The State of South Carolina
In The Court of Appeals

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APPEAL FROM THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
The Honorable Alison R. Lee, Circuit Judge

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Docket No. 2010-CP-40-3299

Tynaysha Horton .....Appellant,

v.

The City of Columbia .....Respondent.



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**BRIEF FOR APPELLANT**

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## Statement of the Issues on Appeal

The Order issued by the Court of Common Pleas granting Respondent's Motion for Summary Judgment constitutes a clearly arbitrary and capricious abuse of discretion as there were genuine issues of material fact in dispute and the Order should be reversed.

## STATEMENT OF THE CASE

This case comes before the Court on Appeal from an Order dated September 29 2011 granting Respondent's Motion for Summary Judgment following a hearing before the Honorable Alison Renee Lee. Appellant, Tynaysha Horton, commenced this action by the filing of a Summons and Complaint with the Richland County Court of Common Pleas on May 28, 2010 alleging, *inter alia*, negligence, malicious prosecution, false arrest, false imprisonment assault and battery in connection with Ms. Horton's wrongful arrest for a crime committed in Columbia, South Carolina in 2009. On June 9, 2010 Respondent answered Ms. Horton's Complaint. On April 29, 2011 Respondent moved for summary judgment asserting that it could not be held liable as a matter of law because Ms. Horton was arrested pursuant to a facially valid warrant. On June 30, 2011 Ms. Horton responded with a motion to deny Respondent's motion for summary judgment. On September 29, 2011 the trial court granted Respondent's motion for summary judgment, holding that no genuine issues of material fact existed in the matter. Ms. Horton timely filed a motion to reconsider the granting of Respondent's motion which was denied by the trial court. Ms. Horton now appeals that judgment and asks that the court allow the case to go to trial.

## STATEMENT OF THE FACTS

On September 9, 2009, a cinder block was thrown through the glass door to break into the "*Roly Poly*" restaurant in Columbia, South Carolina.(R.A. 211) Officer Peter Currie of the City of Columbia Police Department ("CPD") lifted a partial latent fingerprint from the door where the glass had been pushed up to gain entry. (R.A. 255) Officer Currie ran the print through the Automatic Fingerprint Identification System ("AFIS") of the South Carolina Law Enforcement Division ("SLED"). Id. AFIS returned twenty possible matches, with the fingerprint of Appellant identified as the most probable match. (R.A. 256) Officer Currie then conducted a review of that print and made the determination that it matched the latent print taken from the crime scene. Id.

Officer Roberta Tyler of also of the CPD was assigned to investigate this crime. Officer Currie informed her that he had matched the fingerprint of the robber and identified Appellant as the person who broke into the restaurant. Id. On September 15, 2009, Officer Tyler called Appellant's Probation Officer, Albert Smith, in Bennettsville, South Carolina and informed Agent Smith that CPD was seeking a warrant for Ms. Horton's arrest based on fingerprints lifted from a crime scene in Columbia, S.C. (R.A. 210) Agent Smith informed Officer Tyler of his personal reservations regarding the possibility and likelihood that Appellant could have committed the crime based upon his personal knowledge of her lack of transportation and the very recent birth of her third child. Id. Nevertheless, on September 17, 2009, Officer Tyler appeared before a ministerial recorder of the City of Columbia and made a partial disclosure of relevant facts known to the Department at that time. (R.A. 211) Officer Tyler did not disclose any information related to her by Agent Smith, or any other possibly exculpatory information. Id.

Based upon the incomplete information provided, the ministerial recorder issued warrants for Burglary 2nd and Petit Larceny. Id.

Agent Smith assisted in having Appellant surrender herself to Marlboro County law enforcement officers on September 17, 2009. (R.A. 210) CPD brought Ms. Horton to Columbia and then took her to the detention center on September 18, 2009. (R.A. 171) Ms. Horton was not fingerprinted at the time of her arrest nor at any time prior to September 21, 2009 despite multiple requests by her that officers do so. (R.A. 168)

On September 21, 2009, Officer Currie took fresh fingerprints from Plaintiff and realized they were not a match for the prints taken from the crime scene. (R.A. 173) Plaintiff was released from City of Columbia custody immediately after having spent three days in custody. (R.A. 174)

## ARGUMENT

### Jurisdiction and Standard of Review

This is an appeal from summary judgment as granted in the Circuit Court. An appellate court reviews the granting of summary judgment "under the same standard applied by the trial court pursuant to Rule 56 (c), SCRCP: Summary judgment is appropriate when there are no genuine issues as to any material facts and the moving party is entitled to judgment as a matter of law." Peterson v. West American Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). "In determining whether any triable issues of fact exist, the evidence and any reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Peterson, 336 S.C. at 95, 518 S.E.2d at 610-11.

### I. THE ORDER OF THE CIRCUIT COURT GRANTING SUMMARY JUDGMENT CONSTITUTES A CLEARLY ARBITRARY AND CAPRICIOUS ABUSE OF DISCRETION AND SHOULD BE REVERSED.

An "abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 5, 630 S.E.2d 464, 467 (2006) (citing *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565 (1987). A decision is arbitrary if "no rational basis for the conclusion exists, or when it is based on one's will and not upon any course of reasoning and exercise of judgment...a decision may also be arbitrary if it is made at pleasure without adequate determining principles or is governed by no fixed rules or standards." *Converse Power Corp v. S.C. Dep't of Health and Envtl. Control*, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002). The Supreme Court has held that, "the term 'abuse of

discretion' has no opprobrious implication and means nothing more or less than that the ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of the appellant, and, therefore, in the circumstances, amounted to an error of law." *South Carolina State Highway Dept. v. Sharpe*, 242 S.C. 397, 131 S.E.2d 257 (S.C. 1963). Indeed, this Court has further described abuse of discretion as being difficult to define, but easy to spot, "[i]t is not always easy to determine when and if a trial judge has abused his discretion. Overly simplified, abuse of discretion involves the extent of disagreement. When an appellate court is in agreement with a discretionary ruling or is only mildly in disagreement, it says that the trial judge did not abuse his discretion. On the other hand, when the appellate court is in substantial or violent disagreement, it says that there has been an abuse of discretion." *State v. Corey D.*, 339 S.C. 107, 529 S.E.2d 20 (S.C. 2000), (Citing, *Rish v. Rish,* 296 S.C. 14, 15-16, 370 S.E.2d 102, 103 (Ct.App.1988). In "reviewing a grant of summary judgment, the facts and all reasonable inferences must be viewed in a light most favorable to most favorable to the non-moving party ... (the judgment) may only be affirmed if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Singletary v. Aetna Casualty & Surety Co.*, 316 S.C. 199, 200, 447 S.E.2d 869, 870 (Ct.App. 1994). Summary Judgment is only "proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Rule 56(c) SCRCP. It is "well settled that summary judgment is appropriate only where there is no issue of material fact." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). "When determining if any triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Summer v. Carpenter*, 328 S.C. 36.

There were multiple issues of material fact disputed by the parties to this matter. Indeed, much of Respondents' arguments in support of its Motion as adopted by the Court below in its Order revolve around Respondents' position that the existence of a facially valid arrest warrant issued upon probable cause preclude Appellants' actions as a matter of law. In actions for malicious prosecution, false imprisonment or unlawful arrest, the existence of probable cause may only be decided as a matter of law when the evidence yields but one conclusion. *Id.* Lack of probable cause is an essential element in claims for malicious prosecution, false arrest and false imprisonment. *Jackson v. City of Abbeville*, 366 S.C. 662, 623 SE2d 656 (Ct. App. 2005). The existence of probable cause is generally a matter of *fact* to be decided by a jury, not a matter of law. *Law v. South Carolina Dep't of Corr.*, 368 S.C. 42, 435, 629 SE2d 642, 648 (2006), *See, Jones v. City of Columbia*, 301 S.C. 62, 389 SE2d 662 (1990). In actions for malicious prosecution, false imprisonment or unlawful arrest, the existence of probable cause may only be decided as a matter of law when the evidence yields but one conclusion. Id. Probable Cause is "a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise." *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 615, 521 SE2d 163,165 (Ct. App. 1999). The *Gist* Court clearly stated that facially valid arrests warrants do not shield governmental agencies from liability for these torts where the Plaintiff has shown that the warrant was secured without probable cause. Id. at 167, 618. The Supreme Court of this state has held that when an affidavit does not disclose anything which the issuing officer can consider in arriving at a determination of whether there is probable cause for the issuance of a warrant, this, in effect leaves the determination of probable cause to the judgment of the police officer and the warrant issued thereupon is invalid. *State v. Hill*, 254 S.C. 76, 138 SE2d 829 (1964). A

facially valid warrant is also invalid if Plaintiff shows that the government or its agents "omitted from the affidavit material facts with the intent to make, or with reckless disregard of whether they thereby made, the affidavit misleading." *United States v. Colkley*, 899 F2d 297, 300 (4th Cir. 1990), as cited in *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007).

Respondents' Motion for Summary Judgment was improper and should have been denied as there are genuine issues of material fact in dispute. Appellant competently challenged the validity of the warrant and the existence of probable cause for its issuance in her Complaint and at the hearing of Respondent's Motion for Summary Judgment and has thereby raised factual issues that must be properly determined by a jury, rendering summary judgment wholly inappropriate. Respondent incorrectly asserted and the Court ultimately agreed that Appellant's actions must be dismissed because Appellant's arrest was made pursuant to a "facially valid arrest warrant." (R.A. 65-66, 261) However, as discussed in *Law*, an arrest warrant which is "facially valid" or regular on its face merely establishes a rebuttable presumption of the existence of probable cause, an issue of fact for the proper consideration of a jury. In the present case, Appellant has challenged the existence of probable cause and raised a factual issue as to the validity of the arrest warrant based upon Officer Tyler's failure to disclose any information known to her to the issuing authority beyond the alleged matching of the latent fingerprints evidencing a reckless disregard that the affidavit may be misleading to the issuing authority. (R.A. 284) At the time Officer Tyler sought the issuance of the warrant she had spoken with Agent Smith and was aware that Appellant lived almost two hours away in Bennettsville, South Carolina, that she did not own a car and had ongoing issues with securing reliable transportation, that she had been with her parole officer the day after the burglary, that she had three minor

children one of which was a newborn and that she had volunteered to submit to DNA and fingerprint testing. (R.A. 210)

All of these facts would tend to lead a reasonable person to believe it was improbable if not impossible that she had committed the crime. Appellant asserted a factual question whether Officer Tyler knew or should have known that providing this information would have negated a finding of probable cause by the magistrate and whether her omission of these facts evidenced a reckless disregard for the possibility that the affidavit upon which the warrant was issued was misleading. (R.A. 70) Despite these facts and the law to the contrary, the Court below improperly ruled on probable cause as a matter of law and granted Respondent's Motion.

Additional issues of material fact are in dispute, including facts recited in the Circuit Court's Order, arising from inconsistency in Respondents' witness statement and pleadings that are proper only for jury determination. These include facts asserted by Mr. Currie in his affidavit provided in support of Respondents' Motion for Summary Judgment. (R.A. 254) In the tenth paragraph of his affidavit, Mr. Currie states that he took Appellant's fingerprints to SLED for reevaluation "out of an abundance of caution after Appellant related facts that would have *negated her ability to have committed the crime*" but that he still believed the prints were a match. (R.A. 256-57) This statement directly conflicts with Mr. Currie's statements in his deposition testimony and to Respondents' responses to Appellant's Interrogatory 11. (R.A. 222) During Mr. Currie's deposition, when asked if he had ever spoken with Appellant, Mr. Currie stated that he had simply asked "hey how are you" when he fingerprinted Appellant and that he had apologized to Appellant after he discovered his mistake, he mentions nothing about the alleged conversation he discusses in his affidavit which he states gave rise to his desire to retake Appellant's fingerprints. (R.A. 138-39) During his deposition, Mr. Currie also testified that it

was the Departments' procedure to fingerprint the individual in custody and to confirm the match as soon as possible. (R.A. 137) When asked to compare the latent print from the scene with Plaintiff's print during his deposition, Mr. Currie responded "the print is completely different...it doesn't add up..." (R.A. 135) Further, Respondents, in response to Appellant's Interrogatory Eleven stated that "...the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility. (R.A. 222) Appellant's own deposition testimony raises further factual disputes material to her cause of action regarding Mr. Currie's reaction to Appellant's fingerprints taken while in custody and Respondents' reason for taking those fingerprints. (R.A. 173) Each of these facts are disputed by the parties and are material to the ultimate issue of the existence of probable cause and therefore are material to Appellant's case in chief. There was no rational basis for the conclusion made below regarding the existence of probable cause. Indeed, the argument made by Respondent and ultimately adopted by the Court in its Order is viciously circular. It amounts to a belief that wherever a warrant is issued, there must have been probable cause for the issuance simply because a warrant may only be issued on probable cause. By the Court's granting of Summary Judgment, Appellant was denied her right to present to the jury, as the proper finder of fact, any facts or evidence tending to negate the existence of probable cause. Granting summary judgment here, with facts existing that could support an inference of agency, would be in opposition to rule established by the Supreme Court in *Law*. Were this Court to adopt the standard articulated by the Court below the effect would be to foreclose any citizen's ability to bring any action against the government for these torts.

## CONCLUSION

Because genuine issues of material fact exist as to whether probable cause existed to support the issuance of a warrant and the arrest and detention of Appellant, summary judgment was improper in this case. For the reasons set forth above, the Appellant respectfully requests that the judgment of the Court below be reversed and judgment issued in favor of Appellant.

RESPECTFULLY SUBMITTED,

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1 November, 2012

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PROOF OF SERVICE

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I, Laura Diaz, do hereby certify that I have this date served the attached the Final Brief of Appellant upon The City of Columbia by depositing a copy of it in the United States Mail, postage prepaid, on November 5, 2012, addressed to their attorney of record, Robert G. Cooper, Post Office Box 667, Columbia, SC 29202.

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Respondant.

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that this Final Brief complies with Rule 211 (b), SCACR.

RESPECTFULLY SUBMITTED,

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