From:	Ashley Cornwell
To:	Court Of Appeals Filings
Cc:	Robin Jackson; Christy Davol; Missi Kinard
Subject:	Paulette Lawrence v. City of North Charleston (2021-001398)
Date:	Thursday, June 30, 2022 2:40:58 PM
Attachments:	Appellant Final Reply Brief Packet Amended.pdf Proof of Service - Final Briefs.pdf Appellant Final Brief Packet Amended.pdf

Dear Madam Clerk:

Attached for filing please find Appellant's Final Brief and Final Reply Brief, which have been corrected to include the missing Certificate of Counsel for each brief, along with the Proof of Service in the above-referenced matter. Per the Court's instructions, one bound copy of each corrected brief has also been sent to the Court at 1220 Senate Street, Columbia, SC 29201 via US Mail.

Thank you and I apologize for the previous oversight!

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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.

APPEALLANT'S FINAL BRIEF

June 30, 2022

/s Ashley B. Cornwell
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PROCEDURAL HISTORY

This action, arising under the Tort Claims Act, was originally commenced by the filing of a Summons and Complaint on June 18, 2019. (R. pp. 107-119) In response to that filing, which was properly served upon the North Charleston Police Department, Respondent filed a Motion to Dismiss and Motion to Strike on August 29, 2019, stating the action and claims were not filed against the proper parties. On May 12, 2020, Appellant notified Respondent she was voluntarily dismissing the defective pleading in order to refile the claims against them in a new action, naming Respondent as the proper party. On September 10, 2020, Appellant filed the Summons and Complaint in this action, seeking damages from Respondent for false arrest, assault and battery, malicious prosecution, defamation, and negligence. (R. pp. 20-30) On September 24, 2020, Respondent filed a Motion to Dismiss, claiming the statute of limitations had expired on the claims for false arrest, assault and battery, and negligence, and absolute immunity on the claims for defamation and malicious prosecution under the Tort Claims Act. On April 12, 2021, the trial court denied Respondent's motion on the claims of false arrest, malicious prosecution, assault and battery, and negligence and granted absolute immunity on the defamation claim. (R. pp. 15-19) Respondent then filed a Motion for Summary Judgement on August 3, 2021, reiterating their argument that the statute of limitations had expired on the claims of false arrest, assault and battery, and negligence, as well as their claim for immunity on the malicious prosecution claim. The Motion for Summary Judgment was granted by the trial court on November 16, 2021. (R. pp. 1-14) Appellant filed this appeal on November 23, 2021.

STATEMENT OF THE CASE

On February 7, 2018, the North Charleston Police Department ("NCPD") began investigating fraudulent bank activity occurring on the account of Hazel Pinckney. NCPD was informed by Hazel Pinckney's family that the person they believed to be responsible for the fraudulent activity was an unknown black woman who approached Ms. Pinckney at Wells Fargo a few weeks prior. Through the course of their investigation, NCPD obtained copies of the fraudulent checks deposited into Hazel Pinckney's account, including the telephone number used to authorize the fraudulent deposits; screenshots of surveillance videos from the Wells Fargo ATM[1]; and bank records identifying when and where the checks were deposited. (R. p. 84) The bank records received by NCPD show the fraudulent checks were deposited into Hazel Pinckney's account on January 26, 2018, January 30, 2018, and January 31, 2018. The suspect in the surveillance video screenshot at the ATM with Hazel Pinckney was positively identified by law enforcement as Taneshia Simmons. (R. p. 84) NCPD also confirmed that Taneshia Simmons had access to the phone number that was used to deposit the fraudulent checks. (R. p. 84)

On July 26, 2018, Detective Lisa Bousquet obtained an arrest warrant for Paulette Lawrence by swearing out an affidavit containing false allegations that Paulette Lawrence had committed the crime of forgery. (R. pp 85-86) On August 10, 2018, officers with the NCPD went to Lawrence's home, placing her under arrest, and taking her into custody until she could be arraigned by the State. (R. p. 87) Lawrence was arraigned and released on bond the following day. On October 17, 2018, a preliminary hearing was conducted regarding the forgery charge pending against Lawrence. Detective Bousquet appeared at the hearing as a witness for the State, testifying under oath to the same false statements she used to obtain the arrest warrant. As a result of

[1] Paulette Lawrence, is identified in a screenshot taken from the ATM surveillance video on January 29, 2018, when she was depositing cash into her personal Wells Fargo checking account.

Detective Bousquet's testimony, Lawrence's case was bound over to General Sessions. Immediately following the preliminary hearing, Lawrence received her discovery packet, including evidence proving the allegations Detective Bousquet made in her arrest warrant affidavit and under oath at the preliminary hearing were false. As a result, the Solicitor's Office immediately dismissed the forgery charge against Plaintiff.

STANDARD OF REVIEW

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *Bayle v. South Carolina Dept. of Transp.,* 344 S.C. 115, 542 S.E.2d 736 (S.C. App. 2001). 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.

ARGUMENT

I. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED.

Statutes 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). In South Carolina, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. See *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).

A. PLAINTIFF'S FILING OF THE ORIGINAL COMPLAINT ON JUNE 18, 2019, IS A CLAIM UNDER §15-78-30(b).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature." *Harris v. Anderson County Sheriff's Office*, 381 S.C 357, 673 S.E.2d 423 (S.C. 2009)

(internal citations omitted). The Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation. *Id*.

S.C. Code Ann. §15-78-110 specifically states "…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" (emphasis added). Under the definitions section for the Act, §15-78-30(b) defines a "claim" as "[a]ny 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." S.C. Code Ann. §15-78-30 (Supp. 1998). In *Searcy v. South Carolina Dept. of Educ., Transp. Div.*, 303 S.C. 544, 548, 402 S.E.2d 486, 488 (S.C. App. 1991), the South Carolina Court of Appeals determined that the legislative intent of the Act was for §15-78-90(b), §15-78-100(a) and §15-78-110 to be read together with §15-78-80. However, our Legislature has since amended sections of the Tort Claims Act, yet none of those amendments have included the court's interpretation relied upon in *Searcy* and subsequent cases. If the Legislature's true intent was that a claim must be a "verified claim" to extend the statute of limitations, they could have easily amended the plain and ordinary meaning of §15-78-110 to state *"if the claimant first filed a "verified claim" pursuant to this chapter…"* or *"if the claimant first filed a claim pursuant to §15-78-80 of this chapter…"* but they haven't. For that reason, the word "claim" in §15-78-110 must be given it's plain and ordinary meaning, pursuant to the definitions section of the statute, and the Court should not resort to a subtle or forced construction that would limit or expand the statute's operation.

Here, the originally filed complaint was a written demand against the North Charleston Police Department, for money only, on account of loss, caused by the tortious acts of its employees

while acting within the scope of their official duties. (*See* R. pp. 108-118) As such, Lawrence's originally filed complaint meets the statute's plain and ordinary meaning of a "claim", thus extending the statute of limitations to three years from the date of discovery. Accordingly, the trial court erred in granting summary judgment.

B. THE ORIGNAL COMPLAINT FILED ON JUNE 18, 2019, CONSTITUTES A VERIFIED CLAIM UNDER §15-78-80.

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). §15-78-80 S. C. Code Ann. (Supp. 1998) states:

> (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) 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.
>
> (c) 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, Lawrence's original complaint strictly complies with the requirement of a verified claim under §15-78-80. The claims detailed in the original complaint were verified by Lawrence on April 4, 2019, in a sworn and notarized affidavit. (R. p. 119) That complaint provided the City of North Charleston with explicit detail into the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons known to be involved, and the amount of loss sustained. (R. pp. 108-118) It was served upon the North Charleston Police Department in compliance with the provisions of law relating to service of process; received by the appropriate agency or political subdivision within one year after the loss was or should have been discovered; and the City of North Charleston disallowed the verified complaint by filing a Motion to Dismiss and Motion to Strike within 180 days from the date of filing. Accordingly, the statute of limitations in this action is extended to three years from the date the loss was or should have been discovered; therefore, the trial court erred granting summary judgment.

THE DATE OF DISCOVERY IS OCTOBER 17, 2018.

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).

In the case at hand, the date the loss was or should have been discovered is October 17, 2018, when Lawrence learned that the only person making false allegations against her, thus leading to her being falsely arrested, was Detective Bousquet of the NCPD. Under the discovery rule, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of [hers] 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). After her arrest, Lawrence acted with reasonable diligence by immediately filing a motion for discovery pursuant to Rule 5, SCRCP. Lawrence did not receive a response to the motion until October 17, 2018, after a preliminary hearing on the charge had already been held. As such, Lawrence did not and could not have had notice that only party making false allegations against her was Detective Bousquet, until she received a response to her discovery motion.

The actions against the City of North Charleston could not have been reasonably known by a person of common knowledge and experience until October 17, 2018. This action was filed on September 10, 2020, after a claim had already been made on June 18, 2019, extending the statute of limitations to three years. Accordingly, the trial court erred in finding that Plaintiff's claims are barred by the statute of limitations and granting summary judgment.

C. THE DOCTRINE OF EQUITABLE TOLLING IS APPLICABLE.

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). Equitable tolling has been deemed available where – the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period… and does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation. *See Pelzer v. State*, 378 S.C. 516, 662 S.E.2d 618 (S.C. App. 2008).

In the case at hand, Lawrence timely filed a defective pleading on June 18, 2019, which is well within even the most restrictive finding of the date of loss. The defective pleading was properly served on the City of North Charleston, giving them notice of the claim and allowing them to conduct a prompt investigation and preserve evidence in this matter. The City of North Charleston was notified on May 12, 2020, during the peak of the Coronavirus Pandemic, that the defective pleading was being voluntarily dismissed and the claims would be refiled under a new action. This pleading was filed on September 10, 2020, and arises out of the same course of conduct set forth in the original defective pleading. It is clear in this situation that Lawrence did not sleep on her rights in this matter and would suffer a great injustice if she is unable to go forward with

these claims. Accordingly, the interests of justice and fairness, as well as the fundamental purpose of the statute of limitations itself, favor allowing Lawrence's claims to proceed.

II. 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. The Tort Claims Act provides that '[t]he 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." S.C. Code Ann. §15-78-40 (2005). "The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Act is upon the governmental entity asserting it as an affirmative defense." *Steinke*, 336 S.C. at 393, 520 S.E.2d at 152. 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). Under the Act, a governmental entity is not liable for a loss resulting from certain enumerated events except when the power or function is exercised in a grossly negligent manner. *See Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 743 S.E.2d 109 (S.C. App. 2013). "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 do." *Etheredge v. Richland Sch. Dist. One*, 341 S.C 307, 310, 534

S.E.2d 275, 277 (2000). "Gross negligence has also been defined as a relative term and means the absence of care that is necessary under the circumstances." *Id.*

In the case at hand, the actions of Detective Bousquet in obtaining an unlawful arrest warrant for Plaintiff and actively participating in the prosecution of the false forgery charge were grossly negligent. 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). The question of whether probable cause exists is ordinarily a jury question unless the evidence yields but one conclusion as a matter of law. *Id.* The burden is on the plaintiff to show that the prosecuting person or entity lacked probable cause to pursue a criminal or civil action against him. *Law v. South Carolina Dept. of Corrections*, 629 S.E.2d 642, 368 S.C. 424 (S.C. 2006) (internal citations omitted). Probable cause means "the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered. *Id.*

Here, Detective Bousquet possessed exculpatory evidence proving Lawrence was not involved in the fraudulent activity on Hazel Pinckney's account prior to obtaining an arrest warrant. (R. p. 84) Despite possessing this exculpatory evidence, Detective Bousquet drafted and presented a sworn affidavit to the court containing information that was knowingly and intentionally false or made with a reckless disregard for the truth. The sworn affidavit falsely stated the forgery occurred on January 29, 2018, when Lawrence was 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. (R. p. 86) Based upon the incident reports and evidence obtained by the NCPD prior to Detective Bousquet obtaining an arrest warrant for Lawrence, it is clear that this alleged crime did not occur on January 29, 2018, and Lawrence was not the person captured on surveillance video depositing a fraudulent check into Hazel Pickney's account. These falsely made statements are the only evidence establishing the probable cause necessary for the court to issue an arrest warrant. Accordingly, without these grossly negligent and falsely made statements, no probable cause to arrest Lawrence existed, thus rendering the arrest warrant facially defective and the NCPD's subsequent arrest of Lawrence unlawful. Detective Bousquet continued acting in a grossly negligent manner after Lawrence was arrested, by testifying to the same false allegations as a state witness during a preliminary hearing on the forgery charge.

The claims brought in this action are based upon the grossly negligent actions of Detective Bousquet and the NCPD in failing to exercise even the slightest duty of care in effectuating Lawrence's false arrest and malicious prosecution. These actions show a conscious failure to act in a way incumbent upon law enforcement to act when investigating criminal cases, arresting ordinary citizens, and assisting in the prosecution of criminal charges. These actions bar the City of North Charleston from immunity under the Act in accordance with the gross negligence standard articulated in §15-78-60(25). *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.") Accordingly, the City of North Charleston is not entitled to immunity under the Act, and the trial court erred in granting summary judgment.

III. A FACTUAL BASIS EXISTS TO SUPPORT ALL CLAIMS

In cases applying the preponderance of evidence burden of proof, Lawrence is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment on her claims. *See Loflin*, 427 S.C. at 589, 832 S.E.2d at 299.

A. FALSE ARREST

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, Lawrence was falsely arrested pursuant to an invalid arrest warrant lacking probable cause. 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). Here, it has clearly been established that all of the facts attested to in the arrest warrant affidavit are false. 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 and the trial court erred in granting summary judgment.

B. 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 to engage in offensive conduct. 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 Lawrence. Lawrence 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 Lawrence's arms and placed her wrists in restraints multiple times

causing physical injury to Lawrence. (R. p. 89 line 23 – p. 90 line 10) Accordingly, there is sufficient evidence in the record to support a claim of assault and battery and the trial court erred in granting summary judgment.

C. 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 Lawrence's allegations center around violations of the duty of care created by the common law. Detective Bousquet and the NCPD violated this duty of care to Lawrence by filing a false affidavit against Lawrence and effecting an unlawful arrest without

probable cause. Accordingly, there is sufficient evidence in the record supporting Lawrence's claim of negligence and the trial court erred in granting summary judgment.

D. MALICIOUS PROSECUTION

To sustain an action for malicious prosecution, "a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Law v. S.C. Dep't of Corr.,* 368 S.C. 424, 629 S.E.2d 642 (2006). In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution. *Id.*

In the case at hand, the State of South Carolina instituted judicial proceedings against Lawrence after she was unlawfully arrested. Detective Bousquet actively participated in the continuation of those proceedings by falsely testifying during Lawrence's preliminary hearing. The judicial proceedings were terminated in Lawrence's favor when the Solicitor's Office dismissed the charge after discovering that Lawrence was unlawfully arrested pursuant to false information contained in the arrest warrant and testified to by Detective Bousquet. Malice in this case is inferred by Detective Bousquet attesting to evidence against Lawrence that was knowingly and intentionally false or made with a reckless disregard for the truth. As a result of these malicious acts, Lawrence suffered damages including, but not limited to, physical, emotional, and psychological damage. Accordingly, there is sufficient evidence in the record supporting Lawrence's claim of malicious prosecution and the trial court erred in granting summary judgment.

CONCLUSION

The claims brought forth by Appellant were properly filed and served within the statute of limitations and Respondent's grossly negligent actions bar them from immunity under the Act.

Accordingly, the trial court's order granting summary judgement should be REVERSED.

Respectfully Submitted,

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June 30, 2022
Mount Pleasant, South Carolina

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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 Final Brief complies with South Carolina Appellate Court Rule 211(b).

June 30, 2022

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APPEALLANT'S FINAL REPLY BRIEF

June 30, 2022

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The Original Complaint filed by Lawrence was a claim extending the statute of limitations in this matter to three years and the grossly negligent acts perpetuated by the City of North Charleston against Lawrence bar them from claiming immunity or asserting any exemption to liability under the Tort Claims Act. Furthermore, the exemptions asserted by the City of North Charleston are not applicable in this matter.

I. The extent and amount of loss suffered by Lawrence is detailed throughout the Original Complaint.

In its initial brief, the Respondent's only argument against the statute of limitations extending to three years is that the original complaint does not set out the extent of loss or the amount of loss suffered by Lawrence and therefore does not strictly comply with the requirements of a verified claim. This argument is without merit. The original complaint clearly identifies the losses suffered by Lawrence as a result of the North Charleston Police Department's grossly negligent acts. Furthermore, the fact that the original complaint was defective has no effect on whether or not it meets the requirements of a claim, thus extending the statute of limitations to three years. Accordingly, the trial court erred in finding that the statute of limitations had expired and its ruling granting summary judgement should be reversed.

§15-78-30(f) of the South Carolina Code of Laws defines a "loss" as bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence. In the original complaint, Lawrence clearly sets out the extent and amount of loss she suffered as a result of her false arrest including stress, headaches, insomnia, and other physical symptoms due to her false arrest and imprisonment (R. p.

111 ¶19); humiliation, embarrassment, and fear (R. p. 111 ¶20); missing work while incarcerated, to attend hearings, and to meet with and hire an attorney (R. p. 114 ¶37); 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 (R. p. 115 ¶52); actual, compensatory and punitive damages for pain and suffering, lost wages and more (R. p. 117 ¶71); actual and punitive damages, costs and expenses, attorney's fees (R. p. 118). These are all verified statements setting out the extent of loss and amount of loss, as defined in §15-78-30(f) and required for a verified claim pursuant to §15-78-80. The original complaint meets the statutorily defined elements of a claim under §15-78-30(b) and strictly complies with the requirements of a verified claim under §15-78-80. Furthermore, the claims filed in this action arise out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings and therefore this claim should relate back to the date of the original pleading. *See Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (S.C. 2004).

The case at hand is similar to *Braudie v. Richland County*, 219 S.C. 130, 64 S.E.2d 248 (S.C. 1951)(overturned in *Searcy v. South Carolina Dept. of Educ., Transp. Div.*, 303 S.C. 544, 402 S.E.2d 486 (S.C. App. 1991), in that Lawrence's Original Complaint gave more detail to the City of North Charleston than what is required; but distinguishable in accordance with *Searcy* because the Original Complaint was verified, thus extending the statute of limitations to three years. (R. p. 119) In *Braudie* our Supreme Court determined that while the Braudie's claim was not verified, the letter written by Braudie's attorney to the county attorney gave full detail with reference to the facts giving rise to Braudie's cause of actions, giving more information than required by the amendment, thus substantially complying with the statute and finding that Braudie should be allowed to go forward with trial on the merits of her claims. *Id.* In determining strict

compliance as opposed to the substantial compliance found in *Braudie*, our courts have clearly set forth the intent and purpose the filing of a verified claim serves - as stated in *Joubert v. South Carolina DSS*

> "As the Court of Appeals noted in *Searcy* §15-78-80 expressly requires the person to file a verified claim in order to benefit from the three-year limitations period: A twofold purpose is served by a requirement of this kind. First, the governmental entity is put on notice so that it can both conduct an investigation while the facts are fresh and preserve evidence. Second a verification serves to discourage the filing of false claims because a verification permits a prosecution for perjury if the claim is fraudulent."

Joubert v. South Carolina DSS, 341 S.C. 176, 534 S.E.2d 1 (S.C. App. 2000)(internal citations omitted). Here, the Original Complaint was verified by Lawrence on April 4, 2019, (R. p. 119) filed on June 18, 2019, (R. p. 108) and served upon the North Charleston Police Department within approximately ten months from the date of her arrest. Accordingly, Lawrence's Original Complaint serves the Court's interpretation of legislative intent by putting the City of North Charleston on notice of Lawrence's claims and providing verification of those claims. Furthermore, the Original Complaint gave the City of North Charleston full detail of the facts giving rise to Lawrence's claims, giving all if not more information than required; and the City of North Charleston benefitted by this filing because they were able to conduct discovery with counsel prior to the Original Complaint being dismissed. As a result, Lawrence should be allowed to move forward with a trial on the merits of her claim and the trial court's decision granting summary judgement should be reversed.

II. The City of North Charleston should not have been granted immunity pursuant to any exemption from liability, including their asserted exemptions under 15-78-60(20) and 15-78-60(23), because their grossly negligent acts bar them from immunity.

The Tort Claims Act waives immunity for torts committed by the State, its political subdivisions, and governmental employees acting within the scope of their official duties. There

are several exceptions to this waiver of immunity, including discretionary immunity and the exemptions from liability detailed in the enumerated paragraphs of §15-78-60 of the Act. The burden of establishing a limitation on liability or an exception to the waiver of immunity is upon the governmental entity asserting it as a defense. *See Pike v. South Carolina Dept. of Transp.,* 343 S.C. 224, 540 S.E.2d 87 (S.C. 2000). The City of North Charleston claims that because neither of their asserted exemptions under the Act contain a gross negligence standard, their grossly negligent acts do not bar them from immunity. This argument is without merit and contradictory to well-established case law.

In the case at hand, when law enforcement identified Lawrence as a potential suspect for an alleged crime committed in their jurisdiction, the City of North Charleston bestowed upon itself a responsibility or duty to Lawrence pursuant to that investigation. §15-78-60(25) states a governmental entity is not liable for a loss resulting from a "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, ***except when the responsibility or duty is exercised in a grossly negligent manner***." §15-78-60(25) S.C. Code Ann. (emphasis added). Given that Lawrence was identified as a suspect by agents for the City of North Charleston, investigated, and ultimately taken into custody by those same agents, §15-78-60(25) is also an applicable exception in this case therefore the gross negligence standard must be applied to all other asserted exceptions under the Act. *See Steinke v. SC Dept. of Labor, Licensing and Regulation,* 336 S.C. 373, 396, 520 S.E.2d 142 (S.C. 1999). In *Steinke* our Supreme Court found that it would not make sense to say a governmental entity may be found grossly negligent in one applicable exception, yet still allow them to escape liability because they have asserted a different exception that does not contain the gross negligence standard. Instead, the Court determined that

the legislative intent of providing ample defenses and limiting liability to governmental entities does not mean that they intended to allow those entities to eviscerate the impact of one applicable exception by simply asserting a different exception. *Id*. Accordingly, the Court held that when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Otherwise, portions of the Act would be a nullity, which the Legislature could not have intended. *Id.*

Here, the City of North Charleston states they are entitled to immunity under 15-78-60(20) by claiming their actions against Lawrence were based upon the act or omission of a third party. The City of North Charleston also claims they are entitled to immunity under 15-78-60(23) because their act of obtaining an arrest warrant instituted a judicial or administrative proceeding - regardless of the false and unlawful means used to obtain that warrant. Neither of the two exemptions claimed by the City of North Charleston contain a gross negligence standard, which is why they are seeking immunity under those exemptions and not asserting the applicable exemption under 15-78-60(25) that does contain the gross negligence exception. However, when applying the gross negligence standard to both 15-78-60(20) and 15-78-60(23) as required under *Steinke*, it is clear the City of North Charleston failed to exercise even the slightest care in investigating and arresting Lawrence. The City of North Charleston failed to verify the evidence they initially received from Danny Conyers matched the evidence they allegedly requested[1]; failed to corroborate their identification of Lawrence as a suspect with the victim and other witnesses; failed to investigate Lawrence's whereabouts and financial transactions during the time of the alleged incidents; failed to review exculpatory evidence provided by the same third party they are claiming

[1] There is nothing in the record detailing what specific information was requested from Wells Fargo by the North Charleston Police Department or how the information requested by the North Charleston Police Department differed from what was actually sent by Danny Conyers.

the exemption from; obtained an arrest warrant based solely upon their assertions and no one else's; submitted an arrest warrant affidavit that was knowingly and intentionally false or presented to the court with a complete disregard for the truth; failed to follow-up with their investigation after an arrest was made; failed to review the case file and evidence prior to the preliminary hearing; and gave false testimony under oath during the preliminary hearing. As such, even if the asserted exemptions were applicable to this case, which they aren't, they would not serve as an exemption from liability based upon the City of North Charleston's grossly negligent acts.

If the courts were allowed to only consider the asserted exemptions by a governmental entity in claims against law enforcement and not the unasserted applicable exemptions containing the gross negligence standard, no citizen would ever be able to file suit against law enforcement for making a false or grossly negligent seizure or arrest. This is clearly not what the legislature intended and is the reason our courts have continuously ruled that the gross negligence standard must be applied to all exemptions when found in any applicable exemption. Accordingly, the trial court's failure to apply the gross negligence standard to the exemptions asserted by the City of North Charleston is an error of law and it's finding that the City of North Charleston is entitled to summary judgement should be reversed.

III. The exemptions claimed by the City of North Charleston are not applicable.

The City of North Charleston's assertion that the acts or omission of a third party exempt them from liability pursuant to 15-78-60(20) is not supported by the facts of this case. The only party to make any allegation against Lawrence, false or otherwise, were the grossly negligent and false allegations made by Detective Bousquet in her sworn arrest warrant affidavit and subsequent testimony given to the court. The City of North Charleston's claim that the acts or omissions of Danny Conyers was the basis for Lawrence's arrest is a gross misrepresentation of the facts in this

case. This investigation began when Hazel Pinckney's family made a complaint to law enforcement about fraudulent banking activity being conducted on Ms. Pinckney's account. Law enforcement requested video evidence from Wells Fargo Bank, which was provided to law enforcement by Danny Conyers through screenshots of the ATM surveillance camera. Lawrence was never named or identified by Danny Conyers as committing any crimes on Ms. Pinckney's account. Lawrence was not named or identified as committing any crimes on Ms. Pinckney's account by the victim, the victim's family, or any other witnesses in this investigation. The only person that alleged Lawrence committed a crime on Ms. Pinckney's account was Detective Bousquet. Wells Fargo also sent Detective Bousquet banking records from Ms. Pinckney's account at her request, prior to the arrest warrant being sworn out against Lawrence, that prove Lawrence was not the person committing crimes on Ms. Pinckney's account. The only party who made any acts or omissions against Lawrence in this case is Detective Bousquet, acting as an agent for the City of North Charleston. Accordingly, the asserted exemption claimed by the City of North Charleston pursuant to 15-78-60(20) is not applicable in this case and, even if it were applicable, the City of North Charleston would still be barred from immunity as a result of their grossly negligent acts against Lawrence.

The City of North Charleston is also not entitled to the asserted exemption to liability pursuant to 15-78-60(23) for instituting judicial proceeding, because the judicial proceedings instituted by the City of North Charleston in this case were unlawful. The intent of the exemption identified in 15-78-60(23) exempts a governmental entity from liability for ***lawfully*** instituting judicial proceedings. Here, the proceedings against Lawrence were unlawfully instituted based upon an arrest warrant that lacked probable cause, rendering the arrest warrant invalid and the institution of judicial proceedings unlawful. 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. 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. (R. p. 86) These statements are all 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. Consequently, the arrest warrant in this case was invalid and the judicial proceedings instituted against Lawrence by the City of North Charleston were unlawful. Accordingly, the City of North Charleston's asserted exemption to liability pursuant to 15-78-60(23) is not applicable and, even if it were applicable, their grossly negligent acts against Lawrence are an exception to the exemption therefore immunity should not have been granted.

CONCLUSION

The Original Complaint filed by Lawrence was a claim extending the statute of limitations in this matter to three years and the grossly negligent acts perpetuated by the City of North Charleston against Lawrence bar them from claiming immunity or asserting any exemption to liability under the Tort Claims Act. Furthermore, the exemptions asserted by the City of North Charleston are not applicable in this matter. As such, the trial court erred in granting summary judgement and should be reversed.

Respectfully Submitted,

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Counsel for Appellant certifies that this Final Reply Brief complies with South Carolina Appellate Court Rule 211(b).

June 30, 2022

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PROOF OF SERVICE

I certify that I have served both Appellant's Final Brief and Appellant's Final Reply Brief, including the previously missing Certificates of Counsel, on Robin Jackson, Counsel for the Respondent, via email on June 30, 2022.

June 30, 2022

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