

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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SC Court of Appeals

Caitlyn Langham

Appellant,

vs.

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

Respondents.

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

February 1, 2018


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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 Respondents.

On December 24, 2013, Appellant was shopping for some groceries at Dorman Center WALMART in Spartanburg, when she decided to get some personal items. She set all the merchandise in her cart and went to the checkout line. Realizing that she did not bring enough money for all the items she picked, she placed the personal items on the rack beside the cashier where the lip gloss and chips were situated.

As Appellant was reaching the cashier, Respondent Officer Porter approached her from behind and grabbed her left arm. Since she had a birth control implant, she told Respondent Porter that he was hurting her. Respondent Porter, taking her action as a form of resistance, threw her on the ground, handcuffed her and took her into the office. While in the office, Appellant was subjected to a physical search. It was only then that Respondent Officer Porter explained to her that she was being accused of shoplifting, and presented to her the personal items (mascara, powder) which she had placed on the rack only moments before. The police, whom Respondent WALMART called to respond to the incident, arrived and took Appellant in Spartanburg County Jail, where she was booked and arraigned. She was eventually released. The shoplifting charges went to trial, where Appellant was found not guilty.

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 May 15, 2017, Respondent WALMART moved for Summary Judgment on the causes of action for assault and battery. The court granted summary judgment in favor of Respondent WALMART on July 14, 2017.

Appellant moved to reconsider the July 14, 2017 Order, which the Court denied in its Order, dated October 3, 2017. Appellant appealed the aforementioned Orders, which were the subject matter of Appellate Case No. 2017-002160.

Appellant moved to consolidate the two Appellate Cases on October 24, 2017, which this Honorable Court granted in its Order, dated November 29, 2017. Plaintiff filed her Initial Brief and Designation of Matters to be Included in the Record on Appeal on December 28, 2017.

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.

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, since a trial was never conducted on the abovementioned case. As can be shown in Respondent 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 15, 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 Respondent Porter’s Motion for Summary Judgment, presented Ms. Miller’s deposition to prove that: (1) Respondent WALMART has an existing policy on shoplifting, and (2) Respondent Officer Porter and Respondent WALMART’s employees did not follow the said procedure. (Appellant’s Opposition to the Motion for Summary Judgment, p. 5, Feb. 28, 2017, attached as Annex “A”, and Miller Deposition, January 18, 2017, Exhibit “4” in the Opposition, attached as Annex “A-1”). 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.

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. p. 12, l. 10-15, Feb. 28, 2017, Annex “B”).

The testimony of Ms. Ronnee Miller was presented to the trial court and was considered in its Order, dated March 23, 2017. (Annex “C”).

b. On Appellant’s matter number 16, Transcript of Caitlyn Langham Deposition, dated January 18, 2017

Appellant Langham’s statements during her Deposition on January 18, 2017 were introduced by Respondents Porter, City of Spartanburg and Spartanburg Police Department in their Motion for Summary Judgment (Respondent Porter’s Memorandum in Support of Motion for Summary Judgment, p. 2, Feb. 24, 2017, Annex “D”). Thus, since the deposition has been presented in the lower court, Appellant has the right to mention and expound on her statements in her Opposition to Respondent Porter’s Motion for Summary Judgment, and subsequent pleadings, 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 17, 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. (Annex D-1” Respondent Porter’s testimony in the criminal case was briefly discussed by his counsel in the Motion for Summary Judgment hearing. Thus, since the deposition has been presented in the lower court, Appellant has the right to 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.

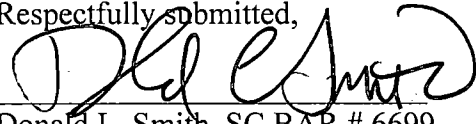
Furthermore, the gist of the designated portion of Respondent Porter's testimony was discussed during the hearing for the Motion for Summary Judgment (Motion for Summary Judgment Tr. 4-5, 9-10, Feb. 28, 2017).

CONCLUSION

Appellant pleads that the documents subject of Respondent WALMART'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.

Respectfully submitted,



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February 1, 2018
Anderson, SC

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

C.A. NO.: 2016-CP-42-1280

Caitlyn Langham,

Plaintiff,

v.

Officer Russell Porter, City of Spartanburg,
 Police Department and Wal-Mart Stores, Inc.

Defendants.

**OPPOSITION TO DEFENDANTS
 OFFICER RUSSEL PORTER, CITY
 OF SPARTANBURG AND
 SPARTANBURG POLICE
 DEPARTMENT**

Plaintiff respectfully submits this Memorandum in Opposition to Defendants Officer Russel Porter, City of Spartanburg and Spartanburg Police Department's Motion for Summary Judgment. In support of which, Plaintiff presents the following:

MEMORANDUM

Plaintiff filed this action for violation 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, false arrest, defamation, false imprisonment, and malicious prosecution.

Plaintiff was accused, assaulted, defamed, forcefully arrested and detained, against her will and without warrant, by Defendant Officer Russel Porter. As a result of these wrongful acts, Plaintiff sustained physical injuries and mental anguish when she was assaulted by Defendant Officer Porter. By reason of his gross negligent conduct, Plaintiff was publicly humiliated and deprived of her liberty when she was unlawfully and falsely imprisoned. And, despite having no

probable cause, Defendants pursued a case against Plaintiff. Plaintiff was acquitted by the Spartanburg Municipal Court on September 14, 2013.

On April 8, 2016, Plaintiff filed a Complaint against Defendants Porter, City of Spartanburg Police Department and WALMART Stores, Inc., alleging among other causes of action, defamation, assault and battery, malicious prosecution, false arrest, false imprisonment, and violation of 42 U.S.C. §1983.

On May 13, 2016, Defendant WALMART moved to dismiss alleging that the Complaint is barred by statute of limitations and lacked cause of action. Plaintiff filed its Opposition to Defendant's Motion to Dismiss on August 24, 2016.

On February 24, 2017, Defendants Officer Porter, City of Spartanburg, and Spartanburg Police Department moved for a Summary Judgment of the present case.

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); Rule 56(c), SCRPC. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). If triable issues exist, those issues must go to the jury. *Young, supra*.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing and Regulation, et al.*, Op. No. 3061 (S.C. Ct. App. filed

October 25, 1999)(Shearouse Adv. Sh. No. 33 at 1). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Vermeer, supra*. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.* In general, if the pleadings and the evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Carolina Alliance, supra*.

Plaintiff submits that the Complaint presented genuine issue of material facts, and Defendants raised no legally valid arguments to warrant a dismissal or summary judgment.

I. The Relevant Statutes of Limitations Bar No Claims in this Action

Defendants asserts that “Plaintiff’s claims for false imprisonment and defamation are governed by §15-3-550 of the South Carolina Code, which required Plaintiff to file those causes of action within two (2) years of the date of the alleged incident.” And that since the Complaint alleged that the incident happened on December 24, 2013, Plaintiff only had until December 24, 2015 to file her case. Defendant further alleges that Plaintiff, in filing her Complaint on April 8, 2016 is already barred by the two-year statute of limitations.

Although § 1983 provides a cause of action for violations of constitutional and federal statutory rights, it does not describe the applicable statutes of limitations, nor does it detail accrual and tolling rules. When § 1983 does not address important litigation issues, the Supreme Court has often looked to 42 U.S.C. § 1988, which specifies that if the federal law is “deficient,”

state law will apply as long as it is “not inconsistent with the Constitution and the laws of the United States.”

Under § 1988, a state’s statute of limitations relating to personal injury is applicable to § 1983 litigation. In various cases, the Supreme Court has held that §1983 is best characterized as a tort action for the recovery of damages, and therefore held that the appropriate statute of limitations to be adopted is the state statute applicable to personal injury actions (*Wilson c. Garcia*, 471 U.S. 261 (1985), *Ownes v. Okure*, 448 U.S. 235 (1989)).

Under § 15-3-535 in relation to §15-3-530 (5), any action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law must be initiated within three (3) years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.

In *Snider v. Seung Lee*, 584 F.3d 193, 199 (4th Cir. 2009), the Court ruled that “ A claim ‘founded on a Fourth Amendment seizure that incorporates elements of the analogous common law tort of malicious prosecution” which requires at least “ a wrongful seizure and termination in her favor of the proceedings following her seizure”. The statute of limitations for such a claim is three years, but the date of accrual is not until the criminal proceedings end in the plaintiff’s favor.

II. DEFENDANTS’ ASSAULT AND BATTERY, UNLAWFUL SEARCH AND SEIZURE, FALSE ARREST, AND MALICIOUS PROSECUTION COMMITTED AGAINST HEREIN PLAINTIFF ARE WITHOUT PROBABLE CAUSE

Defendants assert that Plaintiff’s Complaint against them should be dismissed for lack of probable cause.

Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime had been

committed by the person being arrested. *Jones v. City of Columbia*, 301 S.C. 62, 65, 389 S.E.2d.662, 663 (1990). In determining probable cause, only those facts and circumstances that were or should have been known to the defendant at the time the plaintiff was stopped should be considered. The determination of whether probable cause exists is ordinarily a jury question; however, it may be decided as a matter of law, when the evidence yields but one conclusion. *Law*, 368 S.C. at 441, 629 S.E.2d at 651, as cited in *Lynch v. Toys 'R Us-Delaware*, 375 S.C. 604 (2007).

Defendant Officer Porter testified in the prior criminal action as well as in his own deposition that he accosted Plaintiff while she was in line towards the cashier. (Defendants Exhibit 2, lines 1-14) Defendant Porter had not personally observed Plaintiff approach any merchandise, select and conceal the same. Nor did he witness the Plaintiff intentionally walk past the cash register, nor did she show any attempt to leave the premises. Defendant Porter's actions were prompted by the false and inaccurate reporting of Co-Defendant Walmart's employees. Accordingly, the determination of whether Plaintiff was falsely arrested and imprisoned should be submitted to the jury.

Furthermore, while Walmart's had the right to stop and delay their customers, such should be done in a reasonable manner and within a reasonable time. Ronnie Miller, an employee of co--Defendant WALMART, stated in his deposition Defendant WALMART's policy in relation to shoplifting. (Exhibit 1) Defendant Porter, with gross negligence, did not follow the said policy when, without personally observing her committing any of the four elements of co-Defendant WALMART shoplifting policy (selection, concealment, continued possession and last point of sale). There is nothing reasonable in the manner by which Defendant Officer Porter forcefully seized Plaintiff, who was smaller and lighter than him,

slammed her on the floor and unlawfully and illegally searched her purse. Defendant Officer Porter used such force that it resulted in bruises and physical injuries on the Plaintiff. (Exhibits 2-3).

III. DEFENDANTS CITY OF SPARTANBURG AND SPARTANBURG POLICE DEPARTMENT ARE PROPER PARTIES IN THE MALICIOUS CLAIMS PROSECUTION

Under *Monell v. Department of Social Serv.*, 436 U.S. 658 (1978), a municipal government can be held liable under Section 1983 if a plaintiff can demonstrate that a deprivation of a federal right occurred as a result of the local government's local officials whose acts may fairly be said to be those of the municipality. Defendants insist that no municipality can be held liable under §1983 on a respondeat superior theory. Plaintiff submits that the Complaint against Defendants City of Spartanburg and Spartanburg Police Department is not based on respondeat superior but an independent action based on Defendants City and Police Department's failure to properly train, supervise, and discipline Defendant Porter. In the case of *City of Canton v. Harris*, 489 U.S. 378, 390 (1989) as cited in *Drayton vs. County of Charleston*, Civil Action No. 2:14-cv-3488-RMG-MGB (D.S.C. Jul. 10, 2015), the Court held that the failure to provide proper training may fairly be said to represent a policy for which the city is responsible if it actually causes injury. The physical, emotional and mental injuries sustained by Plaintiff in the hands of Defendant Porter's lack of proper training has yet to be addressed by Defendant City and Police Department.

Furthermore, Defendants City and Police Department's failed to provide remedial action in response to prior complaints against Defendant Porter is tantamount to condoning Defendant Officer Porter's violation of Plaintiff's right against unreasonable search and seizure, due process, right to liberty and right against use of excessive force. Plaintiff asserts that the state's

inaction is an action, which amounts to a custom or practice of deliberate indifference, and not just mere negligence.

The jury then must determine whether those officials who have the power to make official policy, or in the alternative, the custom or practice of inaction perpetuated by Defendants, has caused Plaintiff's deprivation of rights.

IV. THE DEFENDANTS ARE NOT ENTITLED TO QUALIFIED IMMUNITY

Defendants assert that the instant action be dismissed because they are entitled to qualified immunity. Such qualified immunity however does not protect herein Defendants since their conduct is in clear violation of Plaintiff's constitutional and statutory rights. Defendant Porter's act of conducting unreasonable search and seizure upon the person and property of Plaintiff, without probable cause, and using excessive force by slamming Plaintiff on the floor clearly violates Plaintiff's right to due process and liberty. As a police officer, Defendant Officer Porter, should have known that using such force against Plaintiff would result in the latter sustaining physical injuries. The degree of force exerted by Defendant Porter upon Plaintiff is unreasonable, considering the difference in their physicality and strength.

In determining whether the constitutional line has been crossed, a court must look to such factors as the need for application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously or sadistically for the very purpose of causing harm. *Johnson v. Glick*, 481 F.2d 1028 as cited in *Graham v. Connor*, 490 U.S. 386 (1989). Thus, Plaintiff submits that there is genuine issues to be adjudicated in the present action.

CONCLUSION

For the above and foregoing reasons, Plaintiffs submit that Defendant's motion to dismiss should be denied.

Respectfully submitted,

February 28, 2017

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Miller, Ronnee - Vol. I, (Pages 1:1 to 2:17)

1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG

CAITLYN LANGHAM,

Plaintiff,

vs. Case No.: 2016-CP-42-1280

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

DEPOSITION

WITNESS: RONNEE MILLER

DATE: Wednesday, January 18, 2017

TIME: 1:05 p.m.

LOCATION: Logan, Jolly & Smith
1805 North Boulevard
Anderson, South Carolina

TAKEN BY: Attorneys for the Defendant

REPORTED BY: ANDREA SHORB
Court Reporter

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On behalf of Wal-Mart, Inc.

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On behalf of Officer Russell Porter and
City of Spartanburg
Miller, Ronnee - Vol. I, (Pages 11:1 to 15:17)

- 1 address a shoplifting incident?
- 2 A. Yes.
- 3 Q. Can you tell me what the procedure for Wal-
- 4 Mart is when you have an alleged shoplifting?
- 5 A. As an AP associate, you have to have the --
- 6 the four elements. Once you get all four
- 7 elements and they pass the last point of sale,
- 8 which is them going out the door, you then
- 9 approach and take them into the office. From
- 10 there you collect the items, obtain the
- 11 receipt. And then from there, if police need
- 12 to be contacted, we you get them involved. If
- 13 not, we take our information, key it in the
- 14 system and go from there.
- 15 Q. All right. Well, I'm not going to lie to you
- 16 one bit. I didn't get a single thing of that,
- 17 so if we could go slowly for me.
- 18 A. Okay.
- 19 Q. The four elements, what are the four elements?
- 20 A. You have to get selection.

21 Q. Selection meaning?
22 A. Them picking up the items.
23 Q. Yes, ma'am.
24 A. Concealing it.
25 Q. And that means that they've concealed it in
12
1 some way?
2 A. Uh-huh.
3 Q. And what does "concealed" mean to you?
4 A. To me would be placing it in your pocket,
5 placing it in your purse, putting the item on.
6 If it's a hat, taking the tag off and placing
7 the item on head, on your head. That would be
8 concealing it.
9 Q. And the third?
10 A. Continued possession.
11 Q. And that would mean what specifically?
12 A. As you're watching them, they -- like if
13 they're shopping now, after they already got
14 the item, do they still have it on them; that
15 you're just verifying that they didn't take it
16 out of their purse or put the item down.
17 Q. So it's maintaining it in the area that it's
18 been concealed in?
19 A. Uh-huh.
20 Q. Is that "yes"?
21 A. Yes, sir.
22 Q. Thank you. And the fourth element?
23 A. Last point of sale.
24 Q. All right. And that means what?
25 A. Walking out the front door, passing all
13
1 registers.
2 Q. So once that occurs --
3 A. Uh-huh.
4 Q. -- is that when you approach the individual?
5 A. Yes, sir.
6 Q. And passing all registers, meaning, the last
7 opportunity to pay for it?
8 A. Yes, sir.
9 Q. Do you let them get out of the building, or is
10 it just past the register?
11 A. Past the register.
12 Q. Take me from that, that point, please.
13 A. From that point, we then do the approach,
14 identify ourselves. I'll ask them to come

- 15 into the -- the substation.
16 Q. So you have them in the substation?
17 A. Uh-huh. Once they're in the substation, then
18 ask for our items back. We would have the
19 witness or someone come to the substation and
20 grab the items.
21 Q. For what purpose?
22 A. That is a return receipt, so that we can get a
23 subtotal.
24 Q. Okay.
25 A. While that's going on, you then ask for ID.

14

- 1 We then look them up in the system, which we
2 call APIS, A-P-I-S.
3 Q. And so that's for the purpose to see if they
4 are already not allowed to come on -- what's
5 the -- what's the term?
6 A. Just to see if they're already in the system.
7 Q. Trespass.
8 A. Yes. To see if they're trespass also.
9 Q. So you look on there, on APIS, to see if they
10 are on trespass. And if they are not, you go
11 about putting them on trespass?
12 A. Depending on the statement, the situation.
13 Not all shoplifters are on trespass.
14 Q. And the next step?
15 A. After we do all that, get return receipt, they
16 have -- verify the ID, check APIS to see if
17 they're in there. We either contact the
18 police or we release the suspect.
19 Q. And the decision to release or call the police
20 is based on what?
21 A. Based on the dollar amount and if they're in
22 the system or not and also age, for example.
23 Q. Can you explain that to me, please?
24 A. Age, if they're sixteen or younger, we
25 normally will call the parents; get them

15

- 1 involved and then release into the custody of
2 their parents. If it's over \$25 and they have
3 no ID, police are contacted to identify the
4 suspect and because they went over their \$25
5 dollar amount.
6 Q. Is there another one?
7 A. No, sir.
8 Q. Would you say that it was a case-by-case

9 basis?
10 A. Yes.
11 Q. At your store now or Spartanburg previous, is
12 there always an agent, like a police officer
13 for -- police officer from some area of law
14 enforcement that works as well?
15 A. On a daily basis --
16 Q. Yes.
17 A. -- is there? No, sir.

State of South Carolina
County of Spartanburg

Court of Common Pleas

Caitlyn Langham)
)
 Plaintiff,)
 v.)
)
 Russell Porter, et al)
)
 Defendant.)

Transcript of Record
2016-CP-42-01280

February 28, 2017
Spartanburg, South Carolina

B E F O R E:

The Honorable R. Keith Kelly, Judge.

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

Donald Smith, Esquire
Attorney for the Plaintiff

Randi Lynn Roberts, Esquire
Attorney for Wal-Mart

James Jolly, Esquire
Attorney for Officer Porter

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

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THE COURT: *Caitlyn Langham v. Russell Porter.*

MS. ROBERTS: Hi, Your Honor. It's Randi Lynn Roberts here on behalf of Wal-Mart.

THE COURT: Yes, ma'am.

MR. JOLLY: Your Honor, Jim Jolly. I'm here for Officer Porter and the City ---

THE COURT: Yes.

MR. JOLLY: --- but I think -- I'm not part of the first motion, I don't think.

THE COURT: Okay. Is the reconsideration the first thing?

MR. SMITH: Yes, sir.

THE COURT: Okay. I read it over lunch. Yes, sir.

MR. SMITH: Your Honor, may it please the Court?

Your Honor, it's our contention that the officer became part of Wal-Mart and, therefore, is nonimmune, especially considering the lack of probable cause in our estimation.

The officer never saw anything that included concealment, didn't see her pick up anything, and would appear that the arguments are basically fact

1 based. And with that in mind, seemingly we passed
2 the summary judgment.

3 The results are unlawful search and seizure
4 based on the fact that Officer Porter did not see
5 Ms. Langham pass the -- the cashier.

6 And according to Wal-Mart, is -- it's not the
7 way it's done. Supposed to -- they're supposed to
8 get outside before they can be held for stealing or
9 theft. And we believe that Officer Porter acted
10 recklessly in doing that. And as a result, we don't
11 believe he has immunity.

12 And with regard to Wal-Mart, Wal-Mart is
13 equally part of that because they're the ones that
14 told him that she had stolen. And when he got
15 there, she hadn't stolen, or at least that's the
16 fact she's seen.

17 And, previously, it's our belief this is an
18 argument over facts. And with that in mind, the
19 jury should have the opportunity to -- to hear it.

20 THE COURT: Okay. Yes, ma'am.

21 MS. ROBERTS: Your Honor, again, Randi Lynn
22 Roberts on behalf of Wal-Mart.

23 Plaintiff did not present any further facts or
24 issues that the Court did not consider in its
25 initial ruling of this matter. It's my

1 So we would ask for summary judgment on behalf
2 of the officer under qualified immunity. And if he
3 gets qualified immunity and that means there's no
4 Constitutional violation, then the Department and
5 the City would not be liable either.

6 So that's our argument, Judge. I'll be glad to
7 answer any questions.

8 THE COURT: That's good. Thank you.

9 Mr. Smith?

10 MR. SMITH: Yes, sir. May it please the Court?

11 I'll begin by saying that Wal-Mart -- the lady
12 that testified for Wal-Mart and in her deposition
13 said there were 50 cameras within Wal-Mart. In
14 particular, I'm assuming that there's several around
15 the register.

16 As I told the jury in the criminal case, if --
17 if there was truly something on the video, they
18 would've seen it. That's their policy. Wal-Mart
19 said that they keep the video for each progression
20 of the person in the store, or at least review it.

21 They had no video for the criminal trial, and I
22 requested it. They don't have criminal -- the video
23 now. So the idea that the video is not there, in
24 and of itself raises a question.

25 Ms. Langham ended up bruised from this action,

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-42-1280

Caitlyn Langham,)
)
 Plaintiff,)
)
 v.)
)
 Officer Russell Porter, City of)
 Spartanburg, Police Department,)
 and Wal-Mart Stores, Inc.,)
)
 Defendants,)
)
 _____)

ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS
PORTER, CITY OF SPARTANBURG,
AND SPARTANBURG POLICE
DEPARTMENT

This matter is before the Court on the Motion for Summary Judgment of Defendants Porter, City of Spartanburg, and Spartanburg Police Department. For the reasons set forth below, the Court hereby grants summary judgment to these Defendants as to all causes of action raised by the Plaintiff. The Court finds the statute of limitations ran prior to the filing of the Plaintiff's Complaint on all state causes of action except malicious prosecution. Furthermore, the Court finds that the Defendants are entitled to summary judgment as to the malicious prosecution and §1983 causes of action based upon the existence of probable cause to arrest, detain and try the Plaintiff.

PROCEDURAL HISTORY

Plaintiff filed this action with the Clerk of Court for the County of Spartanburg, State of South Carolina, on April 8, 2016, alleging both federal and state causes of action in connection with her arrest for shoplifting on or about December 24, 2013. The Defendants filed an Answer that included, among other defenses, any applicable statutes of limitations. The Defendants filed the Motion for Summary Judgment on December 8, 2016, and a hearing was held on February 28, 2017.

FACTUAL HISTORY¹

According to the Plaintiff's Complaint, she 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 Plaintiff's Complaint admits that Wal-Mart employees told Officer Porter that they witnessed her placing items in her purse. (Complaint ¶¶ 9-13.) The Plaintiff admits that she had a drug problem and was "probably" on pain medicine on the date of her arrest. (Depo. of Caitlyn Langham, p. 12, l. 23 – p. 13, l. 22; p. 14, l. 3-6.)

Officer Porter approached the Plaintiff and personally observed numerous Wal-Mart items in her open shoulder bag/purse. As Officer Porter attempted to place the Plaintiff 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 Plaintiff's purse included hygiene items, snacks, and candies worth \$74.62. (See Trial Transcript, p. 8, l. 1 – p. 9, l. 13).

LEGAL STANDARDS

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.C.P. 56(c). Summary judgment is appropriate when it is clear that there is no

¹ The facts are based on the pleadings, depositions, and other exhibits submitted to the Court, including excerpts of the criminal trial transcript, and are taken in the light most favorable to the Plaintiff.

genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 541 S.E.2d 831 (2001). The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

In determining whether any triable issue of fact exists, the evidence and all inferences, which can be reasonably drawn therefrom, must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Guinan v. Tenet Healthsystems of Hilton Head*, 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009).

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *Moates v. Bobb*, 322 S.C. 172, 470 S.E.2d 402 (Ct.App.1996) (citing 54 C.J.S. Limitations of Actions § 2, at 16-17 (1989)). "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* (citing 51 Am.Jur.2d, Limitation of Actions § 18, at 603 (1970)).

LEGAL ANALYSIS

I. THE PLAINTIFF'S STATE CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff's causes of action for false imprisonment, defamation, and assault and battery are barred by the applicable statutes of limitation. "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). This action was not filed until April 8, 2016, which was more than two (2) years after the Plaintiff’s arrest on December 24, 2013.² Based thereon, those causes of action should be dismissed.³

Moreover, with respect to the accrual of a cause of action under the Tort Claims Act, “the statute of limitations begins to run when the Plaintiff should know that she might have a potential claim against another, not when she develops a full blown theory of recovery.” *Joubert v. S.C. Department of Social Services*, 341 S.C. 176, 190, 534 S.E. 2d 1,8 (SC App. 2000). S.C. Code Ann. §15-78-110(a). The date on which discovery should have been made is an objective, not subjective question. *Kruetner v. David*, 320 S.C. 283, 465 S.C. 2d 88 (1995). “A cause of action accrues when the Plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action.” *Brooks v. City of Winston Salem, N.C.*, 85 F 3d 178 (4th Cir. 1996) (quoting *Nasim v. Warden, Md. House of Correction*, 64 F 3d 951 (4th Cir. 1995) (en banc), cert. denied 516 US 1177 (1996)). Since Plaintiff knew of her arrest on December 24, 2013, the statute of limitations began to run on such date. Therefore, the Plaintiff’s two-year time period for filing suit expired on December 24, 2015. As Plaintiff did not file her initial suit in this matter until April 8, 2016, the Defendants are entitled to summary judgment based upon the statute of

² At a prior hearing held on August 25, 2016 on the Defendant Wal-Mart’s Motion to Dismiss, the Plaintiff conceded that the state claims, including false imprisonment and defamation, are barred by the two-year statute of limitations found in §15-3-550.

³ This Court previously found that the two-year statute of limitations found in §15-3-550 barred the Plaintiff’s causes of action against Wal-Mart for false imprisonment and defamation. (See Order of November 15, 2016.)

limitations as to all state causes of action pled by the Plaintiff, with the exception of malicious prosecution.⁴

II. THE PLAINTIFF'S FOURTH AMENDMENT CLAIM AND HER CLAIMS FOR FALSE ARREST AND MALICIOUS PROSECUTION ARE PRECLUDED BY PROBABLE CAUSE.

Plaintiff's causes of action for unreasonable search and seizure under the Fourth Amendment, as well as for false imprisonment and malicious prosecution under state law, 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). Similarly, 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 (SC 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 (SC App. 1995); *Wortman v. Spartanburg*, 310 SC 1, 425 SE 2d 18 (1992).

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

⁴ Although malicious prosecution also has a two-year statute of limitations under the S.C. Tort Claims Act, one of the elements is that the prosecution was terminated in the Plaintiff's favor. Therefore, that time period did not begin to run until the Plaintiff's acquittal on September 17, 2014. See *Peirce v. Bryant*, 2016 WL 1061060 (D.S.C. March 17, 2016).

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*).

The evidence establishes probable cause: witnesses told Officer Porter that they had seen the Plaintiff place items into her purse; suspiciously, the Plaintiff attempted to leave the store as the officer approached; and the officer personally observed Wal-Mart merchandise in her open purse. In addition, at the conclusion of the State’s case in the criminal trial, the defense 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.” (Trial Transcript, p. 22, l. 8 – p. 23, l. 12). Based thereon, probable cause existed, as a matter of law, for the Plaintiff’s arrest in this case. Therefore, Plaintiff’s state causes of action for false imprisonment and malicious prosecution and her Fourth Amendment claim are barred and the Defendants are entitled to summary judgment thereon as a matter of law.

CONCLUSION

Based on the above, summary judgment as to all claims is hereby granted to the Defendants Porter, City of Spartanburg, and City of Spartanburg Police Department, and the case is dismissed with prejudice as to these defendants.

Electronic signature page to follow.



Spartanburg Common Pleas

Case Caption: Caitlyn Langham VS Russell Porter , defendant, et al
Case Number: 2016CP4201280
Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-03-22 13:16:53 page 8 of 8

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-42-1280

Caitlyn Langham,)
)
 Plaintiff,)
)
 v.)
)
 Officer Russell Porter, City of)
 Spartanburg, Police Department,)
 and Wal-Mart Stores, Inc.,)
)
 Defendants,)
)
 _____)

MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT BY
DEFENDANTS PORTER, CITY OF
SPARTANBURG, AND SPARTANBURG
POLICE DEPARTMENT

COMES NOW the Defendants Officer Russell Porter, City of Spartanburg, and Spartanburg Police Department, by and through their undersigned legal counsel, and file this Memorandum of Law in support of their Motion for Summary Judgment.

STATEMENT OF THE CASE

Plaintiff filed this action with the Clerk of Court for the County of Spartanburg, State of South Carolina, on April 8, 2016, alleging both federal and state causes of action in connection with her arrest for shoplifting on or about December 24, 2013. The Defendants filed an Answer that included, among other defenses, any applicable statutes of limitations. The Defendants filed the Motion for Summary Judgment on December 8, 2016, and now submit this Memorandum in support of the Motion.

STATEMENT OF THE FACTS¹

According to the Plaintiff's Complaint, she was shopping at the Wal-Mart store in Spartanburg on Christmas Eve of 2013 when she "decided to pick up a few personal

¹ The facts are based on the pleadings on file with the Court, the depositions cited herein, and/or the documents submitted herewith as Exhibits.

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 Plaintiff’s Complaint admits that Wal-Mart employees told Officer Porter that they witnessed her placing items in her purse. (Complaint ¶¶ 9-13.) The Plaintiff admits 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, attached hereto as Exhibit 1)

Officer Porter approached the Plaintiff and personally observed numerous Wal-Mart items in her open shoulder bag/purse. As Officer Porter attempted to place the Plaintiff 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 Plaintiff’s purse included hygiene items, snacks, and candies worth \$74.62. .” (See Trial Transcript excerpts attached hereto as Exhibit 2, p. 8, l. 1 – p. 9, l. 13).

LEGAL STANDARDS

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” S.C.R.C.P. 56 (c). Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 541 S.E.2d 831 (2001). The purpose of summary judgment is to

expedite the disposition of cases that do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Guinan v. Tenet Healthsystems of Hilton Head*, 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009).

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *Moates v. Bobb*, 322 S.C. 172, 470 S.E.2d 402 (Ct.App.1996) (citing 54 C.J.S. Limitations of Actions § 2, at 16-17 (1989)). "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* (citing 51 Am.Jur.2d, Limitation of Actions § 18, at 603 (1970)).

LEGAL ARGUMENT

I. THE PLAINTIFF'S STATE CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff's causes of action for false imprisonment, defamation, and assault and battery are barred by the applicable statutes of limitation. "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). This action was not filed until April 8, 2016, which was more than two (2) years after the Plaintiff's arrest on December 24, 2013.² Based thereon, those causes of action should be dismissed.³ Moreover, with respect to the accrual of a cause of action under the Tort Claims Act, "the statute of limitations begins to run when the Plaintiff should know that she might have a potential claim against another, not when she develops a full blown theory of recovery." *Joubert v. S.C. Department of Social Services*, 341 S.C. 176, 190, 534 S.E. 2d 1,8 (SC App. 2000). S.C. Code Ann. §15-78-110(a). The date on which discovery should have been made is an objective, not subjective question. *Kruetner v. David*, 320 S.C. 283, 465 S.C. 2d 88 (1995). "A cause of action accrues when the Plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." *Brooks v. City of Winston Salem, N.C.*, 85 F 3d 178 (4th Cir. 1996) (quoting *Nasim v. Warden, Md. House of Correction*, 64 F 3d 951 (4th Cir. 1995) (en banc), cert. denied 516 US 1177 (1996)). Since Plaintiff knew of her arrest on December 24, 2013, the statute of limitations began to run on such date. Therefore, the Plaintiff's two year time period for filing suit expired on December 24, 2015. As Plaintiff did not file her initial suit in this matter until April 8, 2016, the Defendants are entitled to

² At a hearing held on August 25, 2016 on the Defendant Wal-Mart's Motion to Dismiss, the Plaintiff conceded that the state claims, including false imprisonment and defamation are barred by the two-year statute of limitations found in §15-3-550.

³ Judge R. Keith Kelly previously found that the two-year statute of limitations found in §15-3-550 barred the Plaintiff's causes of action against Wal-Mart for false imprisonment and defamation. (See Order of November 15, 2016, attached hereto as Exhibit 3.)

summary judgment based upon the statute of limitations as to all causes of action pled by the Plaintiff with the exception of malicious prosecution. Defendants concede for purposes of this motion that since one of the elements Plaintiff must prove to establish malicious prosecution is termination in the Plaintiff's favor, the statute arguably did not start to run until September 17, 2014, when the Plaintiff was acquitted. However, malicious prosecution, along with all of the other causes of action, is barred by the conclusive existence of probable cause.

II. **THE PLAINTIFF'S FOURTH AMENDMENT CLAIMS AND HER CLAIMS FOR FALSE ARREST AND MALICIOUS PROSECUTION ARE PRECLUDED BY PROBABLE CAUSE.**

Plaintiff's causes of action for unreasonable search and seizure under the Fourth Amendment, as well as for false imprisonment and malicious prosecution under state law, 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). Similarly, 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 (SC 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 (SC App. 1995); *Wortman v. Spartanburg*, 310 SC 1, 425 SE 2d 18 (1992).

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*).

The evidence establishes probable cause: witnesses told Officer Porter that they had seen the Plaintiff place items into her purse; the Plaintiff (suspiciously and abruptly) attempted to leave the store as the officer approached; and the officer personally observed Wal-Mart merchandise in her open purse. In addition, at the conclusion of the State’s case in the criminal trial, the defense 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 excerpts attached hereto as Exhibit 4, p. 22, l. 8 – p. 23, l. 12). Based thereon, probable cause existed, as a matter of law, for the Plaintiff’s arrest in this case.

Therefore, Plaintiff's state causes of action for false imprisonment and malicious prosecution and her Fourth Amendment claim are barred and the Defendants are entitled to summary judgment thereon as a matter of law.

III. THE DEFENDANTS CITY OF SPARTANBURG AND SPARTANBURG POLICE DEPARTMENT ARE NOT PROPER PARTIES HERETO AND ARE ENTITLED TO DISMISSAL OR SUMMARY JUDGMENT.

There are two (2) causes of action brought against the City/Police Department: (1) the seventh cause of action, for malicious prosecution; and (2) the eighth cause of action, brought pursuant to §1983. As argued above, the Defendants are entitled to dismissal and/or summary judgment as to the malicious prosecution claim based on probable cause. In addition, the Defendants City of Spartanburg and Spartanburg Police Department are not proper defendants as to the Plaintiff's §1983 claims.

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, 690-91 (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 Plaintiff 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 the Plaintiff's §1983 claim against the City or the Police Department. Therefore, these Defendants are entitled to summary judgment as to the Plaintiff's §1983 cause of action against them.

IV. THE DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.

In addition to the above, the Defendants are also entitled to qualified immunity herein. 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 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). As stated above, Plaintiff has failed to establish that Defendants violated her rights, much less that they knowingly did so, thus entitling the Defendants to qualified immunity for all claims.

CONCLUSION

Based on the above, the Defendants Porter, City of Spartanburg, and City of Spartanburg Police Department are entitled to dismissal or summary judgment as to the Plaintiff's claims.

LOGAN, JOLLY & SMITH, LLP

s/James D. Jolly, Jr.

James D. Jolly, Jr.
1805 North Boulevard
Post Office Box 259
Anderson, SC 29622
864-226-1910 (phone)
Attorney for Defendants, Officer Russell Porter,
City of Spartanburg and Spartanburg
Police Department

Anderson, South Carolina

Dated: February 24, 2017

Caitlyn Langham

State of South Carolina

vs.

Caitlyn Langham

DATE TAKEN: September 17, 2014

LOCATION: Spartanburg Municipal Court

145 West Broad Street

Spartanburg, South Carolina 29306

B E F O R E: Honorable Judge Erika McJimpsey

1 Q. -- were you alerted to the defendant?
2 A. I actually saw her coming toward the front of the
3 store while I was already dealing with another
4 shoplifting incident, and she was actually trying to
5 make her way to the exit, and that also caught my
6 attention, also. I then approached her there at the
7 little register near the side door. I don't know if
8 you're familiar with the Walmart on the Westside or
9 not, but near the entrance where the McDonald's is,
10 on that side. I approached her over there. She was
11 trying to get into the line of people that were
12 already at the register, and she was actually trying
13 to break in front of them to try to get in front
14 because she saw me coming towards her. I did
15 approach her, noted she had a big pink purse hanging
16 off her side. As soon as you look down into the
17 purse, the purse was open, I see a bunch of items
18 inside the purse. At that time I began to try to
19 talk to her. She pulled away and I had a little
20 struggle there. I had to actually take her to the
21 floor. Once I took her to the floor, got her purse,
22 started pulling items out of her purse, hygiene
23 items, snacks, candies, all sorts of items from the
24 store that were not purchased. At that time I
25 placed her into custody and charged her with

1 shoplifting.

2 Q. Do you know what the value of the items that were
3 taken were?

4 A. Yes, sir. The property value was \$74.62. I had
5 those items -- the store ring those items up for me
6 to get an actual value of them.

7 Q. Were any of the items damaged?

8 A. They all were resalable.

9 Q. So Walmart is not seeking any restitution?

10 A. That's correct.

11 Q. And all of those items -- you confirmed those were
12 all items that were located and sold by Walmart?

13 A. Yes, that's correct.

14 Q. Did she say anything else to you that day?

15 A. No. She was actually kind of disoriented or either
16 high for lack of -- lack of terms. Kind of
17 incoherent.

18 MR. SMITH:

19 Objection as to finding that she was high or
20 something (inaudible).

21 THE COURT:

22 State's response?

23 THE STATE:

24 Your Honor, he was just stating his impression of
25 what I believe there's case law that officer's as

**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

RECEIVED
FEB 06 2018
SC Court of Appeals

Caitlyn Langham

Appellant,

vs.

Officer Russell Porter, City of Spartanburg
Police Department, and WALMART Stores, 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, Appellant's Reply Brief to Respondent Porter and City of Spartanburg Police Department's Initial Brief 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 February 1, 2018.

February 1, 2018



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Attorney for Appellant

FORM 8
LETTER TO THE APPEALS COURT CLERK
FILING APPELLANT'S RETURN TO RESPONDENT WALMART'S
MOTION TO STRIKE MATTERS IN APPELLANT'S DESIGNATION
OF MATTERS AND REPLY BRIEF TO RESPONDENT PORTER AND
CITY SPARTANBURG POLICE DEPARTMENT'S INITIAL BRIEF

February 1, 2018

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

RECEIVED
FEB 06 2018
SC Court of Appeals

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

Dear Honorable Kitchings:

Please find enclosed the original and seven (7) copies of Appellant's Return to Respondent WALMART's Motion to Strike Matters from Appellant's Designation of Matters, as well as a copy of Appellant's Reply Brief to Respondent Porter and City of Spartanburg Police Department's Initial Brief which I am filing in the above-referenced matter: Enclosed as well is proof of service for same. 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.

Sincerely,


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Stacy Todd Coffee, Esquire
Lee Ellen Bagley, Esquire
Randi Lynn Roberts, Esquire