense. *Clark v. Dept. of Public Safety*, 353 S.C. 291, 578 S.E.2d 16 (S.C.App. 2002) (internal citations omitted).

CONCLUSION

At the motion to dismiss stage, the plaintiff has presented a claim. Further, it is not clear that the applicable statute of limitations expired prior to the filing of the second Complaint. As to the Tort Claims Act immunities, at this early stage in the case, it is not clear that the immunities claimed are applicable and therefore the motion to dismiss is denied on this. Defendant may re-present these arguments at the summary judgment stage after discovery has been completed. Therefore the motion to dismiss is DENIED as to the statute of limitations and Tort Claims Act immunities. The motion is GRANTED with regard to the cause of action for defamation. The defendant shall have 10 days from the date that this order is filed with the clerk to file an Answer or other responsive pleading.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

Charleston Common Pleas

Case Caption: Paulette Lawrence VS North Charleston City Of

Case Number: 2020CP1003999

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON)	
)	**CIVIL ACTION NO.: 2020-CP-10-____**
)	
Paulette Lawrence,)	
)	
Plaintiff,)	**SUMMONS**
)	*(Jury Trial Demanded)*
v.)	
)	
City of North Charleston,)	
)	
Defendant.)	
)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at her office, 1470 Ben Sawyer Blvd., Suite 14, Mount Pleasant, South Carolina, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

CORNWELL LAW FIRM, LLC

/s Ashley B. Cornwell

Ashley B. Cornwell
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, South Carolina 29464
(843) 595-6003
acornwell@cornwellfirm.com
SC Bar No. 76577

September 10, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
PAULETTE LAWRENCE, PLAINTIFF,	)	CASE NO. 2020-CP-10-_____
vs.	)	**COMPLAINT** (JURY TRIAL REQUESTED)
CITY OF NORTH CHARLESTON DEFENDANT.	)	

The Plaintiff, PAULETTE LAWRENCE, would respectfully show unto this Honorable Court:

FACTS

1. Plaintiff Paulette Lawrence is a resident and domicile of Charleston County, South Carolina and has been for more than one (1) year prior to the filing of this action.

2. Defendant City of North Charleston is a government agency located in the City of North Charleston, County of Charleston, State of South Carolina.

3. On August 10, 2018 the North Charleston Police Department arrested Plaintiff Paulette Lawrence for Forgery.

4. Plaintiff was asleep inside her home when a loud banging woke her and her daughter up at approximately 7:30 a.m. on August 10, 2018. A male police officer with the North Charleston Police Department, spoke with Plaintiff, asking if she was "Paulette Lawrence."

5. Plaintiff immediately thought something was wrong, such as an accident causing a loved one to be injured or killed, and confirmed her identity to the officer.

6. Upon confirming her identity, officers told Plaintiff there was a warrant for her arrest and took Plaintiff into custody, handcuffing Plaintiff in her front yard and placing her in the back of their marked patrol vehicle.

7. Plaintiff repeatedly asked what the warrant was for and why she was being arrested, but the officers refused to give her any information regarding the arrest.

8. Plaintiff was never read her Miranda Rights at any point during her arrest and incarceration.

9. Plaintiff repeatedly told officers they were making a mistake and that she hadn't done anything wrong.

10. During the course of the arrest, the arresting officer refused to give Plaintiff any information as to why she was being placed under arrest, and would only tell Plaintiff that she would appear before a judge later that day where she would be advised of her charges and rights.

11. Plaintiff was taken to the North Charleston Police Substation located on Cosgrove Avenue where the victim of the alleged crime was notified that "Paulette Lawrence" was arrested and in custody.

12. Plaintiff continued to plead her innocence while at the substation, telling officers repeatedly that she did not know the victim of the alleged case and hadn't committed any crimes against the alleged victim.

13. While at the substation, officers with the North Charleston Police Department failed to complete Plaintiff's paperwork in a timely manner, resulting in Plaintiff being unable to appear before a judge on the day of her arrest.

14. As a result of this negligence, officers with the North Charleston Police Department took Plaintiff to the Al Cannon Detention Center off of Leeds Avenue where she was required to be strip searched, booked and held in custody at the request of the North Charleston Police Department until the time when North Charleston Police Department properly submitted paperwork needed for Plaintiff to be taken before a judge to be arraigned.

15. While at the Al Cannon Detention Center, officers from the North Charleston Police Department gave Plaintiff the paperwork with her arrest warrant.

16. Plaintiff's paperwork showed that she was arrested under §16-13-0010(A) for Forgery, a class A misdemeanor which carries a potential sentence of up to 3 years in prison.

17. Plaintiff again told officers that there had been a mistake and that she never forged any documents of any kind.

18. Plaintiff was finally arraigned on August 11, 2018, when a judge ordered she be released from custody on a $2,000.00 personal recognizance bond. As an additional condition of her bond, Plaintiff was told she was not allowed to go to Wells Fargo, which is where she had all of her financial accounts. The alleged victim was not present during arraignment.

19. Plaintiff Paulette Lawrence held in custody as a result of the warrant taken out by the North Charleston Police Department from approximately 7:30 a.m. on August 10, 2018 until approximately 1:00 p.m. on August 11, 2018.

20. Plaintiff Paulette Lawrence missed work as a result of this arrest and was forced to inform her employer, The Red Cross, that she was arrested for Forgery.

21. As a result of her arrest by the North Charleston Police Department, Plaintiff's mugshot was made available online and published in the "Mugshots" newspaper, which is sold for $1.00 at many local stores.

22. During the arraignment and bond hearing, which was open to the public, Plaintiff was identified by the North Charleston Police Department as the individual who was present at the ATM of the Wells Fargo bank located on Dorchester Road in Charleston County at the approximate time a "forged" check was allegedly deposited into the ATM.

23. On August 13, 2018, Plaintiff hired Attorney Barbara Strowd to represent her regarding the criminal charges that were wrongfully filed against her.

24. Attorney Barbara Strowd immediately filed for Rule 5 discovery from law enforcement and requested a preliminary hearing.

25. Plaintiff Paulette Lawrence was not given a preliminary hearing on this matter until October 17, 2018 at 10:00 a.m., 69 days after the date of her arrest.

26. North Charleston Police Department failed to comply with the Rule 5 discovery in a timely manner, and moved forward with the preliminary hearing against Plaintiff, despite the fact that they had not provided Plaintiff with a copy of the evidence they allegedly had against her.

27. During the preliminary hearing, the arresting officer from the North Charleston Police Department, testified regarding the negligent investigation against Plaintiff, again identifying Plaintiff in open court as the individual who was present at the ATM of the Wells Fargo bank located on Dorchester Road in Charleston County at the approximate time a "forged" check was allegedly deposited into the ATM.

27. Based upon the officer's testimony regarding the investigation, the magistrate judge denied Attorney Strowd's motion to dismiss the charges against Plaintiff and bound the case over to General Sessions court.

28. At approximately 10:23 a.m. on October 17, 2018, after the commencement of the preliminary hearing, a discovery packet was e-mailed to Attorney Strowd by the North Charleston Police Department.

29. Plaintiff went through the evidence against her with her attorney, who immediately discovered North Charleston Police Department's grossly negligent error in their investigation and subsequent arrest of Plaintiff.

30. According to the North Charleston Police Department, Plaintiff was alleged to have been seen on video surveillance depositing forged check #115 in the amount of $723.00 into the ATM on January 29, 2019 at approximately 8:30 p.m. and then trying to withdraw money from that same account using the victim's ATM card.

31. A review of the victim's statement to the North Charleston Police Department showed the check that was forged to the victim's account was deposited on January 26, 2019 – not January 29, 2019, so the video requested and relied upon by the North Charleston Police Department during their investigation was not from the day of the crime.

33. A cursory glance of the discovery proved that the North Charleston Police Department failed to properly do any investigation into this matter, and solely relied upon video surveillance of Plaintiff using the ATM on a day that was not from the day of the alleged crime in obtaining an arrest warrant on Plaintiff.

34. Upon discovering the error, Attorney Strowd immediately contacted Detective Lisa Bousquet of the North Charleston Police Department to advise her of the error and request the warrant be dismissed immediately.

35. North Charleston Police Department was not authorized to dismiss the warrant and as a result the Solicitor's Office had to be contacted regarding the false arrest.

36. On October 18, 2018, Attorney Strowd was contacted by the assistant solicitor assigned to prosecute Plaintiff and informed that the State of South Carolina had dropped all charges against Plaintiff due to Plaintiff being wrongfully identified by the North Charleston Police Department as the person who committed the crime charged.

37. The grossly negligent error of the North Charleston Police Department could have easily been avoided with even the slightest review of their own evidence.

37. Plaintiff believes that race was a prevailing factor in this investigation, and upon seeing a young African American woman, jumped to conclusions leading them to make this blatantly wrongful arrest.

38. Defendant neglected to protect Plaintiff, allowing Plaintiff to be arrested and imprisoned by the North Charleston Police Department for a crime she did not commit.

39. North Charleston Police Department failed to exercise even the slightest due diligence in investigating this matter, causing the Plaintiff to be wrongfully arrested and incarcerated for a crime she did not commit.

40. Plaintiff was forced to miss work and disclose the nature of her arrest to her employer as a result of this incident.

41. Plaintiff continues to suffer physically, mentally and emotionally, including but not limited to experiencing stress, anxiety, fear of future arrest, insomnia and headaches, as a result of this incident.

FOR A FIRST CAUSE OF ACTION
FALSE ARREST/FALSE IMPRISONMENT

42. Plaintiffs reallege all previous allegations as set forth herein.

43. Defendant deprived Plaintiff's liberty and freedom without lawful justification.

44. Defendant intentionally and unlawfully restrained and imprisoned Plaintiff without lawful justification.

45. Defendant's restraint of Plaintiff was unlawful, without probable cause or justification for the restraint, and the imprisonment was against Plaintiff's will.

46. As a result of Defendant unlawfully and maliciously charging Plaintiff with a crime she did not commit, Plaintiff has suffered injury and damages including but not limited to present

and future anxiety, fear, loss of quality of life, loss of wages, loss of freedom, pain, suffering, mental and emotional anguish, mental and emotional pain, deprivation and shame.

47. Plaintiff is informed and believes she is entitled to damages in an amount determined by a jury.

FOR A SECOND CAUSE OF ACTION
MALICIOUS PROSECUTION

48. Plaintiff realleges all previous allegations set forth herein.

49. The institution of the proceedings against Plaintiff were done with malice and without probable cause at the insistence of the Defendant.

50. The original judicial proceedings against Plaintiff ended in her favor.

51. The institution and continuation of the judicial proceedings against Plaintiff by the Defendant was harbored with malice against Plaintiff in failing to properly investigate and issuing such proceedings against her.

52. Defendant started the proceedings based upon malice as the Defendant knew or should have known that there was no credible evidence against Plaintiff to indicate that she was guilty of the charge for which Defendant attempted to have her prosecuted.

53. Defendant lacked probable cause to charge and arrest Plaintiff with any crime.

54. As a result of Defendant unlawfully and maliciously charging Plaintiff with a crime she did not commit, Plaintiff has suffered injury and damages including but not limited to present and future anxiety, fear, loss of quality of life, loss of wages, loss of freedom, pain, suffering, mental and emotional anguish, mental and emotional pain, deprivation and shame.

55. Plaintiff is informed and believes she is entitled to damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION

DEFAMATION OF CHARACTER/DEFAMATION *PER SE*

56. Plaintiff realleges all previous allegations set forth herein.

57. Plaintiff was handcuffed and placed inside a marked North Charleston Police Vehicle in front of her neighbors, who assumed Plaintiff was a criminal based upon her handcuffed walk by police to the police vehicle in broad daylight.

58. Plaintiff missed work due to her incarceration and as a result was forced to inform her employer of her arrest.

59. Defendant's allegations and resulting actions against Plaintiff, all of which were public record and available for anyone to see, have defamed the character of Plaintiff.

60. The defamatory accusations and implications made by Defendant against Plaintiff were publicly and falsely made.

61. Plaintiff was shamed by Defendant.

62. Defendant made malicious, false and defamatory statements about Plaintiff.

63. Defendant is at fault for the publication of the false, malicious and wrongful arrest and imprisonment of Plaintiff.

64. Plaintiff suffered substantial harm to her reputation from the false and malicious publication of the arrest and imprisonment.

65. Plaintiff is informed and believes she is entitled to damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY

66. Plaintiff realleges all previous allegations as set forth herein.

67. Defendant intended to cause Plaintiff to fear harmful or offensive contact from law enforcement.

68. Defendant's actions did cause Plaintiff to fear harmful or offensive contact was going to happen.

69. Defendant intentionally touched and applied force to the body of Plaintiff.

70. Defendant touched and applied force in a harmful and/or offensive manner without the consent of Plaintiff.

71. As a result of Defendant's offensive actions, Plaintiff suffered substantial harm.

72. Plaintiff is informed and believes she is entitled to damages for pain and suffering, lost wages and more, in an amount to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION
NEGLIGENCE

73. Plaintiff realleges all previous allegations set forth herein.

74. Defendant breached the duty of care owed to Plaintiff.

75. Defendant owed a duty of care to protect and serve Plaintiff.

76. Defendant breached that duty by negligently failing to act or omitting due diligence or care in caring out their duties to Plaintiff.

77. As a proximate result of this negligence, Plaintiff suffered damages including but not limited to false arrest and imprisonment, malicious prosecution, defamation of character, mental and emotional distress, and pain and suffering.

78. Plaintiff is informed and believes she is entitled to damages in an amount to be determined by a jury.

WHEREFORE, having set forth in the complaint and the facts underlying the complaint, Plaintiff prays that this Court will grant Plaintiff damages in an amount to be determined by a jury; costs and expenses; attorney's fees; and for such other relief that this Court my deem just and proper.

Respectfully Submitted,

/s Ashley B. Cornwell

ASHLEY B. CORNWELL
CORNWELL LAW FIRM, LLC
SC Bar # 76577
Attorney for Plaintiff
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
(843) 595-6003
acornwell@cornwellfirm.com

September 10, 2020
Mount Pleasant, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PAULETTE LAWRENCE, Plaintiff, v. CITY OF NORTH CHARLESTON, Defendant.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO. 2020-CP-10-3999 **ANSWER** **(Jury Trial Requested)**

Comes now the Defendant, City of North Charleston, and answers to the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)
All specifically not admitted herein should be deemed denied.

1. Upon information and belief, admit.

2. Deny that it is an agency but admit that the City of North Charleston is a governmental entity.

3. Admit that she was arrested on August 10, 2018, pursuant to a facially valid warrant.

4. Defendant lacks sufficient information to admit or deny what Plaintiff was doing prior to officer's arrival and therefore deny that portion of the allegation demanding strict proof thereof. Admit only that officers verified Ms. Lawrence's identity.

5. Defendant lacks sufficient information to admit or deny what Plaintiff thought when speaking with officers and therefore deny demanding strict proof thereof.

6. Admit.

7. Deny as stated and demand strict proof thereof.

8. Admit.

9. Answering defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

10. Deny and demand strict proof thereof.

11. Upon information and belief admit only that the victim was notified that an arrest had been made.

12. Answering defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

13. Deny and demand strict proof thereof.

14. Admit only that Plaintiff was taken to the Sheriff Al Cannon Detention Center. Deny that the City failed to submit the proper paperwork for Plaintiff to be arraigned. Defendant North Charleston does not run the detention center and therefore defendant lacks sufficient information to admit or deny the remaining allegations and therefore denies, demanding strict proof thereof.

15. Upon information and belief, admit.

16. Upon information and belief, admit.

17. Defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

18. Upon information and belief, admit. Further state that the condition of bond was requested by Wells Fargo and not the police department.

19. Defendant lacks sufficient information to admit or deny the exact timing and therefore denies, demanding strict proof thereof.

20. Defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

21. Defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof. Further, defendant did not take or disseminate plaintiff's booking photo and has never had possession or control of it.

22. Admit only that the police department would have provided all necessary information to the court during a court session. Further assert that the cause of action for defamation was dismissed by the court by order filed April 12, 2021.

23. Defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

24. Deny and demand strict proof thereof. Further assert that such a request should have properly been sent to the solicitor's office.

25. Upon information and belief, admit and further state that such is not within the control of the police department and is solely in the control of the courts in conjunction with the solicitor's office and counsel for the criminal defendant.

26. Deny and demand strict proof thereof.

27. Deny that the investigation was negligent. Admit that the officer testified to the evidence provided to her by Wells Fargo. Further assert that the cause of action for defamation was dismissed by the court by order filed April 12, 2021.

27. [sic] Upon information and belief, admit.

28. Defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

29. Defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

30. Admit that North Charleston brought charges on the information provided by Wells Fargo, who maintained and controlled the records and information.

31. Admit, but deny that this was known to detective Bousquet when she applied for the warrant.

There is no paragraph 32.

33. Deny and demand strict proof thereof.

34. Admit and further state that Detective Bousquet immediately notified the solicitor of the issue.

35. Admit and further state that Detective Bousquet immediately notified the solicitor of the issue.

36. Admit only that the charges were dismissed on October 18, 2018.

37. Deny and demand strict proof thereof.

37. [sic] Deny and demand strict proof thereof.

38. Deny and demand strict proof thereof.

39. Deny and demand strict proof thereof.

40. Defendant lacks sufficient information to admit or deny and therefore denies, demanding strict proof thereof.

41. Deny and demand strict proof thereof.

FIRST CAUSE OF ACTION
FALSE ARREST/FALSE IMPRISONMENT

42. No response required.

43. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

44. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

45. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

46. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

47. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

SECOND CAUSE OF ACTION
MALICIOUS PROSECUTION

48. No response required.

49. Deny and demand strict proof thereof.

50. Admit only that the charges were dismissed.

51. Deny and demand strict proof thereof.

52. Deny and demand strict proof thereof.

53. Deny and demand strict proof thereof.

54. Deny and demand strict proof thereof.

55. Deny and demand strict proof thereof.

THIRD CAUSE OF ACTION

56-65. This cause of action was dismissed by the court by order filed April 12, 2021.

FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY

66. No responses required.

67. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

68. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

69. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

70. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

71. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

72. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

FIFTH CAUSE OF ACTION
NEGLIGENCE

73. No response required.

74. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

75. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

76. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

77. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

78. Deny and demand strict proof thereof. Defendant further asserts that this claim has been filed outside the applicable statute of limitations.

FOR A SECOND DEFENSE
(Rules 8 and 12)

79. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Waiver, *Estoppel,* Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process, No Proximate Cause)

80. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, service of process, applicable statute of limitations, and the acts of the defendant were not the proximate cause of the injuries. Defendant further, specifically asserts that plaintiff did not file the pending action within the applicable statute of limitations under the S.C. Tort Claims Act.

FOR A FOURTH DEFENSE
(Sole Negligence/Comparative Negligence)

81. Defendant asserts that Plaintiff is solely negligent for her suffering and injuries or in the alternative is comparatively negligent.

FOR A FIFTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

82. As to any violation of common law or state law, Defendant asserts the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.*, as a defense and asserts that

it does not waive any of the rights, privileges or immunities therein, including but not limited to the statute of limitations and Eleventh Amendment immunity.

FOR A SIXTH DEFENSE
(Intervening and Superseding Negligence)

83. That if Defendant was negligent, which is specifically denied, the injuries and damages sustained by Plaintiff, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding acts or omissions of others for which this defendant is not liable.

FOR A SEVENTH DEFENSE
(Emotional Distress)

84. Any claims by Plaintiff for the intentional infliction of emotional distress are not actionable and are barred by the plain language of the South Carolina Tort Claims Act.

FOR AN EIGHTH DEFENSE
(Failure to Mitigate)

85. Plaintiff's claims are barred or must be reduced by her failure to mitigate damages should there be any damages.

FOR A NINTH DEFENSE
(Third Party Liability)

86. Defendant asserts that if anyone is liable to Plaintiff, all of which is specifically denied, it is a third party, including but not limited to Wells Fargo Bank.

FOR A TENTH DEFENSE
(Absence of Bad Faith, Malice or Corrupt Motive)

87. Defendant during the performance/non-performance of the alleged actions did not perform any act/inaction in bad faith, with corrupt motives, or in a malicious manner, and Defendant is therefore immune from suit.

FOR A ELEVENTH DEFENSE
(Punitive Damages Unconstitutional)

88. Punitive damages are not recoverable against Defendant not only due to the unconstitutionality, but also in accordance with S.C. Code Ann. § 15-78-120(b).

FOR A TWELFTH DEFENSE
(Absolute/Judicial/Quasi-Judicial/Legislative Immunity)

89. Answering Defendant, as sued, is absolutely immune from liability for acts committed in its legislative, judicial, or quasi-judicial roles.

FOR A THIRTEENTH DEFENSE
(Qualified Immunity/State Law)

90. The actions/inactions and conduct of Defendant, to the extent they actually occurred, were objectively reasonable under the circumstances of which it was aware. Its actions did not violate any clearly established constitutional right of which a reasonable law enforcement official should have known, and it is entitled to qualified immunity even in this suit which alleges only state law claims.

FOR A FOURTEENTH DEFENSE
(Setoff)

91. To the extent that the Defendant may be found liable, which liability is denied, Defendant asserts that it is entitled to a set off for any monies paid in settlement by other parties, including but not limited to defendants to the previous litigation on this same matter.

Wherefore, having fully answered the Complaint, Defendant hereby prays that the Complaint be dismissed with prejudice; that Plaintiff be responsible for all costs and fees associated with defending this action; and for all such further relief as this court deems just and

proper. In addition, Defendant reserves the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.

S/ Robin L. Jackson
ROBIN L. JACKSON
Senn Legal, LLC
Post Office Box 12279
Charleston, South Carolina 29422
(843) 556-4045
(843) 556-4046 (fax)
Robin@sennlegal.com

Attorney for Defendant North Charleston

April 13, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS NONJURY
COUNTY OF CHARLESTON)

PAULETTE LAWRENCE,) TRANSCRIPT
)
PLAINTIFF,) OF
)
vs.) RECORD
)
CITY OF NORTH CHARLESTON,) 2020-CP-10-3999
)
DEFENDANT.)

November 4th, 2021
Charleston, South Carolina

B E F O R E:

THE HONORABLE ROGER M. YOUNG, SR., Judge.

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

ASHLEY B. CORNWELL
ESQ.
Attorney for the Plaintiff

ROBIN JACKSON
ESQ.
Attorney for the Defendant

Transcribed by Pamela E. Green, from DCRP, Digital Courtroom Recorder Project, and WebEx recording

I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

THE COURT: Next, Lawrence versus City of North Charleston.

MS. JACKSON: Good morning.

THE COURT: Well, good morning.

How are you doing?

MS. JACKSON: I'm good. How are you?

THE COURT: I'm doing well.

MS. CORNWELL: Morning, Judge.

THE COURT: Good morning.

Well, this must be my week for Tort Claims Act Statute of Limitations issues. This is the second one I've had.

What I propose doing is listening -- hearing the -- hearing you out on the issue of Statute of Limitations because I got to -- whatever I decide will be consistent with what I decide in a case that I heard what, two days ago, and I've got that under advisement.

But, in essence, in, in that case we have a -- kind of a similar issue to this one and that is they, they clearly did not follow the, the guidelines of -- or the, the law on filing a verified complaint. That would just be something that got filed administratively.

What they did in that case, they filed in Federal Court. That case got dismissed with the claim that the

Court I had earlier this week that basically are saying well, that filing in Federal Court satisfies the requirement of a verified complaint, which is kind of the same issue that I read y'all are at here except the previous complaint was filed in State Court instead of Federal Court.

But, in essence, as I understand, the plaintiff's position is, insofar as the Statute of Limitations goes, is you believe that the filing for your case in State Court within the time of the statute, within the one year, that satisfies a filing of a verified complaint. That gets you to three years.

MS. CORNWELL: Yes, Your Honor, and it's---

THE COURT: Okay.

MS. CORNWELL: And then we would -- the Statute of Limitations does not begin until October. So this would still have been filed and it would be two years for that really.

THE COURT: All right. So, that, that would be the second issue.

So, let me, let me hear y'all on that and then what I will probably do is then just take that under advisement, make sure whatever I'll do I do consistently with my other case, and then, if it survives, I'll have you back to hear the rest of your arguments, and, if you don't survive, but unless somebody can appeal something. I'm having to do

each -- two appeals.

Frankly, apparently, it comes up enough that I don't know if the Supreme Court seems to need to deal with it. But, you know, we've got some language in -- especially the Joubert case which (indiscernible) Court if -- so, the filing of a lawsuit before -- the filing of another lawsuit does not satisfy that requirement of it being a verified complaint.

But, Ms. Jackson, this is your motion. So I will let you go first on that.

MS. JACKSON: Thank you, Your Honor.

And, yes, it's our position that the previous lawsuit does not meet the verified -- the requirements of a verified claim because, first of all, it was not a verified complaint. It was not -- there's no verification signed by the plaintiff, which is a requirement of a verified claim.

Number two, it does not give the extent of the loss. It does not set out what that loss is and it doesn't give an amount of loss and those are three things that are required in a verified claim. And those same exact issues have been addressed by the Court of Appeals in Searcy and in Joubert. Both of which set out that they require strict compliance with the verified claim requirements.

In Vines versus Self Memorial Hospital and in Rink versus Richland Memorial Hospital, both of those cases were

dismissed simply because the submitted claim did not come -- contain an extent of loss or an amount of loss. And, in this case, the original complaint that was filed did not contain either one of those elements.

Therefore, it's our position that no verified claim was filed and that the original complaint does not meet the requirements for a verified claim as set forth by the Court of Appeals in Searcy, Joubert, Vines, and Rink, and, therefore, it does not qualify and we are looking at the two-year Statute of Limitations.

The two-year Statute of Limitations would have begun, at the very latest, on August 11th of 2018, which is the date that Mrs. Lawrence was released from jail for the false imprisonment charge and, for the assault and battery, negligence, and false arrest charge, those would of accrued on August 10th of 2018.

Now, I did find a case that was decided by Judge Robert Hood, Chaffin versus Richland County Sheriff's Department, and, in that case, he set out clearly that the Statute of Limitations for false imprisonment is two years and that the limitations period begins to run at the time of the false imprisonment and he cited Miller versus Dickert from the Supreme Court in 1972. And, Your Honor, I have all these cites if you need any of them. I'm happy to email them.

THE COURT: Could you email me Judge Hood's order?

I don't think I have that.

MS. JACKSON: I will.

He also referenced a Court of Appeals decision that was unpublished called Canziter versus City of Columbia and, in that case, they determined that the accrual of the false imprisonment claim commences on the release of confinement. And so that's why I said the latest that we would be dealing with would be August 11th of 2018 because that is the day that Mrs. Lawrence was released from jail.

And so, as a general rule, false imprisonment comes two years from the time of its accrual or, at the very latest, the time when one's confinement ended. Either way, we're talking about August 10th and August 11th and both of those would be missed un -- under the two-year Statute of Limitations.

The, the assault and battery specifically relates to the arrest itself and the officers putting their hands on Mrs. Lawrence per her testimony in the complaint. The false arrest and then the negligence, per the language of the complaint, has to do with the investigation that was done prior to the arrest and, therefore, it also would have a Statute of Limitations no later than August 10th when the arrest was made.

The only cause of action that is not addressed by the Statute of Limitations argument is malicious prosecution,

and in that -- for that claim we have a separate argument on the Tort Claims Act immunities.

THE COURT: All right. Ms. Cornwell, what's your position on -- well, Robin pronounced it something else. The -- earlier this week they were talking about the, the -- they were calling it the Joubert which---

MS. JACKSON: Oh.

THE COURT: ---it's French.

MS. JACKSON: Sorry.

THE COURT: I don't know. It's kind of like probably out of like Daubert -- you know, Daubert. You know, looks like Daubert to me but I was told at one time those people were from Louisiana and they probably pronounced it Daubert but everybody in America calls it Daubert. But earlier this week the case they were all calling it Joubert. So, I'm gonna probably -- let's just go with Joubert.

MS. CORNWELL: Yes, Your Honor.

THE COURT: You can call it what you want.

All right.

MS. CORNWELL: Well, Your Honor, my response is that this case is actually distinguished from Joubert. Joubert talked about an oral testimony and reservations of rights and that that oral testimony was not a verified claim under the Act. The Court in Joubert, this is what it states, that the reservation makes no statement regarding the extent of

the law at the time, the place, and the persons occur.

When we are looking at what a claim is defined as, it's clear, under the statute, and, and the subheading is actually defined as definitions, and under the definitions of the Tort Claims Act, a claim is defined as any written demand against the State of South Carolina or a political subdivision for money only on account of loss caused by the tort of an employee of the State of a political, political subdivision while acting within the scope of his official duty.

15-78-80 goes on to define a verified claim stating that a verified claim for damages sets forth circumstances that brought about the loss, the extent of the loss, the time and place that the loss occurred, and that, in cases against the State, it can be filed with the State Fiscal Accountability or with the agency employing an employee whose alleged act or omission gives rise to the claim, that they must have an employee to accept the filing, that the filing must be accomplished by receipt of certified mail or compliance with the provisions of law relating to service of process, and that the verified claim must be received by the appropriate agency within one year after.

So, we would indicate or argue to the Court that, under the definition of a claim, that a complaint filed in State Court and served upon the agency, the government agency, is

the filing of a claim because certainly the complaint sets forth the time and place, the persons involved, the damages that have been occurred, and the -- when the losses occurred. It meets all those statutorily defined elements of a claim.

We would argue further that it also falls under a verified claim in accordance with Section 15-78-80 stating that, you know, the verified claim again is a claim for damages. We filed that in the complaint. There is actually a section that states what the damages are. It tells again the time, the location, the persons, when the loss occurred, and where the loss occurred. It was served properly in accordance with the service of process rules via certified mail. We know that it was received because the government agency accepted it, received it, and sent it to the Insurance Reserve Fund, which then contacted Ms. Jackson, who then filed a motion to dismiss.

So, it was received. It was received properly by the appropriate agency and that agency responded within the 180 days under the verified claim and disallowed it by filing their motion to dismiss and motion to strike. So all of those elements have also been met.

So, when considering that part of the argument regarding the Statute of Limitations and whether the three years is tolled based on the filing of a lawsuit or claim,

we would state that we have filed both, and, in filing both, we've met the two standards that the State requires in filing a claim or action.

We have filed an original lawsuit in good faith. That lawsuit improperly named government agency parties. That motion to dismiss and motion to strike was heard and we voluntarily dismissed our claim in order to refile with the appropriate parties. We gave notice, as soon as we agreed to dismiss it, to the -- to the government agency and acknowledged our intent to refile it.

So, again, they had notice that this was coming. They've had the claim. They've had the complaint. The complaint was filed within nine months of the date of arrest. It was filed within six months of what we claim is the date that the loss was known or should have been known. So, clearly, it was filed within that one year timeframe.

Based on that, we would argue that even if the Court determines that the August 10th date is the or the August 11th date is the date that the statute should begin to run, because we filed in June of 2019 the original complaint in State Court in good faith listing all of the required elements of a verified claim, that it was served upon the agency, and that it was accepted by that agency, they've been given notice, which is what the Statute of Limitations purpose is. Not only have they been given

notice, but they've been given all of the information regarding the claim and they've disallowed that claim.

So that does file under -- fall under the verified claim statute. It is very distinguishable from Joubert, Joubert, my southern redneck accent probably is mispronouncing that as well, but, you know, that case was an oral reservation of rights. This clearly is a written demand, which is what is required, and falls under all of those elements.

Based on that, we believe that the Statute of Limitations has been met. We would also rely on our previous memo submitted in this case during the motion to dismiss phase where Your Honor heard arguments, in addition to the verified complaint issue, regarding when the Statute of Limitations began to run.

Our position is the Statute of Limitations in this case did not begin to run until October I believe it was 17th when the preliminary hearing was held and the facts of this case were made to the plaintiff and how they came about.

Obviously there is case law that talks about false, you know, arrest and the date that the arrest was made would be the running of the statute. However, this case is distinguishable from all of those cases because, in those cases, the false arrest was made the day -- the day the

alleged incident occurred.

Most of those cases are dealing with law enforcement officers making arrests for trespass, for public disorderly where the person being arrested is a hundred percent aware of what the claim against them is, who's bringing that action against them, and why the arrest is being made.

In the case at hand, this is more like Young versus South Carolina Department of Corrections where why yes, Mrs. Lawrence was arrested on August 10th and knew she had not committed any crimes, she had no knowledge of, of who was bringing the claims against her, how those claims were brought about, or what the basis of any of those claims were. So, she had no knowledge of what the arrest was for or what she needed to defend herself against and how she needed to go about doing that.

In a false arrest claim, obviously we have to file based on certain elements, and in order to find out whether we meet those elements or not, they have to have knowledge of who's bringing the case. If the case was brought properly by law enforcement based on false information given by a third party, then, yes, that may be a situation where the claim goes against an individual and not a state agency.

In this case, the only party bringing claims against our client is the state agency and we would not have known that, and should not have known that, until we got the

information from the discovery.

Young versus Department of Corrections, obviously Young knew that he was having vision problems while at SCDC. He told medical staff several times about those problems. He was finally taken to a specialist and the vision still did not improve.

When the Supreme Court or, I'm sorry, the Court of Appeals reviewed that, while they determined that the time he started experiencing eye problems was not when the statute ran but it should began running when he was made aware of what the issue with those eye problems are, meaning when he visited the eye doctor, that was when the Statute of Limitations ran.

We would say that this is the same that my client knew that she was being arrested for something that she didn't do but she didn't know why she was being arrested until October 17th when she was given all the information at the preliminary hearing and who brought those allegations against her.

So, again, we would distinguish this from any of the prior cases where the statute begins upon the day of arrest because all of those cases the client -- the, the defendant or the plaintiff in those cases is being arrested at the time the action or incident or alleged crime is being committed. In Mrs. Lawrence's case, she's not arrested

until eight months after this alleged crime occurred and she had no knowledge as to why she's being arrested. The officers did not give her any information or any facts of the case until October.

So, we would argue that the Statute of Limitations should begin to run October 17th of 2018 when the preliminary hearing was had. That was when she was fully informed of the charges she was being arrested for, and, in that case, this lawsuit was properly filed within two years. But, again, that is our secondary argument. We believe that the Statute of Limitations is a three year period based on the filing of a claim.

We would also state that it was filed within a two-year Statute of Limitations based on the October 17th notice date.

THE COURT: Let me ask -- let me, let me --.

MS. CORNWELL: I was gonna say, additionally --

THE COURT: In reference to the---

MS. CORNWELL: -- in relying on what we moved in the motion to dismiss, the third element of this is the equitable tolling of the statute, and I believe that there is -- and I, I, unfortunately, I have not been able to put my hands on the actual order or ruling. I believe it was just a motion for summary judgment. I don't think it ever got overturned.

But there was a case out of Greenville where -- it was similar to the case that Your Honor is considering from earlier this week where that party filed in Federal Court. It got dismissed in Federal Court. It was brought over to I believe Greenville Circuit Court, and they were arguing that the filing in Federal Court -- cause it actually had gotten filed in Federal Court in a couple of different states, finally ended up in South Carolina, got dismissed and removed to the State Court. That Court -- that trial judge determined that the equitable tolling did apply in good faith and fairness, that the statute was a notice document, that the inherent fairness rule when it comes to the justice system would apply.

Obviously equitable tolling is something that is given to the, the Trial Courts with broad discretion based on the inherent fairness and circumstances of the case, that the equitable power of the Court is not bound by cast iron rules, but exists to do fairness and is flexible and adaptable to particular exigencies so that relief, relief will be granted.

Certainly Mrs. Lawrence has done everything that she thought was necessary in preserving these claims and filing these claims. We had the additional challenges of the Coronavirus and the extensions of 30 days on some things but not on others, not being able to get into Courts, not being

able to have the in person hearings and appearances.

And so I believe that, you know, at one point we had an amended complaint motion that, that we just couldn't get on the docket and that was why we removed the original complaint and just refiled a proper complaint as opposed to waiting to get the amended complaint motion heard.

So, it's clear that this plaintiff did not sleep on her rights by letting the Statute of Limitations run. When she filed a pleading on June 18th of 2019, which is well within even the most restricted finding of the loss, the pleading was properly served on defendant giving them notice, allowing them to conduct a proper investigation, and preserve evidence in the matter. The amended pleadings arise out of the same course of conduct and attempted to be set forth in the original pleadings. Therefore, the defendant's not prejudiced by equitably tolling the Statute of Limitations.

If for some reason Your Honor does find that it doesn't meet the claim that it was August, you know, if we fail those two hurdles, there is still a third hurdle of the equitable tolling that we believe would apply in this case.

This is not a case where there's been no movement in a case, no notice, there's been sleeping on rights. Obviously the defendant is not prejudiced. They've been aware of this since June of 2019 and has -- have had every opportunity to

explore and investigate this to preserve evidence.

So, our three thought argument is we filed a claim. It qualifies as a verified claim extending the statute. The statute should not begin until October of 2019 and that equitable tolling would apply as a last option for the Court.

THE COURT: All right. You said you had a, a, a case out of Greenville involving equitable tolling.

Was it -- I don't remember that in your brief.

Did you --

MS. CORNWELL: And I believe the reason---

THE COURT: -- send this to me?

MS. CORNWELL: ---I did not mention it in the brief was because it was a, it was a filing that I found and I'll -- I will put my hands on it and get that to Your Honor.

THE COURT: All right.

All right. Ms. Jackson, would you like to respond?

MS. JACKSON: Yes, thank you, Your Honor.

I, I think I'm gonna try to go backwards.

So, first, in responding to the argument regarding the complaint being filed, it clearly does not meet the verified claim requirement. It does not -- I just looked at it to make sure. It does not contain any amount of loss and it does not give the full extent of loss and it is clearly not verified.

It was signed by an attorney. The plaintiff did not sign it or sign a verification form. Those are all requirements of a verified claim.

The Searcy case, and I hope I'm pronouncing that one correctly, by the Court of Appeals specifically says that you have to read the statutes regarding claims and verified claims together because they're part of a scheme designed to set out the route through which a person can set forth a claim for damages and to attempt to resolve those matters without the need for litigation.

The Searcy Court specifically said when the statutes are so read, the claim mentioned in these code sections can only refer to the verified claim mentioned in 15-78-80. The Court of Appeals, in both Searcy and Joubert, said that a prior lawsuit does not count to extend the Statute of Limitations. They expressly require a person to file a verified claim in order to benefit from that Statute of Limitations extension.

Now, in the Joubert case the Court actually did---

THE COURT: How about---

MS. JACKSON: ---set out---

THE COURT: How about, how about, how about, how about address equitable tolling?

MS. JACKSON: Well, Your Honor, it's our position that the original complaint that was filed was defective and

that's why it was dismissed. There was a motion to dismiss, motion to strike. They named improper parties and then they chose to voluntarily dismiss that case.

Then they were on notice of when these incidents occurred. They spelled out the entire timeline in the original complaint. So, both the plaintiff and her counsel were well aware of when these incidents had occurred and easily could have filed this complaint within the actual Statute of Limitations that expired in August. There was nothing preventing her from refiling this complaint.

When this case was dismissed I believe it was May and we were told that we would -- that they would be refiling it. My office actually checked the Clerk of Court's filings every week between May and the Statute of Limitations in August to see if the case had been refiled. We fully anticipated that it would be within the Statute of Limitations and I was very surprised when it was actually filed in October.

And so it's our position that there was nothing preventing the plaintiff from refiling the case within the proper Statute of Limitations and there is, you know, no, no justification for not meeting the Statute of Limitations. This is a statutorily set out Statute of Limitations and, therefore, equitable tolling is not applicable.

THE COURT: Okay. All right. I want y'all to send me

those cases that you're referring to and I'll take this under advisement and let y'all know as soon as I reach a decision.

MS. JACKSON: All right, Your Honor.

THE COURT: Okay.

MS. JACKSON: And then we'll come back to argue on malicious prosecution?

THE COURT: If that's necessary, yeah.

MS. JACKSON: Well, that, that argument isn't covered or that cause of action isn't covered by the Statute of Limitations---

THE COURT: All right.

MS. JACKSON: ---or do you just want to consider it---

THE COURT: Yeah.

MS. JACKSON: ---on briefs?

THE COURT: Yeah. Yeah. I -- let me just read through the briefs part on that again and I'll decide whether or not I need to bring you back on that.

Okay?

MS. JACKSON: Okay.

THE COURT: All right.

MS. CORNWELL: Your Honor, just for one correction, this was filed in September, not in October, and obviously, again---

THE COURT: I'm sorry.

MS. JACKSON: I apologize.
MS. CORNWELL: It -- I believe Ms. Jackson---
THE COURT: Okay.
MS. CORNWELL: ---said that this was filed in October. It was filed in September. It was approximately---
THE COURT: Okay.
MS. CORNWELL: ---30 days after and that was based off of --.
THE COURT: Okay. All right. Well send me those cases and I'll try to get to it fairly soon. As I said, it's not the only one. So I just want to be sure that whatever I do I'm consistent about doing that.
MS. JACKSON: Your Honor, can---
THE COURT: Either consistently right or consistently wrong.
MS. JACKSON: Are, are we -- are we allowed to ask what the other case is?
THE COURT: You can. I, I frankly don't remember what the name of it is. I've only done like 50 so far this week. So, maybe Michael can help you out on that but I, I really don't remember what the name of it is. I don't even remember who the lawyers were.
MS. JACKSON: Michael, if I send you an email, do you think you could find it cause I'd like to get together with those, those Tort Claims Act lawyers depending on how the

judge rules?

UNIDENTIFIED SPEAKER: I can certainly try.

MS. JACKSON: Okay. I'll send you an email. Thank you.

THE COURT: All right. Thank you.

MS. CORNWELL: Thank you, Your Honor.

THE COURT: All right.

MS. CORNWELL: It's good seeing you.

THE COURT: You too.

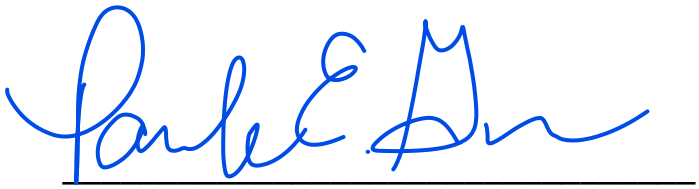
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Charleston County, South Carolina, on the 4th day of November, 2021.

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

January 10th, 2021



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PAULETTE LAWRENCE, Plaintiff, v. CITY OF NORTH CHARLESTON, Defendant.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO. 2020-CP-10-3999 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Comes now the City of North Charleston, by and through its undersigned counsel, and gives notice that it will move this honorable court at a time and place scheduled by this court for an Order granting Summary Judgment to it on all causes of action. The City brings this Motion pursuant to South Carolina Rules of Civil Procedure 56, and applicable case law. A memorandum of law and authorities will be submitted for consideration.

Respectfully Submitted,

s/ Robin L. Jackson
ROBIN L. JACKSON
SC Bar: 0016948
Senn Legal, LLC
Post Office Box 12279
Charleston, South Carolina 29422
(843) 556-4045
(843) 556-4046 (fax)
Robin@SennLegal.com

Attorney for North Charleston

August 3, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PAULETTE LAWRENCE, Plaintiff, v. CITY OF NORTH CHARLESTON, Defendant.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO. 2020-CP-10-3999 **CITY OF NORTH CHARLESTON'S MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT**

OVERVIEW

This case arises out of an investigation into forgery performed in conjunction with Wells Fargo Bank and their security office. The North Charleston Police Department performed an investigation resulting in Paulette Lawrence being identified in photos provided by the bank. The plaintiff previously sued North Charleston and Wells Fargo, but after Wells Fargo settled with plaintiff, she dismissed the suit and refiled only against North Charleston. The City of North Charleston asserts the statute of limitations and Tort Claims Act immunities and further denies that there was a false arrest or imprisonment, malicious prosecution, assault and battery or negligence and asserts that it is entitled to summary judgment.[1]

FACTS

On February 7, 2018, the family of an elderly woman ("victim") reported to the North Charleston Police Department that they had been contacted by Wells Fargo about fraudulent banking activity on the victim's account. Three checks had been deposited into the ATM and

[1] The cause of action for defamation was dismissed by the court through an Order dated April 11, 2021.

immediately the money was withdrawn from the ATM. On February 9, 2018, the family came to the police department to meet with Detective Bousquet and reported that a fourth check for $400 was deposited and withdrawn as well. (Detective Notes, Exhibit A). It appeared that a stranger had convinced the victim to deposit the checks at the ATM after they were refused inside due to the accounts being closed. Ex. A. The only information the victim had about the suspect was that she was a black female. Ex. A. The family had gone to the bank to obtain copies of the deposits and had a phone number that was used to authorize the deposits. The detective requested information on the times and locations where the checks were deposited. Ex. A. The detective called the number and spoke with a person who said that another person was responsible. Ex. A. The second person, Tanisha Simmons, called back a short time later and said that two other people were responsible. Ex. A. She offered to come in and speak with the detective, but never showed up. Ex. A. The detective was unable to reach her again.

On February 26, 2018, Detective Bousquet requested the video of the original incident and other deposits. Ex. A. On February 28, 2018, instead of sending video, Danny Conyers from Wells Fargo sent what he identified as still shots of all of the transactions requested. Ex. A. On March 16, 2018, multiple photos from the still shots were sent to SLED for facial recognition. Ex. A. On March 20, 2018 SLED returned a hit for a possible second suspect, who deposited a check on January 29, 2018 – Paulette Lawrence. Ex. A. As of May 3, 2018, no hits were located by SLED for the first suspect. Ex. A. On June 28, 2018, Detective Bousquet sent out a "request for information" and was contacted by Narcotics with the name Tanisha Simmons. Ex. A.

Bousquet asked Conyers for the bank transactions showing how much money was taken out by the suspects. Ex. A. She received that information from Wells Fargo on July 11, 2018 and also discussed the three hour time difference on the video surveillance photos. Ex. A. On July 26,

2018, Det. Bousquet applied for three warrants for Tanisha Simmons and one warrant for Paulette Lawrence. (Warrant, Exhibit B).

On August 10, 2018, uniformed officers went to the home of Paulette Lawrence and placed her under arrest. (Incident Report Supplement, Exhibit C). The warrant officers who made the arrest had no information about the underlying charge or the investigation. Lawrence immediately told officers that she had not committed any crimes. (Compl. ¶ 9). After receiving the warrant Ms. Lawrence informed officers that she did not know Ms. Pinckney and had not committed any crimes against her. (Compl. ¶ 12; Deposition of Lawrence, 10:1-8, Exhibit D). At the detention center, Lawrence again told officers that there was a mistake and she had not forged any documents. (Compl. ¶ 17). Lawrence was then booked at the detention center. (Compl. ¶ 14). She received a bond hearing and was released from the detention center.

On October 17, 2018, the case was bound over at preliminary hearing. However, immediately after the hearing, Lawrence's attorney looked at the discovery she received from the solicitor's office during the hearing and found that the date on the photos was January 29, 2018. (Compl. ¶ 31). The deposit was actually made on January 26, 2018, but was credited to the account on the 29th. Therefore, the video should have been from the 26th, not the 29th. The bank pulled the video for the date the deposit was credited instead of the date the deposit was made. The detective did not notice the discrepancy. Lawrence's attorney contacted the detective and told her what she had found. The detective then saw it and immediately notified the solicitor who dismissed the charge.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"A motion for summary judgment shall be granted 'if 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.'" *Id.* (quoting Rule 56(c), SCRCP); *accord Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); *see also Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E. 2d 187, 191 (1997). Summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law," *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), and "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

"Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." *Thompkins v. Festival Ctr. Grp. I*, 306 S.C. 193, 194, 410 S.E.2d 593, 593–94 (Ct. App. 1991) (citing *Main v. Corley*, 281 S.C. 525, 526–27, 316 S.E.2d 406, 407 (1984). Further, the United States Supreme Court has held that:

> The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact. When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

Scott v. Harris, 550 U.S. 372, 380 (2007) (internal quotations and citations omitted) (emphasis in original).

Rule 56(e), SCRCP, further states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

See also Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Southeast Group, 413 S.C. 630, 640, 776 S.E.2d 434, 439–40 (Ct. App. 2015); *Lord v. D & J Enters., Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014) ("Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial." (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct.App.2004) ("Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." (citing *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545)).

LAW AND ARGUMENT

The City of North Charleston asserts that (1) the plaintiff has missed the two year statute of limitations for filing this action, (2) there is no evidence to support causes of action false arrest/false imprisonment, malicious prosecution, assault and battery or negligence and (3) that it is entitled to immunity pursuant to the South Carolina Tort Claims Act, S.C. Code 15-78-10 *et seq*.

I. THE TWO YEAR STATUTE OF LIMITATIONS HAS EXPIRED.

The allegations in this case are subject to the two-year statute of limitations as set forth in S.C. Code Ann. § 15-78-110 of the Act:

> Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claiming first filed a claim pursuant to this chapter, then the actin for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

A three-year statute of limitations is only available to a party who files a "verified claim". *See* S.C. Code Ann. § 15-78-80 (Supp. 2002); *Flateau*, 355 S.C. at 207; *see also Joubert v. South Carolina Dept' of Soc. Servs.,* 341 S.C. 176, 534 S.E. 2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years).

The South Carolina Court of Appeals, in *Searcy v. South Carolina Dept. of Educ., Transp. Div.,* 303 S.C. 544, 548, 402 S.E. 2d 486, 488 (1991),said that,

> Sections 15–78–90(b), 15–78–100(a) and 15–78–110 must be read with Section 15–78–80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time affording a governmental entity a measure of protection against fraudulent claims. *See* 73 Am.Jur.2d *Statutes* § 189 at 388 (1974) ("Statutes which are parts of the same general scheme or plan, or are aimed at the accomplishment of the same results and the suppression of the same evil, are ... considered as in pari materia."). **When these statutes are so read, the "claim" mentioned in these code sections can only refer to the "verified claim" mentioned in Section 15–78–80.** *(emphasis added)*

The Court of Appeals has made clear that a prior lawsuit does not count to extend the statute of limitations. This was reiterated by the Court of Appeals in *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 534 S.E. 2d 1 (2000), when it relied on *Searcy* – "§ 15–78–80 expressly requires the person to file a verified claim in order to benefit from the three-year limitations period." The *Joubert* Court went on to say "[i]n order to trigger the three-year statute of limitations under § 15–78–110, a party must follow the procedure outlined in S.C. Code Ann. § 15–78–80". Finally, the *Joubert* Court clearly set out how important compliance with the verified claim requirements is to the extension of the statute.

> Most importantly, our courts have repeatedly held strict compliance with the verified claim statute is mandatory. *See, e.g., Vines v. Self Mem'l Hosp.,* 314 S.C. 305, 307, 443 S.E.2d 909, 910 (1994) ("A claim against a state entity under the Tort Claims Act must be verified to entitle a plaintiff to the three-year statute of limitations. Substantial compliance is not sufficient." The verified claim must set forth the extent and amount of the loss sustained); *Rink v. Richland Mem'l Hosp.,* 310 S.C. 193, 196–197, 422 S.E.2d 747, 748–749 (1992) ("[W]hen a plaintiff seeks to sue a political subdivision he 'must fully comply with the prescribed terms and conditions of the statute, and the filing of a claim as required is an essential prerequisite to a right of action.'") (quoting *Cochran v. City of Sumter,* 242 S.C. 382, 386, 131 S.E.2d 153, 155 (1963), *overruled on other grounds by McCall v. Batson,* 285 S.C. 243, 329 S.E.2d 741 (1985)); *Pollard,* 314 S.C. at 400, 444 S.E.2d at 536 (substantial compliance with the statute is not enough; the "verified claim" procedure must be strictly complied with in order to trigger the three-year limitations period). Accordingly, because [Lawrence] did not comply fully with the statutory mandate, no verified claim was filed, and the statute of limitations on the underlying actions was two years, not three.

Here, it is undisputed that the plaintiff did not file a statutorily compliant verified claim. As there is no evidence that Lawrence filed a verified claim, the three-year statute of limitations does not apply and the two-year statute of limitations is applicable. The arrest in this case occurred on August 10, 2018. The allegations relating to False Arrest, Assault and Battery and Negligence are all tied to the date of arrest, as the plaintiff has testified that she knew when the officers told her they had a warrant for her, that she had not committed any crimes, let alone the crime she was accused of committing. (Depo. Lawrence 9:17-10:8, Ex. D). The Complaint itself asserts that the plaintiff immediately knew that she had not committed the crime and that she went so far as to tell the arresting officers that she did not know the victim and had not committed any crimes against her. (Compl. 12).

False arrest relates, obviously, to the actual arrest. The assault and battery claim is for the handcuffing and possibly the transport to the police station and detention center. Additionally, the negligence claim specifically alleges that the investigation was negligent. (Compl. ¶27)[2] All

[2] In the Complaint there are two consecutive paragraphs numbered 27. Both contain similar information and therefore when paragraph 27 is referenced, defendant includes both paragraphs with this number.

investigation was done before the warrant was executed and before the plaintiff was arrested.

Plaintiff's argument that she did not "discover" her claim until her preliminary hearing is to no avail. She knew that she did not intentionally steal money from another person by defrauding that person at an ATM when she was served with the warrant on August 10, 2018. The information contained in the warrant affidavit provided Lawrence with facts and information related to the crime sufficient for her to know whether or not she committed that crime. Further, she testified that on the date of her arrest, she knew with "1,000% confiden[ce]" that she had not committed any crime. (Lawrence, 9:25, Ex. D). Plaintiff's admits that she received the warrants at the detention center (Lawrence, 11:15-20, Ex. D; Compl., ¶ 15) and that she claims she told officers that she had not forged any documents (Compl., ¶ 17). This is clear evidence of notice. Further, at her deposition, she was asked if she ever questioned herself about whether or not she might have committed the crime she was being accused of, and she adamantly answered no. (Lawrence, 9:17-11:20, Ex. D). She was very clear that without a doubt, she knew that she had not committed the crime for which she was arrested at the time of the arrest.

The Complaint in this case was filed on September 10, 2020, a full month after the expiration of the two-year statute of limitations for these claims. Therefore, the claims for False Arrest, Assault and Battery and Negligence should all be dismissed on the basis that the statute of limitations has expired. That leaves only Malicious Prosecution which is discussed in Section VI below.

II. FALSE ARREST/IMPRISONMENT[3]

Although it is clear that the statute of limitations has expired on this cause of action, if the court declines to dismiss the case on the statute of limitations, defendant asserts the following argument in support of summary judgment on the merits.

In this case, Plaintiff claims that the officer lacked probable cause to arrest her, and therefore, the restraint was unlawful. When a person is arrested on the strength of a facially valid warrant, there is no false arrest as a matter of law. (Arrest Warrant, Ex. B). False arrest and false imprisonment are one in the same with the same elements. *Jones v. City of Columbia*, 301 S.C. 62 64, 389 S.E.2d 662, 663 (1990); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995). "It has been definitely decided in this jurisdiction that where one is 'properly arrested by lawful authority,' 'an action for false imprisonment cannot be maintained against the party causing the arrest.'" *Bushardt v. United Inv. Co.* 121 S.C. 324 330, 113 S.E.637, 639 (1922); *see also Porterfield v. Lott,* 156 F.3d 563, 568 (4th Cir. 1998)(accord). "The facially valid inquiry is not an invitation to look beyond the language of the warrant, which need only contain information given under oath that "plainly and substantially" sets forth the offense charged." S.C. Code Ann. §22-3-710; *Carter v. Bryant*, 429 S.C. 298, 308, 838 S.E. 2d 523, 529 (Ct. App. 2020).

"A warrant is "facially valid" if (1) it is regular in form, (2) it is issued by a court official having authority to issue the warrant for the conduct it describes and jurisdiction over the person charged, and (3) all proceedings required for the proper issuance of the warrant have duly taken place." *Carter v. Bryant*, 429 S.C. 298, 308-9, 838 S.E. 2d 523, 529 (Ct. App.2020) *See*

[3] Defendant asserts that the statute of limitations should eliminate all but the Malicious Prosecution claim, but includes this argument in the alternative.

Restatement (Second) of Torts § 123 (Am. Law Inst. 2019). Here, Lawrence's arrest warrant was regular in form on a form approved by the South Carolina Attorney General as required by §17-13-160 of the South Carolina Code. (Ex. B). The content of the warrant was in compliance with § 22-3-710. There is no dispute Judge Coleman had sufficient authority and jurisdiction to issue the warrant; that he was neutral, independent, and detached; and all necessary proceedings for the warrant's issuance duly occurred. *See McConnell v. Kennedy*, 29 S.C. 180, 189-90, 7 S.E. 76, 80 (1888) (an arrest warrant need not charge offense with the "technical precision required in indictments," and the intent of the statute requiring offenses to be "plainly and substantially" stated in the warrant is to "enable the party accused to understand the nature of the offense with which he is charged, so that he might be prepared to meet the charge at the proper time").

A facially valid warrant that proves to lack probable cause does not make the initial arrest unlawful for the purposes of the tort of false arrest. Otherwise, the doctrine of facial validity would be extinct. *Carter*, 429 S.C. at 307. The warrant in this case is facially valid and therefore any claim for false arrest/false imprisonment should be dismissed.

III. THERE WAS NO ASSAULT AND BATTERY.[4]

As it has already been established that the arrest warrant was facially valid, the only basis for an assault and battery claim would be that the force used in making the arrest was more than a reasonable officer in the same position would believe was necessary.

In determining whether there was an assault and battery by the arresting officer during the course of the arrest, the court must recognize that in every arrest, some amount of force is used.

[4] Defendant asserts that the statute of limitations should eliminate all but the Malicious Prosecution claim, but includes this argument in the alternative.

Quesinberry v. Rouppasong, 331 S.C. 589, 600 (1998). A police officer has the right and duty to touch a person to the extent that it is necessary to make a lawful arrest. A police officer is entitled to use that amount of force reasonably necessary to effectuate a lawful arrest. *Graham v. Connor*, 490 U.S. 386, 396-97, (1989)

A police officer who uses reasonable force in effectuating a lawful arrest is not liable for assault or battery. *Roberts v. City of Forest Acres*, 902 F. Supp. 2d 662, 671–72 (D.S.C. 1995) (citing *Moody v. Ferguson,* 732 F. Supp. 627, 632 (D.S.C. 1989)). However, if a police officer uses excessive force, or "force greater than is reasonably necessary under the circumstances," he may be liable for assault or battery. *Moody,* 732 F. Supp. at 632.

The courts are not to evaluate this claim on how much force was actually needed, but instead on how much force a reasonable officer would perceive was needed in the circumstances then known to the officer on the scene. *Id.; Saucer v. Katz,* 533 U.S. 194, 205 (2001). The appropriate inquiry is whether the officer acted reasonably, not whether he had a less intrusive alternative available to him. *Illinois v. Lafayette,* 462 U.S. 640, 647 (1983); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-57, n. 12 (1976).

Officers need not avail themselves of the least intrusive means of responding to a situation; they need only act within that range of conduct we identify as reasonable. Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. Omniscience is not required and officers need not be absolutely sure of the nature of the threat or the suspect's intent to cause them harm before using force. Officers must act within the range of reasonable conduct.

Here, the plaintiff's allegation is that "Defendant intentionally touched and applied force to the body of the plaintiff." (Compl., ¶ 69). The only other mention of information that could

possibly relate to assault and battery is paragraph 6, which alleges that she was handcuffed and placed into a police car. In her deposition, she testified that the officer merely applied handcuffs, escorted her to the police car and helped her in and out. (Lawrence, 7:23-25, Ex. D). The officer also moved the cuffs to the front once they arrived at the police station. (Lawrence, 8:8-10, Ex. D). She claimed she had an "indent" from the cuffs on her wrist, but did not seek any treatment for it. (Lawrence, 55:21-23, Ex. D). There is no allegation of any physical injury, excessive force, or outrageous touching beyond that which an officer is privileged to engage in for the purpose of making an arrest. Defendant asserts that the officer was legally entitled to handcuff the plaintiff and place her into the police car based on the facially valid arrest warrant and that therefore, there is no evidence to support of claim of assault and battery and this cause of action should be dismissed.

IV. NORTH CHARLESTON IS ENTITLED TO THE PROTECTION OF THE SOUTH CAROLINA TORT CLAIMS ACT, S.C. CODE ANN. §15-78-10, *et. seq.* WITH REGARD TO PLAINTIFF'S STATE LAW CLAIMS.[5]

The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against North Charleston, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994). *See also* S.C. Code Ann. 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. 15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the

[5] Defendant asserts that the statute of limitations should eliminate all but the Malicious Prosecution claim, but includes this argument in the alternative and to address the Malicious Prosecution cause of action.

limitations upon liability and damages, and exemptions from liability and damages, contained herein.").

Importantly, the Act also spells out that the exceptions to the waiver of immunity "must be **liberally construed in favor of limiting the liability of the state**." S.C. Code Ann. § 15-78-20(f) (Emphasis added). Defendants assert several subsections of the Act that are applicable and assert that these are absolute immunities to suit.[6]

A. THE CITY IS NOT LIABLE FOR A LOSS RESULTING FROM THE INSTITUTION OR PROSECUTION OF ANY JUDICIAL PROCEEDING.

"The governmental entity is not liable for a loss resulting from . . . .the institution or prosecution of any judicial or administrative proceeding[.]"§ 15-78-60 (23). This immunity relates to all of the causes of action, but most specifically, the claim for malicious prosecution. For a state claim for malicious prosecution, "a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the insistence of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Pallares v. Seinar*, 756 S.E. 2d 128, 131 (S.C. 2014); *see also Huffman v. Sunshine Recycling, LLC*, 826 S.E.2d 609, 615 (S.C. 2019).

South Carolina Courts have repeatedly dismissed the state malicious prosecution claim based upon SCTCA immunity. The first element of this claim requires "the institution or continuation of original judicial proceedings." *Pallares*, 756 S.E. 2d at 131. However, the SCTCA explicitly provides that a "governmental entity is not liable for a loss resulting from" the "institution or prosecution of any judicial or administrative proceeding[.]" S.C. Code § 15-78-

[6] Defendant respectfully requests that the court consider all immunities asserted. Even if the court determines that the City is entitled to immunity under one of the first subsections considered, defendants ask the court to make such a determination under all immunities asserted, if possible.

60(23). As a governmental entity, the City is therefore immune from this claim. *See McCoy v. City of Columbia*, 929 F. Supp. 2d 541, 567, N.10 (D.S.C. 2013) (finding the City of Columbia was immune from a state malicious prosecution claim based upon S.C. Code § 15-78-60(23)); *Bellamy v. Horry Cty. Police Dep't*, No. 4:19-CV-03462-RBH-KDW, 2020 WL 2559544, at *5 (D.S.C. Apr. 30, 2020), *report and recommendation adopted*, No. 4:19-CV-03462-RBH-KDW, 2020 WL 2556953 (D.S.C. May 20, 2020) (finding Defendant Horry County Police Department was immune from a state malicious prosecution claim based upon S.C. Code § 15-78-60(23)). *Smith v. Lexington County Sheriff's Office*, 3:19-cv-02155-JMC, 2021 WL 1172692 (2021)(finding the Lexington County Sheriff's Office was immune from a state malicious prosecution claim based on S.C. Code § 15-78-60(23)).

B. THE CITY IS NOT LIABLE FOR A LOSS RESULTING FROM THE ACT OR OMISSION OF A PERSON OTHER THAN AN EMPLOYEE.

"The governmental entity is not liable for a loss resulting from . . . . an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." § 15-78-60 (20). In this case, the person who is not an employee, whose act is important here – is Danny Conyers, the Bank Security employee. The language "including but not limited to" is important because it is specifically inclusive of the actions of the bank employee in pulling and providing the wrong video to the detective. The plaintiff even accused Conyers of "alleg[ing] that Plaintiff was committing a crime." (First Complaint, para. 17, 2019-CP-10-3281). The purpose of this section is to give immunity where the acts of non-employees result in loss. That is exactly the situation that the court is faced with in this case. The detective contacted the bank to ask for the records and the video footage. The bank provided records for the victim showing the activity in her account. A bank security employee reviewed the video footage himself and provided the

detective with still shots that he asserted showed the time, date and location of the incident. The detective relied on these assertions from the bank employee and moved forward to identify the persons in the still shots. One of those persons was thereafter identified as the plaintiff. (Lawrence, 67:7-10, Ex. D). At no time did the bank or its employee notify the detective that a mistake was made on the date of the video that was pulled and provided. It was only later discovered by the plaintiff and her criminal defense counsel that the dates on the video coincided with the dates the deposit was entered into the system, not the date the deposit was actually made. Ms. Lawrence testified that she has no evidence that Detective Bousquet purposefully obtained photos for the wrong date (Lawrence, 48:3-6, Ex. D) or that she realized she had photos for the wrong date before attorney Strowd notified her. (Lawrence, 48:13-17, Ex. D). Immediately upon being notified of this information, Detective Bousquet contacted the solicitor's office and the charges were dismissed.

Because the information that ultimately proved to be incorrect was provided by Bank employee Danny Conyers, the City is entitled to immunity.

C. GROSS NEGLIGENCE IS NOT TO BE INTERPOLATED INTO THE EXCEPTIONS ASSERTED BY THE CITY IN THIS MATTER.

The South Carolina Supreme Court has clearly addressed when the gross negligence standard should be applied to an immunity that does not contain the standard.

> [I]n order for the gross negligence standard from on immunity provision to be read into an immunity provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence standard must first apply to the case. We disavow any suggestion to the contrary . . . In many instances, a governmental entity may initially plead entitlement to immunity pursuant to a subsection containing a gross negligence standard. In many of those instances, that particular immunity may ultimately not apply to the facts of the case. In such a case, the gross negligence standard contained in that immunity is not to be read into applicable immunity subsections that do not contain a gross negligence standard.

Repko v. Cty of Georgetown, 818 S.E. 2d 746, 750 (S.C.2018). Neither of the exceptions asserted by North Charleston, §15-78-60 (20) and (23), contain a gross negligence standard. Therefore the gross negligence standard must not be applied to the exceptions to waiver of immunity asserted by the Defendant under the Tort Claims Act.

V. THERE IS NO NEGLIGENCE.

Even if the Plaintiff had not missed the statute of limitations and there were no applicable Tort Claims act immunities, the City is still entitled to summary judgment on the Negligence cause of action. The plaintiff has alleged that the City was negligent in that it "breached the duty of care owed to Plaintiff" and that it "owed a duty of care to protect and serve Plaintiff." (Compl. ¶ 74-75).

In order to establish liability in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999). Whether a defendant owes a duty of care to the plaintiff is a question of law for the Court to determine. *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). An affirmative legal duty to act may be created by statute, contractual relationship, property interest, or some other special circumstance. *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999); *Jensen v. Anderson Cnty. Dep't of Soc. Servs.*, 304 S.C. 195, 403 S.E.2d 615 (1991). "Today, a plaintiff alleging negligence on the part of a governmental actor or entity may rely either upon a duty created by statute or one founded on the common law." *Arthurs ex rel. Estate of Munn v. Aiken Cnty.*, 346 S.C. 97, 104, 551 S.E.2d 579, 582 (2001), *Edwards v. Lexington Cty. Sheriff's Dep't*, 688 S.E.2d 125, 128 (S.C. 2010).

When a plaintiff's cause of action against a governmental entity is founded upon the common law, *e.g.*, the duty to warn, then the existence of that duty is analyzed as it would be were the defendant a private entity. *See Rogers v. S.C. Dep't of Parole & Cnty. Corrs.*, 320 S.C. 253, 464 S.E.2d 330 (1995).

Plaintiff's negligence claims here do not rely on any "breach of a statutory duty," thus, "the public duty rule is inapposite" to the instant negligent claims. *Newkirk v. Enzor*, 240 F. Supp. 3d 426, 437 (D.S.C. 2017) (citing *Arthurs ex rel. Estate of Munn v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 582 (2001) ("When, and only when, the plaintiff relies upon a statute as creating the duty does a doctrine known as the 'public duty rule' come into play.")); *Turner v. Taylor*, No. 7:09-CV-02858-JMC, 2011 WL 3794086, at *9 (D.S.C. Aug. 25, 2011) (similar); *Zelarno v. Taylor*, No. 7:09-CV-02860-JMC, 2011 WL 3794143, at *9 (D.S.C. Aug. 24, 2011) (similar). As no statutory duty is invoked, Plaintiff's negligence claims must rest on a common law duty.

Yet where there exists no special circumstance creating a duty to act, the South Carolina Supreme Court has opined that "the police owe a duty to the public at large and not to any individual." *Wyatt v. Fowler*, 484 S.E.2d 590, 592 (S.C. 1997) (citation omitted). "More specifically, the **state does not owe its citizens a duty of care to proceed without error when it brings legal action against them**." (*Id.* (citation omitted, emphasis added).) Here, the court should dismiss Plaintiffs' negligence claims. Plaintiff has not alleged or otherwise shown that any special circumstance arose to create a common law duty to bind Defendants to act. Moreover, the reasoning in *Wyatt* and subsequent cases all but confirm there is no common law negligence claim in this context, absent some other "special circumstance," in South Carolina; rather, the City of North Charleston simply "owe[s] a duty of care to the public at large and not to any one individual." *Washington v. Lexington Cty. Jail*, 523 S.E.2d 204, 207 (S.C. Ct. App. 1999) (citing

Wyatt, 484 S.E.2d 590).

The South Carolina Court of Appeals confirmed the claim at issue in *Wyatt* was one for "common[ ]law negligence events arising out of the serving of an arrest warrant." *See Washington v. Lexington Cty. Jail*, 523 S.E.2d 204, 207 (S.C. Ct. App. 1999). Accordingly, Plaintiffs' claims for negligence, all of which arise out of South Carolina's common law and lack any special circumstances, should be dismissed.

CONCLUSION

The plaintiff has missed the applicable statute of limitations for her false arrest/false imprisonment, assault and battery, and negligence claims in this matter and they should be dismissed on that basis. All causes of action should be dismissed based on the law, and the immunities contained in the South Carolina Tort Claims act, which "must be **liberally construed in favor of limiting the liability of the state**." S.C. Code Ann. § 15-78-20(f). Finally, there is no evidence to support the causes of action and each should be dismissed. The City is entitled to summary judgment on all claims and this defendant asks this court to grant the motion and dismiss this matter.

Respectfully Submitted,

s/ Robin L. Jackson
ROBIN L. JACKSON
SC Bar: 0016948
Senn Legal, LLC
Post Office Box 12279
Charleston, South Carolina 29422
(843) 556-4045
Robin@SennLegal.com

Attorney for North Charleston

October 22, 2021
Charleston, South Carolina

Exhibit Index
Lawrence v. North Charleston
2020-CP-10-03999

A	Detective Bousquet's Notes
B	Arrest Warrant
C	Incident Report Supplement
D	Deposition Transcript Excerpts Paulette Lawrence

Agency: North Charleston Police Department
Officer ID/Name: 114 \ BOUSQUET, LISA
Date:

Assignment

Case Number: 2018003595

Narrative Title:

02/09/2018 Victim's son ([redacted]) and daughter ([redacted]) walked in in reference to this incident. [redacted] is also on the account due to her mother being easily influenced and she manages it for her. [redacted] advised her that several checks had been deposited in her account and money taken out. The checks then returned unable to be cashed. [redacted] and [redacted] stated that their mother was very vague about details and seemed confused. She told them a stranger came up to her and convinced her to cash their check to help them. They filled out a check with her name, and she attempted to deposit it into her account inside the bank. They refused to deposit it because the account it was from was closed. The unknown subject then convinced her to deposit the check from the drive through ATM, which she did. The other three checks were deposited without her knowledge or permission. She does not remember the strangers name and described her as a black female. She stated that there was a black male with her at first too. They had gone to the bank and obtained copies of the checks, and also a phone number that was used to call into the bank to authorize the deposits. ([redacted]). They supplied an email address that was given too ([redacted]om). They called the number and a female answered that stated that they had no idea what they were talking about. A person on that phone number called back later that night questioning them about the constant calling, and [redacted] told her what was occurring. The subject stated she wasn't a part of it and did not know anything about it. The name on the voice mail of this phone was Tanisha Simmons. [redacted] provided me with copies of the checks and I requested the times and location where the checks were deposited. [redacted] advised she would go back to the bank and obtain that information.

[redacted] and [redacted] returned a few minutes after leaving saying that the subject called back and had information on the case. They were placed into Interview room #1 and called the number back on speaker phone. The subject identified herself as Karleisha Simmons who is the Sister of Tanisha Simmons. She advised that this was her phone and Tanisha had been using it. She contacted Tanisha who stated that the father of her child "Jemerous Gadsden" a subject named "Zel" and a subject named "C" who drives a silver car were involved and that Tanisha had let them use the phone. Tanisha told her she wasn't involved but believed that those subjects named were. She knew that they were waiting outside of banks and approaching people to cash fraudulent checks for them. She stated that she would contact Tanisha and have her call in to talk to detectives. She provided the phone number ([redacted]) for Tanisha. The conversation was recorded in the interview room along with a voice recorder by Det. J. Monroe. The voice recording will be downloaded to a file and saved to this incident.

Tanisha then called in a short time later. She stated that she was not a part of the incident and Jemerous had been using that phone. She had borrowed the phone from Karleisha because she did not have one currently. She stated that she would come in and give as much information as she could find out about the incident. She stated she would come in and speak with Detectives at 3 Pm.

02/10/2018 Tanisha Simmons never came in to speak with detectives. Attempts were made to contact her and she has not responded back.

02/26/2018 A request was sent to Wells Fargo for video of the original incident, and the other deposits made into the account.

02/28/2018 Danny Conyers from Wells Fargo sent still captures of all the transactions requested.

03/16/2018 Multiple pictures taken from the still shots were emailed to sled for facial recognition. I spoke with the victim's daughter and advised her that the pictures had been sent.

03/20/2018 Sled returned with a possible hit for the second suspect who deposited a check on 01/29/2018. A possible match was made for Paulette Lawrence DOB[redacted]The pictures provided for the match are the subject in the video surveillance. She is seen driving a light colored chrysler vehicle, and Lawrence has a[redacted]registered in her name.

05/03/2018 No hits could be located for the first suspect. An RFI was sent out.

06/28/2018 A new RFI was sent out. I was contacted by Narcotics Officer A. Washington-Saunders who advised me that subject is Tanisha Simmons.

07/11/2018 I contacted Wells Fargo for a copy of the bank transactions showing how much money was taken out by the suspects. A total of $300 cash was taken out of the ATM on 01/31/2018. The bank originally refunded that amount to the victim's account, but later took that money back. The $300 loss is to the victim[redacted]. There is also a 3 hour time difference on the video surveillance pictures.

ARREST WARRANT

2018A1021000676

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

2018003595 THE STATE

against

Paulette Iona Lawrence

Address:

North Charleston, SC 29405-

Phone: ( ) SSN: ( ) 2

Sex: F Race: B Height: 5 4 Weight: 200

DL State: SC DL #: 4

DOB: Agency ORI #: 184

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Lisa Bousquet # 5689-2878

Offense: Forgery Offense Code: 00488

Code/Ordinance Sec: 16-13-0010(A)

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Paulette Lawrence on 8/10/18

Favero, T

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2500 City Hall Lane
North Charleston, SC 29406

AFFIDAVIT

SCCA 516

☐ County/ ☒ Municipality of North Charleston)

Personally appeared before me the affiant Lisa Bousquet # 5689-2878 who being duly sworn deposes and says that defendant Paulette Iona Lawrence did within this county and state on 01/29/2018 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston in the following particulars:

DESCRIPTION OF OFFENSE: Forgery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT

CHARLESTON COUNTY

OCA# 2018003595

RDC

RECEIVED ORIGINAL
JUL 26 2018
BY:

SCC IN 7/30/18
OPR 836
NCIC 7/27/18
OPR 836
NCIC #W474405353

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
North Charleston)

Affiant's Address 2500 City Hall Lane
North Charleston, SC 29405-

Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01/29/2018 defendant Paulette Iona Lawrence did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Forgery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 07/26/2018 (L.S.)

Signature of Issuing Judge

Judge Code: 6058

Samuel M. Colem...

Judge's Address 2500 City Hall Lane
North Charleston, SC 29419-

Judge's Telephone (843)740-2601

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

2018A1024000676

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT
OCA#2018003595
Detective L. Bousquet

Personally appeared before me, a magistrate of this county, one Det. L. Bousquet who first being duly sworn, deposes and says,

Paulette Iona Lawrence

did within this county and state on January 29th, 2018 violate the criminal laws of the state of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
FORGERY
16-13-10

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on January 29th, 2018, while at 4400 Leeds Ave, Wells Fargo Bank, which is located in the City of North Charleston, County of Charleston, and State of South Carolina, one Paulette Iona Lawrence, did commit the offense of Forgery, in violation of section 16-13-10 of the South Carolina Code of Laws of 1976, as amended, in that she did utter or publish as true , any false, forged, or counterfeited writing or instrument of writing; falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or willfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing.

Facts to establish the aforesaid are that on January 29th, 2018, at approximately 2030 hours, the Defendant is captured on ATM surveillance depositing check #115, which appeared on its face to be drawn from Bank of America account 063000047, issued by Gdnship Acct For Malaki Omari Shyhie, into Hazel Pinckney's(Victim) account ending in 1435. The check was made out to "Joseph" with an illegible last name for the amount of $723, and later returned as fraudulent. The victim, Hazel Pinckney, reported to the North Charleston Police Department on February 7th, 2018 that several forged checks had been deposited into her account without her permission or knowledge. The victim had been scammed out of her ATM card ending in #1388 on January 26th, 2018 by a Co-Defendant, and it was used to deposit all of the fraudulent checks. A total of $300 was removed from the victim's account by the same Co-Defendant. The Defendant was positively identified through a SLED facial recognition match of pictures obtained from the ATM surveillance video. This is based on the investigation of Detective L. Bousquet. Hazel Pinckney, Bryant Wilson (Victim's son), and Gena Brown (Victim's daughter) are witnesses to prove the same. All against the law, peace, and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 26 day of May 2018.

(AFFIANT)

Address: 2500 City Hall Ln
N. Charleston, SC 29406
Phone: 843-740-2883

Signature of Judge
Samuel M. Coleman

ADDITIONAL NARRATIVE

Agency Name:	ORI #:	Report Date/Time:		OCA #:
NORTH CHARLESTON POLICE DEPARTMENT	SC0100800	01/31/2018	12:19	2018003595

Warrant Service (Paulette Lawrence)

On 08/10/18 officers responded to 2901 Olympia St to attempt a warrant service on Ms Lawrence. Officers made contact with Ms Lawrence, the warrant was confirmed and she was taken into custody. She was handcuffed behind the back, double locked and checked for proper tension. She was transported to Central where the warrant was picked up and then to the ACDC. Once at ACDC it was discovered that the victim in the incident was a person and not a business. There was not a Victim Information sheet with the warrant so she was escorted to the South Bureau so the victims information could be retrieved and the victim notified. The victim was notified by telephone and she advised that she would not be present for the bond hearing but did wish to be notified of the suspects release from jail. Ms Lawrence was then transported back to jail where she was lodged until a bond hearing could be held on 08/11/18.

BWC activated
In car video activated during transport

In the Matter of:

PAULETTE LAWRENCE

vs.

CITY OF NORTH CHARLESTON

Paulette Lawrence

July 20, 2021

SPECTRUM
COURT REPORTING SERVICES
www.spectrumcourtreporting.com
P.O. Box 1296
Mt. Pleasant, SC 29465
843-849-0133
Spectrumaaa@gmail.com

opened the door, they was like, Paulette Lawrence? And I said, yes.

So when I'm looking at him -- the officer gentleman -- and he's looking at me, but he had his hand on his gun. So I was like, yes. I'm Paulette Lawrence. And he was like, well, we have a warrant for your arrest, and I said, for what? But at that time, he couldn't tell me for what. So they asked to come into the home, and they was like, was anybody else there? Was anyone else inside the home?

Q I apologize. You keep talking.

A Okay. They asked was anyone else in the home, and I said, well, my daughter is here. And when they came on in, they told me to put on clothes. So they said, well, if I hurry up and put on some clothes, I can go and see the judge that morning. And so I kept asking them, like, why am I being arrested, and they couldn't tell me. I asked, you know, if I could see a warrant or any paperwork, but they didn't give me anything.

So I went ahead and put on clothes, and they went ahead and detained me. And they put the cuffs on me and walked me outside, and I was in the back of the car. So when I got in back of

the -- into the car, he drove to Leeds Avenue. And from Leeds Avenue, we sat in the parking lot for like, I don't know, maybe 15 minutes.

So at this point, my wrist is hurting. So I asked him -- I said, well, can you bring me inside now? So he then put the car in reverse and took me to a substation on Cosgrove and Rivers Avenue. So when we got there, he took off my cuffs and sat me in some chair. Well, he put the cuffs in front over me, and he sat in the chair.

From then, he was doing some kind of paperwork or whatever, and he made a call to, I don't know, a Ms. Pinckney, and he -- he told them that they had the suspect detained. So from there, we left the substation, and he then took me to Leeds Avenue, where I was processed.

Q Okay. And so then, you were turned over to the sheriff's office?

A Uh-huh.

Q Is that a yes?

A Yes. I'm sorry.

Q That's okay. Okay. How old was Tasheena when this -- is that how you pronounce her name?

A Yes. Tasheena.

Q Yes. How old was she?

A What is she, 24? This was about four years ago. So 20 or could have been 19 going on 20.

Q Okay.

A Something like that.

Q Do you remember the names of the officers who came to your house?

A I do not.

Q Okay. Can you describe them in any way?

A Just Caucasian male. Caucasian woman.

Q Okay. When you got to the jail, did they give you a copy of the warrant?

A When I got to the jail, after being fingerprinted, they did give me a copy. I'm not quite sure if it was a warrant, but I know it was a paper. And it had that I was being charged with forgery.

Q Okay. All right. So when officers came to your house and told you they had a warrant for your arrest, did you know that you had not committed any crimes?

A Yes.

Q Okay. And even though the officers couldn't tell you what the warrant was for, did you feel confident that you had committed any crime?

A I was 1,000 percent confident.

Q Okay. And then, when you got to the substation and you heard the name Ms. Pinckney, did you -- did that confirm that you -- in your mind that you hadn't committed any crimes?

A Yes. I know I didn't commit any crimes.

Q Okay. And did you even voice that to the officers?

A Yes.

Q Okay. And then, when you got to the detention center and you got the papers, you read them?

A I did.

Q Okay. I'm going to show you --

(Defendant's Deposition Exhibit No. 1 was marked for identification.)

BY MS. JACKSON:

Q I'm going to show what I've marked here as defense Exhibit 1, and I will assert to you that this is a copy of the arrest warrant.

A Okay.

Q And that Page 2 is a copy of the affidavit.

A Okay.

Q Is this what you recall receiving?

A This is what I did receive. This paper

here.

Q Okay.

A I never --

Q The second page?

A Yes. I never even seen this page.

Q Okay.

A They never gave me this but the second page --

Q Do you see on the bottom left-hand side where it says copy of this arrest warrant was delivered to defendant Paulette Lawrence on 8-10 -- and I think it says '17 -- oh, no, it's an 8. '18 by Favero, T?

A Yeah. I see that, yes.

Q Okay. And so when you read the affidavit, this Page 2 of this exhibit, did you know at that time that you had not committed this crime?

A Yes.

Q And were you 100 percent clear on that?

A Yes.

Q Okay. Did you know who Ms. Pinckney was when you heard them call her?

A No. No. Let me just answer your question. No. I did not.

Q Okay. Did you know why they were calling

A Okay. I'm sorry. Can you repeat that question?

Q Sure. Do you have any evidence that the detective purposefully obtained photos for the wrong date?

A No.

Q Okay. Do you have any evidence that Detective Bousquet actually realized she had the wrong date before your attorney called her?

MS. CORNWELL: Objection.

A Repeat that question.

BY MS. JACKSON:

Q Do you have any evidence that Detective Bousquet realized that she had photos for the wrong date before your attorney brought it to her attention?

A Oh, no.

Q Okay. Would you agree that the bank is responsible for providing information for the wrong date?

MS. CORNWELL: Objection.

A No. I agree that North Charleston and the bank is responsible because the detective should have did her homework.

A Oh, no. I don't think that was Detective Bousquet.

Q Okay. So the officers who came to your house to arrest you were not Detective Bousquet?

A No.

Q That was a bad question. Can you just put your answer into a complete sentence? No. It was not Detective Bousquet?

A No. It was not Detective Bousquet.

Q Okay. I'm sorry. Sometimes we ask bad questions. Did the officer who came to your house and placed you under arrest cause you any physical injury?

A To my wrists.

Q Okay. What happened to your wrists?

A It was hurting for a few days.

Q Okay. Did you get any treatment for it?

A I didn't. I just put a band over it.

Q What do you mean a band?

A Like an ACE bandage.

Q Okay. Were your wrists cut?

A It wasn't cut. It just had like the indent from the cuffs.

Q Okay. So bruised?

A Yeah. Like a little bruise from the cuff.

Q Okay. So if the victim, the original victim, who had money taken from her account said that there were two black females involved.

MS. CORNWELL: Objection.

A I don't know. I have no clue.

BY MS. JACKSON:

Q Okay. But you acknowledge that in the photos that were provided to Detective Bousquet, the photos -- it was you in the photos?

A A photo, yeah.

Q Okay.

A Uh-huh.

Q Have you ever seen the incident report?

A I don't recall.

Q Okay. The incident report from the family who came in report that --

A Oh.

Q -- this had happened to Ms. Pinckney?

A Oh, no.

Q Okay. So you don't know what Ms. Pinckney or her family told law enforcement about who was involved?

A No. I don't know what she told them.

Q Okay. All right. Have we talked about everything that happened during the course of your

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON	)	**CIVIL ACTION NO.: 2020-CP-10-3999**
Paulette Lawrence, **Plaintiff,**	)	**MEMORANDUM IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT**
v.	)	
City of North Charleston, **Defendant.**	)	

NOW COMES the Plaintiff, through her undersigned counsel, and respectfully submits the following Memorandum in Opposition of Defendant's Motion for Summary Judgment. Plaintiff asserts this action was properly filed within the Statute of Limitations and Defendant is not entitled to immunity under the Tort Claims Act. Accordingly, Defendant's Motion to for Summary Judgment should be DENIED.

STATEMENT OF FACTS

On February 7, 2018, the North Charleston Police Department ("NCPD") began investigating fraudulent bank activity that occurred on the account of Hazel Pinckney. NCPD was informed that the suspect responsible for the fraudulent activity was an unknown black woman who originally approached Ms. Pinckney at Wells Fargo and asked Ms. Pinckney if she could go to the ATM with Ms. Pinckney and deposit a check into Ms. Pinckney's account in order to withdraw cash. Through the course of their investigation, NCPD obtained copies of the fraudulent checks, got the phone number used to authorize the fraudulent deposits into Ms. Pinckney's account, spoke to witnesses, received screenshots of surveillance video from the Wells Fargo ATM showing Ms. Pinckney with the suspect, and obtained bank records showing exactly when the fraudulent checks were deposited. The bank records showed that the fraudulent

checks were deposited on January 26, 2018, January 30, 2018, and January 31, 2018. The suspect in the screenshot with Ms. Pinckney was positively identified by law enforcement as Taneshia Simmons. NCPD also confirmed that Taneshia Simmons had access to the phone number that was used to deposit the fraudulent checks.

Despite the overwhelming evidence that Taneshia Simmons was the black female responsible for the fraudulent activity, Detective Lisa Bousquet swore out a false affidavit against Plaintiff in order to obtain an unlawful arrest warrant. On August 10, 2018, Plaintiff was taken into custody by NCPD. On October 17, 2018, a preliminary hearing was conducted regarding the forgery charge pending against Plaintiff. Detective Bousquet was noticed to appear at the preliminary hearing and testify on behalf of the State. Detective Bousquet appeared at the hearing and testified under oath to the same false statements she previously made in her affidavit to obtain the unlawful arrest warrant. Immediately after the preliminary hearing, Plaintiff obtained discovery from the Charleston County Solicitor's Office, which definitively showed that Plaintiff was arrested unlawfully and without probable cause. Plaintiff, through her attorney, informed the Solicitor's Office that NCPD falsely arrested Plaintiff and the Solicitor's Office immediately dismissed the case against her.

On June 18, 2019, Plaintiff filed her original summons and complaint against the North Charleston Police Department and Detective Lisa Bousquet in good faith. On May 12, 2020, in response to Defendant's Motion to Dismiss and Motion to Strike, Plaintiff voluntarily dismissed the original action and gave notice to Defendant that she would be re-filing the claims. This action was subsequently filed on September 10, 2020, and properly served on Defendant on September 18, 2020, via certified mail.

STANDARD OF REVIEW

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 judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Id.* at 362, 563 S.E.2d at 333. "In determining whether any triable issues of fact exist, 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." *Loflin v. BMP Dev., LP*, 427 S.C 580, 832 S.E.2d 294 (S.C. App. 2019); *see also Hancock v. Mid-S. Magmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). Further, "in cases applying the preponderance of the evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Id.* at 589, 832 S.E.2d 299.

LEGAL ANALYSIS

I. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED.

The statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Young v. SC Dept. of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (S.C.App. 1999). The statute begins to run from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Id.* Reasonable diligence is intrinsically tied to the issue of notice. The *Joubert* Court explicated: "We have interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." *Joubert v. South Carolina Dep't of Social Servs.,* 341 S.C. 176, 534 S.E.2d 1 (Ct.App.2000).

The Tort Claims Act ("Act"), which governs tort claims against governmental entities as detailed in §15-78-10 *et al*. of the South Carolina Code of Laws, states that any action brought pursuant to this Act is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for

damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered. *See* S.C. Code Ann. §15-78-110 (Supp. 1998). There are two ways to assert damages against a state agency under the Act (1) the filing of a "verified claim" pursuant to §15-78-80(a); or (2) the institution of an action against the appropriate agency. §15-78-30 defines a "claim" as

> Any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

§15-78-80 defines the filing of a "verified claim."

> (a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed
>
> (1) in cases against the State, with the State Fiscal Accountability Authority, or with the agency employing an employee whose alleged act or omission gave rise to the claim
>
> …
>
> (b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.
>
> (c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.
>
> (d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered
>
> …

In the case at hand, Plaintiff was wrongfully arrested on August 10, 2018. Upon being arrested she was simply given a copy of her arrest warrant with no details as to who was making the false allegations against her or the context of how these false allegations came about. On October 17, 2018, after a preliminary hearing, Plaintiff was provided with documentation that showed her arrest was based purely upon maliciously fraudulent statements made by Detective Lisa Bousquet, acting as an agent for the North Charleston Police Department. On June 18, 2019, Plaintiff submitted claims for damages under the Act by

filing a complaint against the North Charleston Police Department and Detective Lisa Bousquet. The claims were filed in the Charleston County Court of Common Pleas and properly served upon the Defendant within thirty (30) days of the filing. The complaint served as a written demand, for money only, on account of loss caused by the torts of an employee of the State or a political subdivision while acting within the scope of her official duty. The complaint was served upon the Defendant via certified mail or in compliance with the provisions of law relating to the service of process and received by the appropriate agency within one year after the loss. Given that Plaintiff could not have reasonably known of the causes of action against Defendant until October 17, 2018, and Plaintiff filed a claim under the Act in accordance with §15-78-30(b) and §15-78-80 on June 18, 2019, the statute of limitations in this case did not expire until October 17, 2021.

II. FALSE ARREST/IMPRISONMENT

In determining the lawfulness of an arrest, the court must determine whether or not probable cause existed 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. *Horton v. City of Columbia*, 408 S.C. 27, 757 S.E.2d 537 (S.C.App. 2014). **A warrant issued without probable cause violates the Fourth Amendment of the United States Constitution and Article 1, section 10 of the South Carolina Constitution and makes any seizure based solely on the warrant unlawful**. *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (S.C. App. 2020) (citing *Manueal v. City of Joliet, Ill.*, ---U.S.---, 137 S. Ct. 911, 919, 197 L.Ed.2d 312 (2017))(*emphasis added*). The question of whether probable cause exists is ordinarily a jury question unless the evidence yields but one conclusion as a matter of law. *Horton* at 27, 757 S.E.2d at 541.

In the case at hand, Plaintiff was arrested pursuant to a facially defective arrest warrant, thus rendering her arrest unlawful and falsely made. A warrant is "facially valid" if it (1) is regular in form, (2) issued by a court official having authority to issue the warrant for the conduct it describes and jurisdiction over the person charged, and (3) all proceedings required for the proper issuance of the warrant have duly

taken place. *See Carter* at 308-9, 838 S.E.2d at 529. Our courts have repeatedly ruled when a sworn affidavit contains false or unreliable statements, those statements must be removed and the court must determine whether or not probable cause would still exist even without the false or unreliable statements in order for the warrant to be valid. *See State v. Robinson*, 415 S.C. 600, 785 S.E.2d 355 (S.C. 2016). *See also Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L.E.2d 667 (1978). According to the affidavit sworn by Detective Bousquet and presented to Judge Coleman, the forgery occurred on January 29, 2018 when Plaintiff is captured on surveillance video depositing check #115 made out to "Joseph" with an illegible last name in the amount of $723 into the victim's account, which was later returned as fraudulent. These statements are false. Based on the incident reports and evidence obtained by Detective Bousquet prior to her swearing out this affidavit, including bank records and screenshots of surveillance video from the bank, the forgery did not occur on January 29, 2018, and Plaintiff is not the person that deposited fraudulent check #115 into the victim's account. Once the court removes the false statements from the warrant affidavit, no probable cause exists for a valid warrant to be issued. Accordingly, there is sufficient evidence in the record to support the claim of false arrest.

III. ASSAULT AND BATTERY

Assault and Battery are intentional torts, but they do not require an intent to harm as an essential element. *See Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App, 2008) An assault is an attempt or offer to inflict bodily harm on another, with force or violence, or engage in offensive conduct. The elements of assault are (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm. *Id.* 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. *Id.* (quoting *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230, 317 S.E.2d 748, 754 (Ct. App. 1984). In civil actions, the intent, while pertinent and relevant, is not an essential element. The rule,

supported by the weight of authority, is that the defendant's intention does not enter into the case, for, if reasonable fear of bodily harm has been caused by the conduct of the defendant, this is an assault. *Id.* (quoting *Herring v. Lawrence Warehouse Co.,* 222 S.C. 226, 241, 72 S.E.2d 453, 458 (1952). Furthermore, an unlawful arrest, or an attempt to make an unlawful arrest, stands upon the same footing as any other nonfelonious assault, or as a common assault and battery. *State v. Francis*, 152 S.C. 17, 149 S.E. 348 (1929).

In the case at hand, members of the North Charleston Police Department unlawfully arrested Plaintiff. Plaintiff had a reasonable fear that bodily harm would be inflicted upon her by the officers if she were to resist the unlawful arrest. During the course of their unlawful arrest officers repeatedly grabbed Plaintiff's arms and placed her wrists in restraints multiple times causing physical injury to Plaintiff. Accordingly, there is sufficient evidence in the record to support a claim of assault and battery.

IV. THE CITY OF NORTH CHARLESTON IS NOT ENTITLED TO IMMUNITY UNDER THE TORT CLAIMS ACT.

The Plaintiff's arrest in this case was unlawful and grossly negligent, thus barring Defendant from immunity on any claim under the Act. The burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense. *Clark v. Dept. of Public Safety*, 353 S.C. 291, 578 S.E.2d 16 (S.C.App. 2002) (internal citations omitted). To establish discretionary immunity, the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice. *Id.* Furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. *Id.* This standard is inherently factual. When the responsibility or duty carried out by a governmental entity is exercised in a grossly negligent manner the statutory exemptions no longer apply. *Stenike v. SC Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999).

Defendant's grossly negligent actions bar them from immunity under the Act. Defendant's claims for immunity under subsections (20) and (23) do not contain a gross negligence standard, however subsection (25) could also apply in this case and does contain the gross negligence standard, thereby allowing that standard to also be applied to all claims, creating a waiver of immunity under the Act. *See Stenike v. SC Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999) ("Accordingly, we conclude the better practice is to allow the government to assert all relevant exceptions, and apply the gross negligence standard to all when it is contained in one applicable exception. Our holding is faithful to the legislative intent to limit liability and allow ample defenses, while not allowing a governmental entity to eviscerate the impact of one exception by asserting another.") Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (S.C. 2000) (internal citations omitted) In other words, it is the failure to exercise slight care. *Id.* The claims brought against Defendant are based upon the grossly negligent actions taken by Defendant in effecting Plaintiff's arrest and prosecution of criminal charges, thus barring Defendant from immunity. *See Webb v. Lott*, (D.S.C. 2021). Furthermore, these claims are not based upon the acts or omissions of a third person and Defendant is not the governmental entity that instituted or prosecuted judicial or administrative proceedings in the criminal matter. Accordingly, Defendant is not entitled to immunity under the Act.

V. NEGLIGENCE

An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without a duty, there is no actionable negligence. A plaintiff alleging negligence on the part of a governmental actor or entity may rely either upon a duty created by statute or one founded on the common law. When the duty is created by statute, we refer to this as a "special duty" whereas when the duty is founded on the common law, we refer to this as a legal duty arising from

"special circumstances". *Edwards v. Lexington Cty. Sheriff's Dept,* 688 S.E.2d 125 (S.C. 2010)(citations omitted). Where the duty relied upon is based upon the common law…then the existence of that duty is analyzed as it would be were the defendant a private entity. *See Arthurs ex rel. Estate of Munn,* 346 S.C. 97, 551 S.E.2d 579 (S.C. 2001). Under the common law duty of care, officers have a "duty to act reasonably in [their] interactions." Our courts have further stated that "one who assumes to act, even though under no obligation to do so, may become subject to the duty to act with due care." *Newkirk v. Enzor*, 240 F.Supp.3d 426, 436 (D.S.C. 2017). Furthermore, the public duty doctrine has never been invoked to shield police officers or their employers from liability where it is the affirmative actions of the police officers themselves which cause harm. *See Webb v. Lott* (D.S.C. 2020) citing *Arrington v. Hensley*, C/A No. 5:15-93-BO, 2015 WL 4910203, at *2 (E.D.N.C. Aug. 17, 2015).

In the case at hand Plaintiff's allegations center around violations of the duty of care created by the common law. Defendant violated this duty of care and failed to Plaintiff by filing a false affidavit against Plaintiff and effecting an unlawful arrest without probable cause. Accordingly, there is sufficient evidence in the record supporting Plaintiff's claim of negligence.

CONCLUSION

The claims brought forth by Plaintiff against Defendant were properly filed and served within the statute of limitations, are supported by sufficient evidence, and do not fall under any immunity exception under the Act. Accordingly, Defendant's Motion for Summary Judgment should be DENIED.

(Signature Page to Follow)

Respectfully Submitted,

/s *Ashley B. Cornwell*

Ashley B. Cornwell, Attorney for Plaintiff
Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, South Carolina 29464
(843) 595-6003
acornwell@cornwellfirm.com
SC Bar No. 76577

October 27, 2021
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
PAULETTE LAWRENCE, PLAINTIFF,	)	CASE NO. 2019-CP-10-3281
vs.	)	
WELLS FARGO BANKS, NA; DANNY CONYERS, an employee of Wells Fargo Bank, NA; NORTH CHARLESTON POLICE DEPARTMENT, DETECTIVE LISA BOUSQUET OF THE NORTH CHARLESTON POLICE DEPARTMENT, DEFENDANTS,	)	**SUMMONS**

FILED
2019 JUN 18 PM 12:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

To the Defendants, above named, and/or their attorneys:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiff or her attorney, BARBARA A. STROWD, at Post Office Box 1708, Summerville, South Carolina 29484, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons, within thirty (30) days after the service hereof, exclusive of the day of such service, JUDGEMENT BY DEFAULT will be entered against you for relief demanded in the Complaint.

April 4, 2019

BARBARA A. STROWD
ATTORNEY FOR THE PLAINTIFF
P.O. Box 1708
Summerville, SC 29484
(843) 851-2588 / (854) 999-4185 Facsimile
StrowdLaw@sc.rr.com

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
PAULETTE LAWRENCE, PLAINTIFF, vs. WELLS FARGO BANKS, NA; DANNY CONYERS, an employee of Wells Fargo Bank, NA; NORTH CHARLESTON POLICE DEPARTMENT, DETECTIVE LISA BOUSQUET OF THE NORTH CHARLESTON POLICE DEPARTMENT, DEFENDANTS,	)	CASE NO. 2019-CP-10-3281 **COMPLAINT** (JURY TRIAL REQUESTED)

The Plaintiff, PAULETTE LAWRENCE, would respectfully show unto this Honorable Court:

FACTS:

1. The Plaintiff is a resident and domicile of Charleston County, South Carolina and has been for more than one (1) year prior to the filing of this action.

2. Defendant Wells Fargo Banks, NA is a corporation registered in Delaware; however, the company has offices and branches in South Carolina, including several in Charleston County. Defendant Wells Fargo has a registered agent in Columbia, South Carolina.

3. The Plaintiff is informed and believes that Defendant Danny Conyers is an employee of Wells Fargo Banks, NA and performs his duties for the Charleston Area Branches. The Plaintiff is informed and believes that Defendant Conyers is a resident and domicile of Dorchester County, South Carolina.

4. Defendant North Charleston Police Department is a government agency of the City of North Charleston, in Charleston County, South Carolina.

5. Defendant Bousquet is an employee of North Charleston Police Department in Charleston County, South Carolina.

6. On August 10, 2018 the North Charleston Police Department arrested the Plaintiff named above for Forgery;

7. At approximately 730 a.m. on that day, the Plaintiff was at home asleep on the sofa with her daughter 21 years of age was asleep in her bedroom. A loud banging on the door woke both. The male officer spoke with Plaintiff first and asked if Plaintiff was "Paulette Lawrence." Plaintiff immediately thought that there must have been an accident, and someone had been hurt or killed. Then the officer told Plaintiff that he had a warrant for her arrest. Plaintiff was shocked and her daughter, standing beside her mother, was traumatized. The officers did not tell Plaintiff why she was being arrested. Plaintiff repeatedly asked why they were doing this to her and the officers refused to answer.

8. The Plaintiff was handcuffed and walked to the police vehicle parked outside of her home.

9. Defendant North Charleston Police Department failed to read the Plaintiff her Miranda rights at any point during the arrest and incarceration.

10. Defendant North Charleston Police took Plaintiff to the Police Substation on Cosgrove Ave. While Plaintiff sat in the station the officer called the "victim" and advised victim that Paulette Lawrence was in custody. During arrest the officer told Plaintiff she could see a judge that day. While at the substation the officer told the victim that Plaintiff would not see a judge until the next day at 11 am. Officer could have completed paperwork to allow Plaintiff to see a bond court judge on the day of arrest but chose to keep her locked up wrongly overnight.

11. Plaintiff was taken to the Leeds Avenue Detention Center. While at Leeds Avenue, the male officer provided Plaintiff with paperwork stating why she was being arrested. Plaintiff told everyone that would speak to her that there was a mistake and she has never forged anything.

12. Plaintiff was strip searched and humiliated by the Detention Center. While there, Plaintiff was given a bologna sandwich for all five (5) meals for which she was incarcerated. While in the holding area the Plaintiff had to relieve herself in the presence of other people.

13. Plaintiff was arrested at about 730 a.m. and incarcerated from approximately 830 a.m. on August 10, 2018 and remained incarcerated until approximately 1 p.m. on August 11, 2018.

14. Plaintiff missed work on August 11, 2018 and was forced to tell her employer, The Red Cross, that she was arrested for Forgery.

15. Plaintiff's mugshot was placed in the "Mugshots" newspaper sold for $1 on many local store counters. Plaintiff's mugshot is also still available online at Mugshots.com as of the filing of this action.

16. Plaintiff was taken to a bond hearing on August 11, 2018, no victims present so delay in hearing was not due to victim appearance. Delay was merely to hold Plaintiff at the behest of Defendant North Charleston Police Department.

17. Plaintiff was reportedly identified as the individual who was at the ATM of Defendant Wells Fargo on Dorchester Road in Charleston County at the approximate time a "forged" check was allegedly deposited into the ATM. Plaintiff believes that she was chosen the alleged forger due to her race. Plaintiff suspects that many other individuals used the ATM at the time the bank and Mr. Conyers alleged that Plaintiff was committing a crime.

18. Defendants North Charleston Police Department and specifically Detective Lisa Bousquet of the North Charleston Police Department did not investigate this matter fully. They relied on the sloppy work of the bank and forced Plaintiff into their narrative. The police of North Charleston failed to protect and serve the Plaintiff.

19. Plaintiff suffered stress, headaches, insomnia and other physical symptoms due to her false arrest and imprisonment. Plaintiff continued to suffer for in excess of two months until the matter was dismissed.

20. Plaintiff has been humiliated, embarrassed and fearful that others would see her mugshot and think that she actually committed the crime.

21. The Plaintiff's daughter was present for the arrest and handcuffed walk and suffered through the time her mother was incarcerated. Her daughter feared returning to school at Hampton University in Virginia as she was afraid something would happen to her mother. Daughter was terrified while mother was incarcerated. Daughter tried to help mother piece together what may have happened.

22. Plaintiff's daughter, Tasheena Lawrence, knew her mother was innocent and wanted to prove this to the world.

23. Plaintiff had a preliminary hearing on October 17, 2018 a full 69 days after her arrest.

24. Plaintiff hired attorney named below to represent her in the criminal matter on August 13, 2018. Plaintiff's attorney immediately requested Rule 5 discovery from solicitor and officers.

25. No discovery was received prior to the preliminary hearing, which was scheduled at

10:00 a.m. on 10/17/18. The Discovery Packet was emailed to attorney on that same day as the hearing at 10:23 a.m. It actually arrived during the hearing, rendering it useless to Plaintiff and her attorney for the hearing.

26. Plaintiff's case was not dismissed at the hearing. It was held over. Upon leaving the courtroom, Plaintiff and her attorney reviewed the discovery that appeared during the hearing in the waiting area at the courthouse. Plaintiff and attorney reviewed the documents on attorney's phone and within five (5) minutes of opening the discovery packet found the careless error that led to Plaintiff's arrest.

27. State's case said that Plaintiff was seen depositing forged check #115 in the amount of $723 into the ATM on January 29, 2018 at approximately 830 p.m. Additionally, the State alleged that Plaintiff then tried to withdraw money from the same account using the victim's ATM card.

28. Plaintiff and her attorney found that the bank statement of the "victim" stated the following regarding the alleged date of the crime: 1/29/18 Deposit credit for deposit made on 1/26/18.

29. It was obvious to the Plaintiff that the Defendants had looked at the ATM video at the time the credit had posted to victim's account and not on the day and time of the actual deposit of the check into the ATM.

30. This careless error of the bank, its employee Danny Conyers, the North Charleston Police Department and Detective Bosquet could have been avoided with any one of the Defendants simply reviewing the evidence they held in their hands. Just looking over the

evidence for five (5) minutes as the Plaintiff and her attorney did following the preliminary hearing could have avoided this entire nightmare for the Plaintiff.

31. The Defendants, seeing a young African-American woman, jumped to the conclusion that their case was solved. Sadly, the Defendants have stereotyped the Plaintiff, and no-one listened to her claims of innocence.

32. If the Plaintiff can be arrested in this manner, any law-abiding citizen can be arrested for a crime they did not commit.

33. The Defendants neglected to protect their client and citizen of their town. They failed to review the evidence that was completely within their control and chose to instead falsely arrest and imprison the Plaintiff.

34. At Plaintiff's bond hearing, Plaintiff was told she could go not to the Wells Fargo branch of which she was a client.

35. The Plaintiff is a long-time client of Wells Fargo Bank. The bank had access to Plaintiff's banking records and could have looked at her statement or account activity to determine if she had made a deposit into her own account. In fact, on January 29, 2018 at approximately 837 p.m., Plaintiff did deposit $60 in cash into her account at the ATM and this deposit made by a client is what the bank used to have Plaintiff falsely arrested. Plaintiff believes that Wells Fargo Bank never even checked to see if Plaintiff was a client prior to initiating Plaintiff's arrest.

36. Defendant Wells Fargo carelessly missed that the date of the deposit was actually January 26, 2018 and assumed that the deposit date was the date the computer credited the ATM deposit. Wells Fargo should absolutely know how their own system works. The description

listed next to the date of 1/29/18 on the victim's bank statement clearly stated that the deposit was made on 1/26/18 and credited to the account on 1/29/18.

37. Plaintiff missed work while incarcerated, to attend hearings and to meet with and hire an attorney to defend her from the false charges.

38. Plaintiff's attorney immediately called Defendant Detective Lisa Bosquet to advise her of the error made by the Defendants. Defendant Bosquet advised the attorney that she would contact Defendant Wells Fargo Bank, NA and specifically the employee Danny Conyers to find out if the attorney was correct.

39. Plaintiff's attorney received a call from the assistant solicitor assigned to the case on October 18, 2018 and was advised that the State of South Carolina was dropping the charges against the Plaintiff due to Plaintiff being wrongfully identified as a criminal by the Defendants.

FOR A FIRST CAUSE OF ACTION

FALSE ARREST/FALSE IMPRISONMENT

40. The Plaintiff would reallege her previous allegations as set forth herein.

41. All Defendants named above individually and jointly wrongfully identified Plaintiff as a criminal then Defendants arrested, imprisoned and restrained the Plaintiff.

42. The Defendants intentionally restrained and imprisoned the Plaintiff.

43. The Defendants' restraint of the Plaintiff was unlawful, without probable cause or justification for the restraint and the imprisonment was against the Plaintiff's will.

44. As a result of the unlawful restraint, the Plaintiff is informed and believes that she is entitled to actual damages in an amount determined by a jury.

45. Plaintiff nor her daughter ever could have known what the bank had done

FOR A SECOND CAUSE OF ACTION
MALICIOUS PROSECUTION

46. The Plaintiff realleges all her previous allegations set forth herein.

47. The institution and continuance of the judicial proceedings against the Plaintiff were at the insistence of the Defendants.

48. The original judicial proceedings against the Plaintiff ended in her favor.

49. The institution and continuation of the judicial proceedings against the Plaintiff by the Defendants was accompanied by malice and each of the Defendants harbored malice against the Plaintiff in issuing such proceedings against the Plaintiff.

50. The Defendants started the proceedings based upon malice as the Defendants knew or should have known there was no credible evidence against the Plaintiff to indicate that the Plaintiff was guilty of the charge for which she was prosecuted.

51. The Defendants lacked probable cause to charge Plaintiff with any crime. There was no probable cause to arrest the Plaintiff for any charge.

52. As a result of Defendants unlawfully and maliciously charging the Plaintiff with a crime she did not commit, the Plaintiff has suffered injury and damages including but not limited to present and future anxiety, fear, loss of quality of life, loss of wages, loss of freedom, pain, suffering, mental anguish, mental pain, deprivation and shame.

53. As a result of the acts and omissions of the Defendants, the Plaintiff is entitled to actual damages in an amount determined by a jury.

FOR A THIRD CAUSE OF ACTION
DEFAMATION OF CHARACTER

54. The Plaintiff would reallege her previous allegations as set forth herein.

55. The Plaintiff was handcuffed and walked to the North Charleston Police Department vehicle in front of her daughter and her neighbors. A reasonable person would have assumed that the Plaintiff was a criminal based upon her handcuffed walk to the police vehicle in the broad daylight in the presence of neighbors. The Plaintiff's neighbors confronted her later about her handcuffed walk.

56. The Plaintiff missed work due to her incarceration and was forced to inform her employer of her arrest as she is employed by the Red Cross and must advise them of an arrest. Plaintiff told her supervisor of the arrest and resulting reason for missing work.

57. The Defendants' actions of walking the Plaintiff in handcuffs, taking her to the detention center, putting her mugshot in the Mugshot newspaper and making her mugshot available to the date of filing this action online have all defamed the character of the Plaintiff.

58. The defamatory accusations, mugshot publication and implications were false in that Plaintiff had committed no crime and there was no probable cause to indicate that Plaintiff had committed a crime and yet the Defendants arrested the Plaintiff, handcuffed the Plaintiff, walked the handcuffed Plaintiff in front the Plaintiff's daughter and neighbors, published the Plaintiff's mugshot in the Mugshots newspaper and on Mugshots.com.

59. The Plaintiff was shamed by the Defendants and

60. The Defendants made a false and defamatory statement about the Plaintiff.

61. The Defendants made the arrest and imprisonment public by walking the Plaintiff in front of her neighbors in handcuffs and by providing the Plaintiff's mugshot to third parties for anyone to see.

62. The Defendants were at fault for the publication of the wrongful and false arrest and

imprisonment.

63. The Plaintiff has suffered harm from the false publication of the arrest and imprisonment.

64. As a result of the defamation of the Plaintiff's character, the Plaintiff is entitled to damages to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY

65. The Plaintiff realleges her previous allegations as set forth herein.

66. The Defendant North Charleston Police Department and its officers intended to cause the Plaintiff to fear harmful or offensive contact from the Defendant North Charleston Police.

67. The Defendant North Charleston Police Department's actions did cause the Plaintiff to fear harmful or offensive contact was going to happen.

68. The Defendant North Charleston Police Department intentionally touched and applied force to the body of Plaintiff.

69. The Defendant North Charleston Police Department touched and applied force in a harmful and/or offensive manner without the consent of the Plaintiff.

70. Based upon the foregoing, Defendant North Charleston Police Department is liable for the assault and battery of the Plaintiff.

71. The Plaintiff is entitled to actual compensatory and punitive damages for pain and suffering, lost wages and more.

WHEREFORE, having set forth her complaint and the facts underlying her complaint, the Plaintiff would pray that this Court will grant her actual and punitive damages, costs and expenses, attorney's fees and for such other relief that this Court may deem just and proper.

April 4, 2019

BARBARA A. STROWD
SC Bar# 72768
Attorney for Plaintiff
P.O. Box 1708
Summerville, SC 29484
(843) 851-2588/(854) 999-4185 Facsimile
StrowdLaw@sc.rr.com

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PAULETTE LAWRENCE, PLAINTIFF, vs. WELLS FARGO BANKS, NA; DANNY CONYERS, an employee of Wells Fargo Bank, NA; NORTH CHARLESTON POLICE DEPARTMENT, DETECTIVE LISA BOUSQUET OF THE NORTH CHARLESTON POLICE DEPARTMENT, DEFENDANTS,	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2019-CP-10-3281 **VERIFICATION**

PAULETTE LAWRENCE, after being duly sworn, says that she is the Plaintiff herein, and she has read the foregoing Complaint and knows the contents thereof, that the same is true of her own knowledge, except those matters therein stated to be alleged on information and believe, and as to those matters, she believes them to be true.

Sworn to and subscribed before me this
4th day of April, 2019

Notary Public for South Carolina
My commission expires: 10/22/2024

Paulette Lawrence
PAULETTE LAWRENCE

RECEIVED
Jun 17 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No.: 2021-001398

Paulette Lawrence, Appellant,

V.

City of North Charleston, Respondent.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material.

June 15, 2022

/s Ashley B. Cornwell
Ashley B. Cornwell
Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
843-595-6003
acornwell@cornwellfirm.com
Attorney for Appellant