

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**  
JUN 15 2018  
SC Court of Appeals

Caitlyn Langham,

Appellant,

vs.

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

Respondents.

**OPPOSITION TO RESPONDENTS PORTER AND CITY OF  
SPARTANBURG POLICE DEPARTMENT'S OBJECTION TO AND MOTION TO  
STRIKE MATTERS FROM APPELLANT'S AMENDED FINAL BRIEF  
AND AMENDED FINAL REPLY BRIEF**

The two underlying appeals were consolidated on November 29, 2017. Appellant filed her Initial Brief and Designation of Matters on December 28, 2017.

In her Initial brief, Appellant reiterated her arguments from pleadings submitted to the lower court. (e.g. Opposition to Defendants' Motion for Summary Judgment, Plaintiff's Motion for Reconsideration). To expound on her allegations, Appellant cited pages of deposition transcripts in several instances.

Respondents thereafter filed their respective Motion to Strike Matters from Plaintiff's Designation of Matter, which the Appellant opposed. This Court granted the Motion in its Order, dated March 8, 2018, which stated:

*“Respondents’ motion to strike is granted. The pages of the deposition transcripts referenced in Respondents’ motion to strike shall not be included in the record on appeal. See Rule 210(c), SCACR (providing the record on appeal shall not include matters that were not presented to the lower court).”*

On May 4, 2018, Appellant submitted her Appellant’s Record on Appeal, Final Brief and Final Reply Briefs to respective Respondents’ Final Briefs. In compliance with the Court’s Order, dated March 8, 2018, Appellant did not include the pages of deposition transcripts referenced in Respondents’ motion to strike in her Record on Appeal. Appellant filed her Final Brief and Final Reply Briefs to respective Respondents in the exact same way as her Initial Brief and Initial Reply Briefs, based on Rule 211(b) SCACR.

Respective Respondents called the attention of herein Appellants on the pages of deposition transcripts that were still cited on Appellant’s Final Brief and Final Reply Briefs.

On May 23, 2018, Appellant amended her Final Brief and Final Reply Briefs, removing the pages of deposition transcripts and cited transcripts (see Exhibit 1, Comparison of the Arguments in the Appellant’s Briefs)

Appellant opposes Respondent’s Motion to Strike any reference to or arguments because these arguments have been previously presented in the lower court in Appellant’s various pleadings. Rule 210 (c ) specifically stated that the “Record on Appeals shall not include matters that were not presented in the lower court.” These arguments/matters in fact appear in the Record on Appeal, as they were restatements of arguments found in Appellant’s Opposition to Defendants’ Motion for Summary Judgment and Motion for Reconsideration, which the lower court ruled upon. Thus, Appellant believes that the arguments should be retained in her final briefs.

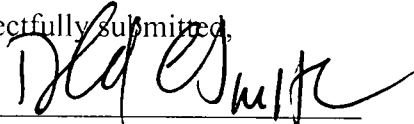
CONCLUSION

Appellant pleads that the arguments sought to be stricken by Respondents Porter and City of Spartanburg Police Department were presented to and decided upon by the lower court, included in the Record on Appeal, and as such, are proper matters to be included in her Final Briefs and Final Reply Briefs.

WHEREFORE, for the above and foregoing reasons, Appellant respectfully submits that Respondents Porter and City of Spartanburg Police Department' Motion to Strike matters from Appellant's Amended Final Brief and Amended Final Reply Briefs, should be denied.

June 12, 2018  
Anderson, S.C.

Respectfully submitted,



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Appellant's Initial Brief/Final Brief	Appellant's Amended Final Brief	Reference from Previous Pleading
<p>1) P. 6 Miller testified she cannot recall having seen the Appellant select or pick out an item, conceal, nor carry it out of the store nor pass the check-out counter or cashier. (Miller Dep., 38:22-25;39:1-6, Id. ).</p>	<p>p. 6 Miller testified she cannot recall having seen the Appellant select or pick out an item, conceal, nor carry it out of the store nor pass the check-out counter or cashier. (R. p. 113).</p>	<p><b>Appellant's Opposition to Defendants' Porter and City of Spartanburg Motion for Summary Judgment, dated February 28, 2017, p. 5, par. 2, (appearing in the Record on Appeal, R., p. 113):</b></p> <p><i>"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)."</i></p>
<p>p. 6-7.</p> <p>Respondent Porter did not personally observe Appellant approach any merchandise, select nor conceal the same. In fact, he testified in a prior criminal case that he accosted Appellant upon the prodding of a WAL-MART employee, who allegedly saw her carrying personal items suspiciously. (Russell Porter Tr., 19-11-25; 20:1-8). Respondent Porter did not personally witness Appellant intentionally attempt to leave the building without paying for the items, as in fact he arrested her while she was in line to pay for the items she had chosen.</p> <p><i>"Q: Well, where did you— where did you see her take something? A: <u>I didn't see her take anything. The things were</u></i></p>	<p>p. 6-7.</p> <p>Respondent Porter did not personally observe Appellant approach any merchandise, select nor conceal the same. In fact, he testified in a prior criminal case that he accosted Appellant upon the prodding of a WAL-MART employee, who allegedly saw her carrying personal items suspiciously. (R. 113). Respondent Porter did not personally witness Appellant intentionally attempt to leave the building without paying for the items, as in fact he arrested her while she was in line to pay for the items she had chosen. (R. p. 113).</p> <p>Entire Transcript of Trial Porter Testimony was deleted.</p>	<p><b>Appellant's Opposition to Defendants' Porter and City of Spartanburg Motion for Summary Judgment, p. 5, par. 1, (R,p.113) :</b></p> <p><i>"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</i></p>

<p><b><u>in her bag. I don't have to see her take anything?</u></b>  <i>Q: You—you go grab people and start going through their purse with—</i>  <i>A: No. As soon as I walked up to her I looked into her bag, and the items were in her bag.</i>  <i>Q: And you knew that was stolen because why?</i>  <i>A: Because she immediately tried to—tried to leave. She tried to turn and walk away from me.”</i>  <i>(Emphasis supplied)</i></p> <p>(Porter, Trial Testimony. 14: 1-9, September 17, 2014)</p> <p><i>“Q: The bottom line is you did not see her put anything in that purse, did you?</i>  <i>A: I don't have to see her put it in. That's not—that's not a part of the statute I have to see her put it in. She needs (ph) possession of it. I don't have to see her put it in.</i>  <i>Q: She hadn't gotten through the line, had she?</i>  <i>A: No, she had not.</i>  <i>Q: Okay. So, you're essentially assuming that she wasn't going to pay for something?</i>  <i>A: By her actions she did not intend to pay, and she didn't have the money. She didn't have the \$74.16 in her purse when we checked her.</i>  <i>Q: And that's why she took—she took stuff from her cart and put it to the side—”</i>  <i>(Emphasis supplied)</i></p> <p>(Porter Trial Testimony. 15: 17-25; 16:1-6).</p>		<p><i>determination of whether Plaintiff was falsely arrested and imprisoned should be submitted to the jury.”</i></p>
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COMPARISON OF THE ARGUMENTS IN THE APPELLANT'S BRIEFS

<p> <i>Q: So we don't—we don't have any video?</i>  <i>A: No.</i>  <i>Q: We don't have the alleged witnesses?</i>  <i>A: No witnesses.</i>  <i>Q: Well, people—</i>  <i>A: (Inaudible) witness?</i>  <i>Q: --that actually saw what happened. Right? That's how you learned of it. Right?</i>  <i>A: Saw?</i>  <i>Q: I mean you don't just go up to people and attack them and say, You stole this. Right?</i>  <i>A: No, huh-uh.</i>  <b><i>Q: Okay. Well, there were people that gave you that hint. Right?</i></b>  <b><i>A: Right.</i></b>  <i>Q: Where are they?</i>  <i>A: I don't know.</i>  <i>Q: Do you have anybody here from WALMART to say that you can't – the video was not good, you couldn't see it, or you just didn't get it? Right?</i>  <i>A: There was no video, sir. I went in the LP office, asked the LP guy. Is this area covered? No this area is not covered. There's nothing— (Emphasis supplied).</i> </p> <p>(Porter Trial Testimony, 19:11-25; 20: 1-8).</p>		
<p>3. p. 11</p> <p>Furthermore, there was a genuine issue of material fact as to the appropriateness of Respondent Porter's action in arresting, detaining, and manhandling Appellant. In her deposition, Ronnee Miller stated that police officers are hired by Respondent WAL-MART to provide security.</p>	<p>The transcript as well as transcript pages of Ronnee Miller Deposition on WALMART's hiring of police officers, appearing on Page 11 of Appellant's Final Brief, was deleted. This matter was not discussed at all in Appellant's Amended Final Brief.</p>	

**COMPARISON OF THE ARGUMENTS IN THE APPELLANT'S BRIEFS**

<p><i>“Q: What procedures are law enforcement agents to follow when they’re looking for you? Ms. Bagley: Object to the form. A: They—I mean, they—they normally do their job as a police officer and whatever that entails. And then they’re —like I said, they’re just there for security purposes and just crowd control when hired in. Q: All right. And so correct me if I’m wrong, that the purpose of the law enforcement agent is not to catch shoplifters; it is to maintain calm within the store? A: Yes, sir. Q: So to keep people from stabbing each other for an Xbox? A: Yes sir.”</i></p> <p>(Ronnee Miller Dep., 21:23-25; 23:1-15).</p>		
<p>4. p. 14, par. 2</p> <p><i>Secondly, at all relevant times, Respondent WAL-MART had control and supervision over Respondent Porter’s actions during the incident. Respondent Porter approached, stopped, arrested and detained Appellant upon the instruction and/or instigation of Respondent WAL-MART’s employees. (Porter Trial Testimony, 7:4-8; 19:23-25).</i></p>	<p>p. 12, par. 3</p> <p><i>Secondly, at all relevant times, Respondent WAL-MART had control and supervision over Respondent Porter’s actions during the incident. Respondent Porter approached, stopped, arrested and detained Appellant upon the instruction and/or instigation of Respondent WAL-MART’s employees. (R. p. 113).”</i></p>	<p><b>Appellant’s Opposition to Defendants’ Porter and City of Spartanburg Motion for Summary Judgment, p. 5, par. 1-2, (R,p.113) :</b></p> <p><i>“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.</i></p>

COMPARISON OF THE ARGUMENTS IN THE APPELLANT'S BRIEFS

		<p><i>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."</i></p> <p><i>"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)."</i></p>
<p>5. p. 19-20</p> <p><i>Firstly, Respondent WAL-MART hired Respondent Porter, a law enforcement officer, on his off days. Respondent Porter admitted that he was hired by Respondent WAL-MART for the twelfth time on the day the incident happened. (Porter Depo., 11:15-18).</i></p> <p><i>** Same phrase appears in Appellant's Initial/Final Reply Brief to Respondent WAL-MART Stores, Inc.'s Final Brief</i></p>	<p>p. 18</p> <p>Firstly, Respondent WAL-MART hired Respondent Porter, a law enforcement officer, on his off days. Respondent Porter admitted that he was hired by Respondent WAL-MART for the twelfth time on the day the incident happened. (R. p. 78).</p>	<p><b>Plaintiff's Motion for Reconsideration, November 21, 2016, page 3, par.2, R.p. 78:</b></p> <p><i>"In the case at bar, numerous facts point to the conclusion that Wal-Mart was acting in concert with the local police. First, Defendant Wal-Mart hired Defendant Officer Porter, a law enforcement officer, on his off days. Defendant Officer Porter admitted that he was hired by the Defendant Wal-Mart for the twelfth time on the day the incident happened. Second, it is the practice of Defendant Wal-Mart to work with the police department in prosecuting shoplifters. Defendant Officer Porter and/or Wal-Mart's employee had telephoned the police after the unlawful search of Plaintiff's purse and her</i></p>

**COMPARISON OF THE ARGUMENTS IN THE APPELLANT'S BRIEFS**

		<p>wrongful arrest, and requested the assistance of an officer for all the detained shoplifters. The Police responded by taking the Plaintiff into custody”</p>
<p><b>6. Appellant’s Initial/Final Reply Brief to Respondents’ Porter and City of Spartanburg Police Department’s Final Brief</b></p> <p>p. 3</p> <p><i>Ronnee Miller asserted that she cannot recall having seen the Appellant select or pick out an item, conceal the same, nor carry it out of the store nor pass the cashier. (Miller Dep., 38: 22-25; 39: 1-6, Id.).</i></p> <p>** the exact same phrase appears in Appellant’s Initial/Final Reply Brief to Respondent WAL-MART Stores, Inc.’s Final Brief (p. 8, par. 1)</p>	<p><b>Appellant’s Amended Final Reply Brief to Respondents’ Porter and City of Spartanburg Police Department’s Final Brief</b></p> <p>p. 3</p> <p>Ronnee Miller asserted that she cannot recall having seen the Appellant select or pick out an item, conceal the same, nor carry it out of the store nor pass the cashier. (R. p. 113).</p> <p>** the exact same phrase appears in Appellant’s Amended Final Reply Brief to Respondent WAL-MART Stores, Inc.’s Final Brief (p. 8, par. 1)</p>	<p><b>Appellant’s Opposition to Defendants’ Porter and City of Spartanburg Motion for Summary Judgment, dated February 28, 2017, p. 5, par. 2, (appearing in the Record on Appeal, R., p. 113):</b></p> <p>“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).”</p>
<p>7.</p> <p>p. 3, par. 3</p> <p><i>Respondent Porter testified in a prior criminal case that he accosted Appellant while she was in a queue towards the cashier. (Russel Porter Trial Tr., lines 1-14, September 17, 2014). He himself admitted that he did not see her take anything. (Porter, Trial Testimony, 14:1-9, 15:17-20). In fact, he was busy with another shoplifting incident when he was “notified by WALMART employees that a certain young lady was putting stuff into her bag.” (Porter, Trial Testimony, 7:4-8; 19:23-25).</i></p>	<p>p. 3, par. 3</p> <p>Respondent Porter testified in a prior criminal case that he accosted Appellant while she was in a queue towards the cashier. (R. p. 98, lines 6-7). Respondent Porter had not personally observed Appellant approach any merchandise, select and conceal the same. (R. p. 113). Respondent Porter’s actions were prompted by the false and inaccurate reporting of co-respondent WAL-MART’s employees. (R. p. 113).</p>	<p><b>Appellant’s Opposition to Defendants’ Porter and City of Spartanburg Motion for Summary Judgment, p. 5, par. 1-2, (R,p.113) :</b></p> <p>“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</p>

**COMPARISON OF THE ARGUMENTS IN THE APPELLANT'S BRIEFS**

<p>**</p> <p><i>Respondent Porter testified in a prior criminal case that he accosted Appellant while she was in a queue towards the cashier. (Russel Porter Trial Tr., lines 1-14, September 17, 2014). – this same phrase occurs in Appellant’s Initial/Final Reply Brief to Respondent WAL-MART Stores, Inc.’s Final Brief (p. 8, par. 1)</i></p>		<p><i>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.”</i></p> <p><i>“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).“</i></p> <p><b>Plaintiff’s Motion For Reconsideration, dated July 19, 2017, (R. p. 164).</b></p> <p><i>Defendant Porter testified in a prior criminal case that he accosted Plaintiff while she was in a queue towards the cashier. (Russell Porter Trial Tr., lines 1-14). Defendant Porter did not personally observe Plaintiff approach any merchandise, select nor conceal the same. Defendant Porter did not personally witness Plaintiff intentionally attempt to leave the building, as in fact he arrested her while she was in a line towards the cashier.</i></p>
<p>8. p. 4</p> <p><i>What is apparent in Respondent Porter’s testimony is that in his</i></p>	<p>P. 4</p> <p><i>What is apparent in Respondent Porter’s testimony is that in his</i></p>	

**COMPARISON OF THE ARGUMENTS IN THE APPELLANT'S BRIEFS**

<p><i>overzealousness to perform his job, he failed to follow respondent WALMART's shoplifting policy. By his own admission, he assumed that Appellant was not going to pay. (Porter, Trial Testimony, 15:24-25; 16:11-14). Respondent should not be allowed to arrest Appellant for what he assumed would happen. Respondent Porter does not have reasonable cause to believe that Appellant did not intend to pay. He approached Appellant while she was in the line towards the cashier. She never made it to the cashier as Respondent Porter stopped and arrested her. In short, there was no taking without paying. Thus, based on the facts and circumstances known to Respondent Porter, there was no crime or offense committed or being committed.</i></p>	<p>overzealousness to perform his job, he failed to follow respondent WALMART's shoplifting policy. Respondent should not be allowed to arrest Appellant for what he assumed would happen. Respondent Porter does not have reasonable cause to believe that Appellant did not intend to pay. He approached Appellant while she was in the line towards the cashier. She never made it to the cashier as Respondent Porter stopped and arrested her. In short, there was no taking without paying. Thus, based on the facts and circumstances known to Respondent Porter, there was no crime or offense committed or being committed.</p> <p><i>** deleted the sentence : By his own admission, he assumed that Appellant was not going to pay. (Porter, Trial Testimony, 15:24-25; 16:11-14).</i></p>	<p><b>Plaintiff's Motion For Reconsideration, dated July 19, 2017, (R. p. 164).</b></p> <p><i>Defendant Porter testified in a prior criminal case that he accosted Plaintiff while she was in a queue towards the cashier. (Russell Porter Trial Tr., lines 1-14). Defendant Porter did not personally observe Plaintiff approach any merchandise, select nor conceal the same. Defendant Porter did not personally witness Plaintiff intentionally attempt to leave the building, as in fact he arrested her while she was in a line towards the cashier.</i></p>
<p>9. p.5</p> <p><i>Secondly, at all relevant times, Respondent WALMART had control and supervision over Respondent Porter's actions during the incident. Respondent Porter approached, stopped, arrested and detained Appellant upon the instruction and/or instigation of Respondent WALMART's employees. (Porter, Trial Testimony, 7: 4-8; 19: 23-25).</i></p>	<p>p. 4</p> <p>Secondly, at all relevant times, Respondent WALMART had control and supervision over Respondent Porter's actions during the incident. Respondent Porter approached, stopped, arrested and detained Appellant upon the instruction and/or instigation of Respondent WALMART's employees. (R.p. 113).</p>	

**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

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Caitlyn Langham,

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

Respondents.

**PROOF OF SERVICE**

I certify that I have served copies of Appellant's Opposition to Respondents' Russell Porter and City of Spartanburg Police Department's Objection and Motion to Strike Matters from Appellant's Amended Final Brief and Amended Final Reply Brief and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Ms. Lee Ellen Bagley, Esquire and Ms. Randi Lynn Roberts, Esquire at 3700 Forest Drive, Suite 400, Columbia, SC 29204, and Mr. James D. Jolly Jr., Esquire and Ms. 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 June 12, 2018.

June 12, 2018  
Anderson, South Carolina

  
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FORM 8  
LETTER TO THE APPEALS COURT CLERK

June 12, 2018

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

RECEIVED  
JUN 15 2018  
SC Court of Appeals

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

Dear Honorable Kitchings:

Please find enclosed an original and seven copies of Appellant's Opposition to Respondents Russell Porter and City of Spartanburg Police Department's Objection and Motion to Strike Matters from Appellant's Amended Final Brief, which I have filed in the above-mentioned case. Also enclosed is proof of service of the same.

Sincerely,

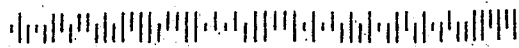


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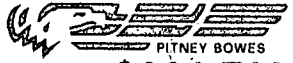
Lee Ellen Bagley, Esquire  
Randi Lynn Roberts, Esquire  
James D. Jolly, Jr., Esquire  
Stacy Todd Coffee, Esquire

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Anderson, SC 29621



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