IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

C.A. No. 2016-CP-42-1280
Appellate Case No. 2017-001009

CAITLYN LANGHAM,..... Appellant,

v.

OFFICER RUSSELL PORTER,
CITY OF SPARTANBURG POLICE DEPARTMENT,
AND WAL-MART STORES, INC., ... Respondents.

INITIAL BRIEF OF RESPONDENTS PORTER AND CITY OF SPARTANBURG POLICE DEPARTMENT

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STATEMENT OF ISSUES ON APPEAL

Did the circuit court err in granting summary judgment on all causes of action to the Respondents Officer Russell Porter, the City of Spartanburg, and the City of Spartanburg Police Department (the "City Respondents")?

STATEMENT OF THE CASE

On April 8, 2016, Appellant Caitlyn Langham filed this action with the Clerk of Court for the County of Spartanburg, State of South Carolina, naming Wal-mart, Officer Russell Porter, and the City of Spartanburg Police Department.[1] Appellant alleged both federal and state causes of action in connection with her arrest for shoplifting at Wal-Mart on or about December 24, 2013. The Complaint alleged the following causes of action against Officer Porter: malicious prosecution, false imprisonment, defamation, assault and battery, and violation of 42 U.S.C. §1983. The Appellant also alleged malicious prosecution and violation of 42 U.S.C. §1983 against the Spartanburg Police Department. (Complaint.)

On December 8, 2016, a Motion for Summary Judgment was filed on behalf of Officer Porter, the City of Spartanburg, and the City of Spartanburg Police Department (the "City Respondents"), and a hearing was held by Circuit Judge R. Keith Kelly on February 8, 2017.[2] (City's Motion for Summary Judgment; Transcript of hearing.) On March 23, 2017, Judge Kelly filed the "Order Granting Summary Judgment to the Defendants Porter, City of Spartanburg, and Spartanburg Police Department," finding that the state causes of action, other than malicious prosecution, were barred by the statute of limitations. (Order.) Judge Kelly also dismissed the malicious prosecution,

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[1] There has been some confusion as to whether the Appellant sued the City of Spartanburg and/or the Spartanburg Police Department, or both. It is the City Respondents' position that either the City or the Police Department is a proper defendant, but not both, because the Police Department, as a department of the City, is not a separate entity from the City. The caption has been revised by the Clerk of the Court of Appeals to include the City of Spartanburg Police Department but not the City as a separate defendant/respondent. However, the arguments herein are presented on behalf of both the City and the Police Department if the two are considered as separate entities or defendants/respondents herein.

[2] The Defendant Wal-Mart also filed Motions for Summary Judgment, which are addressed in the Briefs filed by Appellant and Wal-Mart but will not be addressed herein.

false arrest, and §1983 causes of action, finding that there was probable cause to arrest, detain and try the Appellant. This appeal followed on April 18, 2017. (Notice of Appeal.)

STATEMENT OF FACTS

According to the Complaint, Appellant was shopping at the Wal-Mart store in Spartanburg on Christmas Eve of 2013 when she "decided to pick up a few personal cosmetic items." She put "cosmetic items such as mascara and eyeliner in her shopping car[t]," along with other items. However, she claims that when she got to the register she realized she did not have enough money for all of the items in her cart and that she put the cosmetic items on a shelf near the checkout line. The Complaint admits that Wal-Mart employees told Officer Porter that they witnessed her placing items in her purse. (Complaint ¶¶ 9-13.) The Appellant has admitted that she had a drug problem and was "probably" on pain medicine on the date of her arrest. (See Depo. of Caitlyn Langham, p. 12, l. 23 – p. 13, l. 22; p. 14, l. 3-6)

Officer Porter personally observed the Appellant acting suspiciously and trying to break in line and leave the store. As he approached her, he personally observed numerous Wal-Mart items in her open shoulder bag/purse. When he attempted to place the Appellant into custody, she physically resisted and Officer Porter was forced to use a reasonable amount of force to effectuate the arrest. The unopened, and unpurchased, Wal-Mart items found in her purse included hygiene items, snacks, and candies worth $74.62. (See Trial Transcript, p. 8, l. 1 – p. 9, l. 13).

On September 17, 2014, Appellant's criminal trial was held in Spartanburg Municipal Court. At the close of the State's case, the Appellant's attorney made a motion to dismiss the charges, arguing that the State had failed to show there was

probable cause for the arrest. The trial judge denied the motion, stating that "there's sufficient evidence to move forward" to the jury. (See Trial Transcript, p. 22, l. 8 – p. 23, l. 12.) The trial ended in an acquittal.

ARGUMENT

On appeal, the Appellant makes the following challenges to the lower court's Order as it pertains to the City Respondents:[3]

(1) In Argument II of her Initial Brief, Appellant challenges the lower court's dismissal of her claim for malicious prosecution, which was granted based on the court's finding that she cannot prove a lack of probable cause.

(2) In Argument IV(A), the Appellant challenges the lower court's dismissal of her cause of action for assault and battery, which was granted based on the statute of limitations.

(3) In Argument IV(B), the Appellant challenges the lower court's dismissal of her Fourth Amendment and malicious prosecution claims, which were granted based on the court's finding that she cannot prove a lack of probable cause.

(4) In Argument IV(C), the Appellant argues that the City Respondents are proper parties under §1983.

(5) In Argument IV (D), the Appellant argues that the City Respondents are not entitled to qualified immunity.

(6) In Argument V, the Appellant argues that Respondent Porter is liable for assault and battery.

[3] Appellant also challenges the lower court's grant of summary judgment to Defendant Wal-Mart, but those arguments are not addressed herein.

I. APPELLANT'S CAUSES OF ACTION FOR MALICIOUS PROSECUTION, FALSE IMPRISONMENT, ASSAULT AND BATTERY AND VIOLATIONS OF THE FOURTH AMENDMENT FAIL BECAUSE THERE WAS PROBABLE CAUSE FOR THE APPELLANT'S ARREST.

The Plaintiff's state law causes of action for malicious prosecution, false imprisonment, and assault and battery, as well as her §1983 claims under the Fourth Amendment, are barred by the existence of probable cause. "[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed." *Devenpeck v. Alford*, 542 U.S. 146 (2004). State law claims for malicious prosecution and false arrest require the lack of probable cause as one of their elements. See *McBride v. School District of Greenville County,* 389 SC 546, 698 SE 2d 845 (Ct.App.2010); *Jordan v. Deese,* 317 SC 260, 452 SE 2d 838 (1995); *Jones by Robinson v. Winn-Dixie Greenville, Inc.,* 318 SC 171, 456 SE 2d 429 (Ct.App.1995); *Wortman v. Spartanburg,* 310 SC 1, 425 SE 2d 18 (1992). A police officer who uses reasonable force in effectuating a lawful arrest is not liable for assault or battery, and an arrest is lawful if it is supported by probable cause. *Roberts v. City of Forest Acres*, 902 F.Supp. 662 (D.S.C. 1995).

"While actions for malicious prosecution may be maintained in the courts, they have never been regarded with favor and are not encouraged as it is in the best interest of good order that criminals be brought to justice; and it is generally held that the prosecutor is free from damage if there be probable cause of the accusation made, the burden being upon the plaintiff to show the absence of probable cause as a part of the cause of action." *Prosser v. Parsons,* 245 S.C. 493, 141 S.E.2d 342 (1965). *See also White v. Coleman,* 277 F.Supp. 292 (D.S.C.1967). "Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law

when the evidence yields but one conclusion." *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642 (2006) (citing *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 143 S.E.2d 607 (1965)).

The foundational case for the probable cause standard is *Illinois v. Gates*, 462 U.S. 213 (1983), which states that judicial officers should evaluate the evidence presented in the complaint and affidavits in a "nontechnical, common-sense" manner, "applying a standard less demanding than those used in more formal legal proceedings" and that the ultimate decision on whether probable cause exists must be based on the totality of the circumstances. Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest. *Devenpeck, supra* (citing *Maryland v. Pringle,* 540 U.S. 366 (2003)).

"The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *Maryland v. Pringle, supra.* Probable cause exists when facts and circumstances known to the officer(s) would warrant belief of prudent person that arrestee had committed or was committing offense, and must be supported by more than mere suspicion, although evidence sufficient to convict is not required. *See Taylor v. Waters*, 81 F.3d 429 (4th Cir.1996). "Stripped to its essence, the question to be answered is whether an objectively reasonable police officer, placed in the circumstances, had a 'reasonable ground for belief of guilt' that was 'particularized with respect to the person to be searched or seized.' " *U.S. v. Humphries*, 372 F.3d 653 (4th Cir.2004) (citing *Maryland v. Pringle, supra).*

"Probable cause only requires enough evidence to warrant a man of reasonable caution in the belief that an offense has been ... committed." *Wilkes v. Young,* 28 F.3d 1362 (4th Cir.1994) (citing *Brineger v. U.S.,* 338 U.S. 160 (1949)) (internal quotations and citations omitted). In determining probable cause, the facts must be "regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be." *Law v. S.C. Dept. of Corrections, supra* (citing *Eaves. v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 289 S.E.2d 414 (1982)). "Probable cause does not turn on the plaintiff's guilt or innocence of the criminal charge; it depends on whether the [investigator] had at the time knowledge of facts and circumstances as would excite the belief in a reasonable mind that the person charged was guilty of the crime charged." *White v. Coleman, supra* (citing *Parrot v. Plowden Motor Co., supra.*).

In essence, the question for the Court is: did Officer Porter have information that he reasonably relied on in arresting and charging the Appellant? The evidence clearly establishes probable cause: witnesses told Officer Porter that they had seen the Appellant place items into her purse, the Appellant (suspiciously and abruptly) attempted to leave the store as the officer approached, and the officer personally observed unopened Wal-Mart items in her open purse.

In addition, at the conclusion of the State's case in the criminal trial, the Appellant made a motion for a dismissal based on lack of probable cause. The Court denied the motion and stated, "there is sufficient evidence to move forward to allow the matter to be taken in front of the jury." (See Trial Transcript, p. 22, l. 8 – p. 23, l. 12). The standard for ruling on a motion for a directed verdict by a defendant in a criminal case

requires the trial judge to submit a case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" *See State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000)) (citing *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)). Based thereon, it has already been determined that there was probable cause for the Appellant's arrest. Therefore, Plaintiff's state causes of action for false imprisonment, malicious prosecution, and assault and battery, as well as her Fourth Amendment claims, are barred and the City Respondents were entitled to summary judgment thereon as a matter of law, as found by the lower court.

II. APPELLANT'S CAUSE OF ACTION FOR ASSAULT AND BATTERY IS PRECLUDED BY THE STATUTE OF LIMITATIONS.

The lower court found that the Appellant's state law claims for false imprisonment, defamation, and assault and battery are barred by the applicable statute of limitation found in S.C. Code Ann. §15-78-10, *et. seq.* The Appellant appeals this finding only as to the assault and battery cause of action.[4]

"The S.C. Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.*, governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct.App.2003). The Tort Claims Act contains a general **two (2) year** statute of limitations. S.C. Code Ann. §15-78-110 (1976, as amended). There is no dispute that the Appellant's lawsuit was not filed until more than two (2) years after

[4] In Argument IV(A) of the Appellant's Brief, she also argues that her §1983 claim and her malicious prosecution claim are not barred by the two (2) year statute of limitations. However, the City Respondents did not argue that the two (2) year statute of limitations applied thereto, and the lower court's dismissal of those causes of action was not based thereon.

her arrest. So, the question for this Court is whether the two (2) year limitation period found in the Tort Claims Act applies to the Appellant's assault and battery claim against Officer Porter.

Under S.C.Code Ann. § 15–78–200, "[n]otwithstanding any provision of law ... the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." Officer Porter was acting within the scope of his official duty at the time of the arrest and there is no evidence that he had any intent to harm the Appellant, which would be required to take his actions outside the scope of his duty (and outside the scope of the Tort Claims Act). Intent to harm is NOT an essential element of assault in South Carolina, so the allegation is not in and of itself enough to take it out of the scope of the Act. *See Doe v. U.S.*, 618 F.Supp. 503 (D.S.C.1984). There is no evidence of malice or intent to harm by the officer. Based thereon, the Appellant's cause of action for assault and battery falls under the Tort Claims Act and is barred by the two (2) year statute of limitations found therein.

III. THE CITY OF SPARTANBURG AND SPARTANBURG POLICE DEPARTMENT ARE NOT PROPER DEFENDANTS UNDER §1983.

In Argument IV(C) of her Brief, the Appellant argues that the City of Spartanburg and Spartanburg Police Department are proper parties under §1983.[5] However, it is "well settled that a municipality is only liable under §1983 if it causes such a deprivation through an official policy or custom." *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690-

[5] Although the lower court did not actually rule on this argument, it was presented to the lower court, and "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." SCACR 220(c).

91 (1978). No municipality can "be held liable under §1983 on a *respondeat superior* theory" and "rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee." *Id.* Although Appellant alleges that there was a history of complaints against Officer Porter, and that the City was deliberately indifferent thereto, there is no evidence to support such an allegation or to otherwise support a §1983 claim against the City or the Police Department. Therefore, the City and Police Department are entitled to summary judgment as to the Appellant's §1983 cause of action against them.

IV. THE CITY RESPONDENTS ARE ENTITLED TO QUALIFIED IMMUNITY.

In Argument IV(D) of her Brief, the Appellant argues that the City Respondents are not entitled to qualified immunity.[6] Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." *Mitchell v. Forsyth,* 472 U.S. 511 (1985). It protects government officials performing discretionary functions from civil damage suits insofar as the officials' conduct does not violate clearly established rights of which a reasonable person would have known, but officials lose the protection of the immunity if they violate a constitutional or statutory right of the plaintiff and the right was clearly established at the time of the alleged violation such that an objectively reasonable official in the defendants' position would have known of it. *Porterfield v. Lott*, 156 F.3d 563 (4th Cir.1998). In considering a claim of qualified immunity, the court initially must decide whether a constitutional right would have been violated on the facts alleged, and next, assuming that the violation of the right is established, must consider whether the

[6] Although the lower court did not actually rule on this argument, it was presented to the lower court, and "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." SCACR 220(c).

right was clearly established at the time, such that it would be clear to an objectively reasonable person that his conduct violated that right. *Brown v. Gilmore*, 278 F.3d 362 (4th Cir.2001). Appellant failed to establish that the City Respondents violated her rights, much less that they knowingly did so, thus entitling them to qualified immunity for all claims.

V. APPELLANT CANNOT PROVE ASSAULT AND BATTERY.

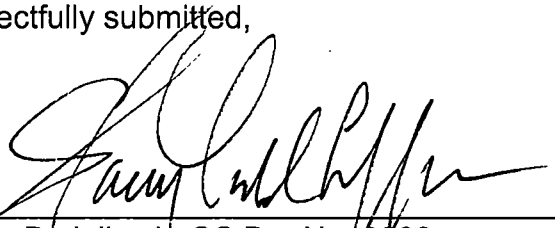
Appellant's final argument is that Officer Porter was liable for assault and battery.[7] As argued previously herein, the arrest was supported by probable cause. Based thereon, the Appellant's arrest was lawful, and the allegations made by the Appellant do not and cannot rise to the level of an assault or battery. *See Roberts v. City of Forest Acres*, *supra* (citing *Moody v. Ferguson*, 732 F.Supp. 627 (D.S.C.1989)) (A police officer who uses reasonable force in effectuating a lawful arrest is not liable for assault or battery.) Therefore, the City Respondents are entitled to summary judgment as to the Appellant's assault and battery claim.

[7] Although the lower court did not actually rule on this argument, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." SCACR 220(c

CONCLUSION

Based on the arguments herein, the City Respondents (Officer Porter, City of Spartanburg, and City of Spartanburg Police Department) are entitled to dismissal or summary judgment as to the Plaintiff's claims, as found by the lower court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Initial Brief of Respondent was served by first class mail, postage prepaid this 4th day of October 2017, upon the following:

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Re: Caitlyn Langham v. Officer Russell Porter, City of Spartanburg, Police Department and Wal-Mart Stores, Inc.
Case No. 2016-CP-42-1280

Dear Ms. Kitchings:

Please find enclosed for filing the Respondent's Initial Brief, Designation of Matter to be Included in the Record of Appeal, and the Certificate of Service in the above referenced matter. Please return a clocked in copy of the same to me in the enclosed self-addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.

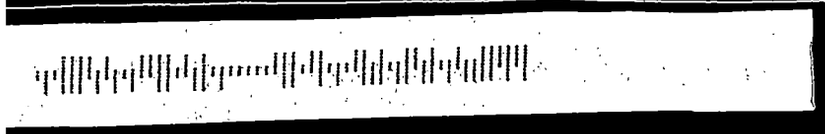
With kind regards, I remain,

Yours very truly,

Logan, Jolly & Smith, LLP

Stacey Todd Coffee

STC:hgc
Enclosure
cc: Donald L. Smith, Esq.
Randi Lynn Roberts, Esq.



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