

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Judge

Appellate Case No. 2017-001009

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OCT 23 2017

SC Court of Appeals

Caitlyn Langham

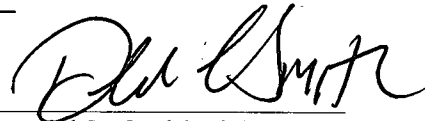
Appellant,

vs.

Officer Russell Porter, City of Spartanburg,
Spartanburg Police Department, and WALMART, Inc.,

Respondents.

**APPELLANT'S RETURN TO RESPONDENT WALMART'S
MOTION TO STRIKE MATTERS FROM APPELLANT'S
DESIGNATION OF MATTER**



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Officer Russell Porter, City of Spartanburg
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Lee Ellen Bagley, Esquire
Randi Lynn Roberts, Esquire
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
Columbia, SC 29204
Attorney for Respondent WALMART, Inc.

Appellant, by and through her counsel, respectfully submits this Return to Respondent's Motion to Strike Matters from Appellant's Designation of Matter. In support of which, Appellant presents the following:

FACTUAL AND PROCEDURAL HISTORY

Appellant filed this action for violations of her constitutional rights under the due process clause of the Fourteenth Amendment for violation of his constitutional rights under the reasonableness clause of the Fourth Amendment for the tortious acts perpetrated by the Defendants.

On April 8, 2016, Appellant filed a Complaint against Respondents Officer Russel Porter, the City of Spartanburg, the Spartanburg Police Department and WALMART Stores Inc. alleging defamation, false arrest, false imprisonment, assault and battery and violation of 42 U.S.C. §1983.

On May 13, 2016, Respondent WALMART moved to dismiss alleging that the Complaint is barred by statute of limitations and lack of cause of action. Appellant filed her Opposition on August 24, 2016. The trial court granted Respondent's Partial Motion to Dismiss on November 15, 2016. The court dismissed the causes of action for defamation, false imprisonment, and violation of § 1983, leaving the causes of action for assault and battery still pending in the lower court.

On November 21, 2016, Appellant moved to reconsider the Order, dated November 15, 2016, which the court denied in its Order, dated March 22, 2017.

On December 8, 2016, Respondents Porter, City of Spartanburg and Spartanburg Police Department moved for summary judgment, which Appellant opposed. The lower court granted the said motion in its Order, dated March 23, 2017.

Appellant timely filed an appeal on Judge Kelly's Orders, dated March 22, 2017 and March 23, 2017.

On August 15, 2017, Appellant submitted Initial Brief of the Appellant and the Designation of Matter to be Included in the Record on Appeal. On October 9, 2017, Respondent WALMART filed its Motion to Strike Matters from Appellant's Designation of Matter.

Appellant opposes such and states that:

ARGUMENT

THERE IS NO GROUND FOR THE RESPONDENT WALMART'S MOTION TO STRIKE MATTERS FROM APPELLANT'S DESIGNATION OF MATTER

All the documents listed in appellant's designation of matters were submitted in the trial court.

Respondent WALMART contends that specific documents in Appellant's Designation of Matter to be included in the Record on Appeal, dated August 15, 2017, were not presented in the trial court and must be stricken out.

Appellant asserts that in preparing the Designation of Matters to be included in the Record on Appeal, the party taking the appeal needs to include everything that supports the statements of facts and arguments made, including where the arguments were made and ruled on in the trial court. In general, the Record on Appeal should contain orders, judgments, decrees, decisions, pleadings, transcripts, charges, exhibits and other materials that are relevant to the issue/s on appeal. Rule 210 (c) of SCACR, however limits the same, to wit:

“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. xxx “

Appellant argues that all the documents, subject of Respondent's Motion to Strike, were presented to the lower court through pleadings as a trial was never conducted on the abovementioned case. As can be shown in Defendant WALMART's Exhibits, attached to its Motion to Strike, the documents were file-stamped copies of the pleadings and other exhibits submitted by parties to the case.

a. On Appellant's matter number 16, Transcript of Ronnee Miller Deposition, dated January 18, 2017

On December 8, 2016, Respondents Officer Porter, City of Spartanburg and Spartanburg Police Department moved for summary judgment of the case, alleging among others the presence of probable cause for the arrest and detention of Appellant.

To dispute the said allegation, Appellant, in her Opposition to the Motion for Summary Judgment, presented Ms. Miller's deposition to prove that: (1) that Respondent WALMART has an existing policy on shoplifting, and (2) that Respondent Officer Porter and Respondent WALMART's employees did not follow the said procedure. This goes to the very issue of the appropriateness and reasonableness of Respondent Porter's action, which is the standard of probable cause in shoplifting cases. (Appellant's Opposition to the Motion for Summary Judgment, 5, Feb. 28, 2017, and Exhibit "3" for the same).

The testimony of Ms. Miller was briefly discussed during the February 28, 2017 Motion for Summary Judgment hearing, participated by Respondent WALMART's counsel, Randi Lynn Roberts, Esquire, and which were taken under advisement by the lower court. (Motion for Summary Judgment Tr. 12, Feb. 28, 2017).

The testimony of Ms. Ronnee Miller was presented to the trial court and was considered in its Order, dated March 23, 2017.

b. On Appellant's matter number 17, Transcript of Caitlyn Langham Deposition, dated January 18, 2017

Appellant Langham's statements during her Deposition on January 18, 2017 was introduced by Defendants Porter, City of Spartanburg and Spartanburg Police Department in their Motion for Summary Judgment (Memorandum in Support of Motion for Summary Judgment, 2, Feb. 24, 2017). Thus, since the deposition has been presented in the lower court, Appellant has the right to mention and expound on her statements in her Initial Brief to prove that there was no probable cause for Respondent Porter's arrest, detention and assault of Appellant.

Furthermore, the designated portion of Appellant's deposition is a reiteration of her statement of facts as contained in her Complaint.

c. On Appellant's matter number 18, Transcript of Officer Porter Trial Testimony, dated September 17, 2014

Respondents Officer Porter, City of Spartanburg and Spartanburg Police Department presented respondent Officer Porter's testimony as Exhibit "2" in their Memorandum in Support of the Motion for Summary Judgment. Thus, since the deposition has been presented in the lower court, Appellant has the right to mention and expound on the Respondent's Porter's statements in her Initial Brief to prove that there was no probable cause for the arrest, detention and assault of Appellant.

Furthermore, the gist of the designated portion of Respondent Porter's testimony was discussed during the hearing for the Motion for Summary Judgment (Motion for Summary Judgment Tr. 4-5, 9-10, Feb. 28, 2017).

On Appellant's matter number 19, Incident Report, dated December 24, 2013

The gist of the Incident Report was mentioned in the Appellant's Complaint. (Complaint. 8:29, Apr. 8, 2016). A copy of this report has been submitted to the parties as part of the discovery procedure.

CONCLUSION

Appellant pleads that the documents subject of Respondent's Motion to Strike have been presented to the lower court, and thus are proper matters to be included in the Record on Appeal. Appellant prays that this Court afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from constraints of technicalities. The ends of justice and fairness would best be served if the issues involved in the case are thoroughly threshed out.

WHEREFORE, for the above and foregoing reasons, Appellant respectfully submits that Respondent WALMART'S Motion to Strike matters from Appellant's Designation of Matters should be denied.

October 19, 2017
Anderson, S.C.

Respectfully submitted,



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**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Judge

Appellate Case No. 2017-001009

Caitlyn Langham

Appellant,

vs.

Officer Russell Porter, City of Spartanburg,
Spartanburg Police Department, and WALMART, Inc.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Return to Respondent WALMART's Motion to Strike Matters from Appellant's Designation of Matters, and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Lee Ellen Bagley, Esquire, and Randi Lynn Roberts, Esquire at 3700 Forest Drive, Suite 400, Columbia, SC 29204, and James D. Jolly Jr., Esquire and Stacy Todd Coffee, Esquire at 1805 North Blvd., Anderson, SC 29622 by depositing a copy of it in the United States Mail, postage prepaid, on October 11, 2017.

October 19, 2017



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FORM 8
LETTER TO THE APPEALS COURT CLERK
FILING OPPOSITION TO RESPONDENT WALMART'S
MOTION TO STRIKE MATTERS IN APPELLANTS DESIGNATION OF MATTERS

October 19, 2017

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

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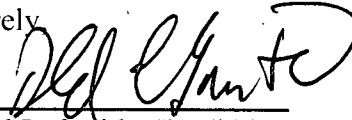
SC Court of Appeals

**RE: Caitlyn Langham v. Officer Russell Porter, City of Spartanburg,
Spartanburg Police Department and WALMART, Inc.
Appellate Case No. 2017-001009**

Dear Honorable Kitchings:

Please find enclosed a copy of Appellant's Return to Respondent WALMART's Motion to Strike Matters from Appellant's Designation of Matters, which I am filing in the above-referenced matter: Enclosed as well is the proof of service for same.

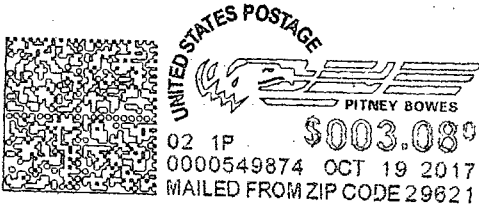
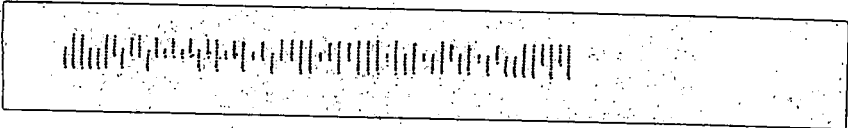
Sincerely,



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The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
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