

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

Tynyasha Horton,

Appellant,

v.

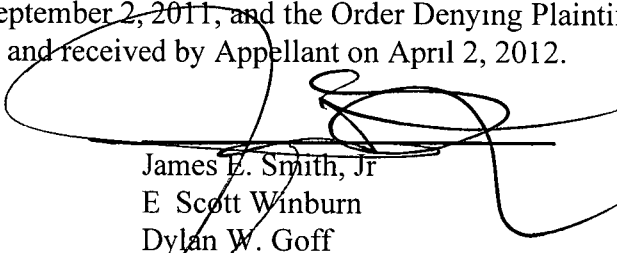
City of Columbia Police
Department,

Respondant

NOTICE OF APPEAL

Tynyasha Horton appeals the Order of the Honorable Alison Renee Lee dated August 26, 2011, received by Appellant on September 2, 2011, and the Order Denying Plaintiff's Motion to Reconsider dated March 28, 2012 and received by Appellant on April 2, 2012.

April 12, 2012


James E. Smith, Jr.
E Scott Winburn
Dylan W. Goff
Law Offices of James E Smith, Jr.
1422 Laurel Street
Columbia, South Carolina 29201
(803)933-9800
Attorney for Appellant

Other Counsel of Record:
Robert Cooper, Esq.
Office of the City Attorney
City of Columbia
Post Office Box 667

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APR 12 2012

SC Court of Appeals

Columbia, South Carolina 29202
Attorney for Respondent
(803)737-4242

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No 2010-CP-40-3299

Tynyasha Horton,

Appellant,

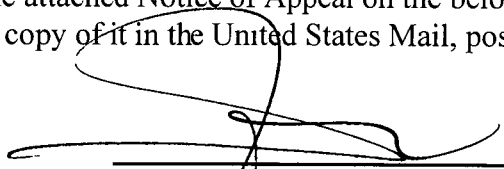
v.

City of Columbia Police
Department,

Respondant.

PROOF OF SERVICE

I certify that I have served the attached Notice of Appeal on the below-named parties, at the addresses given, by depositing a copy of it in the United States Mail, postage prepaid, on this day of April 12, 2012


James E. Smith, Jr.
E. Scott Winburn
Dylan W Goff
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(803)933-9800
Attorney for Appellant

The Honorable Alison Renee Lee
Richland County Courthouse
PO Box 192
1701 Main Street, Room 324
Columbia, SC 29202-0192

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APR 12 2012

SC Court of Appeals

The Honorable Jeanette W. McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202-2766

Robert Cooper, Esq.
Office of the City Attorney
City of Columbia
Post Office Box 667
Columbia, South Carolina 29202

JAMES E. SMITH, JR., P.A.
ATTORNEYS AT LAW

JAMES E. SMITH, JR. *†
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OF COUNSEL
NINA NELSON SMITH

*ALSO ADMITTED IN NC
†ALSO ADMITTED IN GA

April 12, 2012

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Tynaysha Horton v. City of Columbia Police Department
Civil Action Number 2010-CP-40-3299

Dear Ms. Kitchings

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent, The Honorable Alison Renee Lee, and the Clerk of Court of Richland County,
- (2) A copy of the Final Order and Decision and Order Denying Motion to Reconsider challenged on appeal,
- (3) A filing fee of \$100

With kind regards, I am

Sincerely,

James E. Smith, Jr.

cc Robert Cooper, Esq.
The Honorable Alison Renee Lee
Clerk of Court of Richland County

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APR 12 2012
SC Court of Appeals



Service Disabled Veteran-Owned Small Business

JAMES E. SMITH JR., P.A.

ATTORNEYS AT LAW

1422 LAUREL STREET
COLUMBIA, SOUTH CAROLINA 29201

By Hand

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Tynaysha Horton

Plaintiff

JUDGMENT IN A CIVIL CASE

CASE NO: 2010-CP-40-3299

RECEIVED
APR 12 2012
SC Court of Appeals vs.

RECEIVED
SEP - 2 2011
JAMES E. SMITH, JR., PA

JEANETTE W. MORRILL
C.P. & G.S.

2011 AUG 30 AM 10:45

RICHLAND COUNTY
FILED
City of Columbia

Defendant

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- DECISION BY THE COURT.** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC, Rule 41(a),
 - SCRPC (Vol Nonsuit), Rule 43(k), SCRPC (Settled), Other _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC, Bankruptcy
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award,
 - Other _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)

- Affirmed; Reversed; Remanded, Other

NOTE. ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED:

- See attached order,
- Statement of Judgment by the Court

On Defendant's motion for summary judgment, this Court determines the following.

Plaintiff asserts the following causes of action. false imprisonment, false arrest, malicious prosecution, negligence, and assault and battery. In considering the evidence in the light most favorable to the Plaintiff, Defendant's motion for summary judgment must be granted. False arrest and false imprisonment are not separate torts Under false arrest, plaintiff must prove that the restraint was unlawful. An action cannot be maintained where the plaintiff is arrested by lawful authority. Jones v City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (Ct. App. 1999); Gist v Berkeley County Sheriff Dept, 336 S.C. 611, 521 S.E.2d 163. In this case, the arrest was made pursuant to an arrest warrant issued by a ministerial recorder The fundamental issue in determining lawfulness of the arrest is whether there is probable cause McBride v School Dist Of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010) (citing Law v S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006)) Plaintiff claims that there is a question of fact as to whether the arrest warrant was issued on probable cause based on the exculpatory information given to the officer The existence of probable cause may be decided as a matter of law when the evidence yields but one conclusion. McBride, supra The warrant affidavit on its face is sufficient to establish probable cause. Probable cause is 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 person, under the circumstances to believe likewise The crime scene analyst investigated the scene, lifted a fingerprint from the scene, and ran the print through a law enforcement database that identified Plaintiff as the most probable match The officer then reviewed the Plaintiff's prints with the one taken from the scene and verified the prints matched Two additional crime scene analysts

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compared the prints and verified the prints matched. The analyst informed an officer of the match, and based upon that information, the officer prepared the affidavit and obtained the arrest warrant. Probable cause is determined as of the time of arrest, based upon facts and circumstances objectively measured and known to the arresting officer. The officer who sought the arrest warrant obtained the warrant based on the fingerprint analysis. There was probable cause to arrest Plaintiff based on the fingerprint analysis, irrespective of whether the officer was informed by Plaintiff's probation officer that Plaintiff could not have committed the crime because she had problems securing transportation and had children at home.

The same analysis applies to the malicious prosecution claim. Plaintiff must prove a lack of probable cause in a malicious prosecution action. Again, probable cause is determined at the time of the arrest and not what might be revealed in hindsight. The officer sought a warrant based on a good faith objective belief that the person identified committed the offense at the time. The cause of action for malicious prosecution must also fail on summary judgment.


Plaintiff asserts a claim for assault and battery based on her arrest. Plaintiff does not allege that Defendants used excessive force. A battery is the actual infliction of any unlawful, unauthorized violence on the person of another. Jones v Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995). A police officer who uses reasonable force in effecting a lawful arrest is not liable for assault or battery. Roberts v City of Forest Acres, 902 F.Supp. 662, 671-72 (D S C. 1995) (applying South Carolina law). Plaintiff's arrest was based on a facially valid arrest warrant. Therefore, Defendants' actions in arresting Plaintiff did not constitute an assault or battery, and the Defendant is entitled to summary judgment on those causes of action.

Plaintiff also asserts a claim for gross negligence in failing to fingerprint Plaintiff when she was taken into custody and before she was transported to Columbia for detention. Plaintiff also alleges Defendants failed to properly train its employees to administer the taking of fingerprints and to properly investigate a burglary and in failing to implement policies to ensure officers were properly trained to handle such situations. Plaintiff has not produced evidence that an employee of Defendant failed to exercise slight care in its investigation or arrest of Plaintiff. According to the Affidavit and deposition of Peter Currie, the analyst who identified Plaintiff's fingerprints as matching those from the scene, he completed multiple courses in fingerprint analysis and was certified in database fingerprint comparison. He received additional training in crime scene investigation. Currie stated that Defendant's practice or procedure is to fingerprint an individual again once they are arrested and placed into custody. Currie followed this procedure and took Plaintiff's fingerprints once she was transported to Columbia. Defendant's motion for summary judgment on the negligence cause of action is granted.

To the extent Plaintiff alleges Defendant is liable based on the misidentification of the fingerprints as hers, Plaintiff's claims are barred by § 15-78-60(5) of the Tort Claims Act. The analyst exercised his professional judgment based upon his training and experience. Summary judgment is not based on exceptions to the Tort Claims Act, specifically Sections 15-78-60(17), (23), and (4). And this Court so holds.

Defendant shall prepare a more formal order that includes facts to support the Court's ruling and additional legal citations consistent with this form order. A copy of the order shall be submitted not later than September 6 in Word format by e-mail with a copy to Plaintiff's counsel for comment.

Dated at Columbia, South Carolina, this 26th day of August, 2011.



PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 30th day of August, 2011, to attorneys of record or to parties (when appearing pro se) as follows.

Dylan Goff

ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRCP APP-24/FORM 4

Robert Cooper

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2010CP4003299

Tynyasha Horton

City Of Columbia Police Department

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ACTION STRICKEN (CHECK REASON)** Rule 40(j), SCRPC, Bankruptcy, Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed, Reversed, Remanded, Other _____

RICHLAND COUNTY
 FILED
 2012 MAR 29 AM 10:33
 JEANETTE W. McBRIDE
 C. P. & G. S.

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case

Additional Information for the Clerk _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 29 March 2012 to attorneys of record or to parties (when appearing pro se) as follows

Dylan W Goff

Robert G Cooper

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Tynyasha Horton)

Civil Action No 2010-CP-40-3299

Plaintiff,)

ORDER

v.)


City of Columbia Police Department)

Defendant)

RICHLAND COUNTY
FILED
2012 MAR 29 AM 10:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Plaintiff's Motion pursuant to Rule 59(e) SCRPC to Alter or Amend Judgment of this Court's Order entered on or about September 29, 2011 Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

March 28, 2012
Columbia, South Carolina

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