

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

---

Case No. 2010-CP-40-3299

---

RECEIVED  
NOV 01 2012  
SC Court of Appeals

Tynyasha Horton.....Appellant,

v.

City of Columbia Police Department..... Respondent.

---

**BRIEF OF RESPONDENT**

---

Robert G. Cooper  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
(803) 737-4242

Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

---

Case No. 2010-CP-40-3299

---

Tynyasha Horton.....Appellant,

v.

City of Columbia Police Department..... Respondent.

---

**BRIEF OF RESPONDENT**

---

Robert G. Cooper  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
(803) 737-4242

Attorney for Respondent

## TABLE OF CONTENTS

Table of Authorities .....	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Statement of Facts.....	3
Arguments	
I.    The appeal should be dismissed because Appellant did not appeal the final order .....	2. 5
II.   Even if Appellant were permitted to substitute the final order in its notice of appeal, the appeal should still be dismissed since it was untimely .....	7
III.  The appeal should be dismissed as procedurally barred because all claims have been abandoned or are subject to the two issue rule .....	8
IV.  The circuit court properly ruled on the validity and effect of the arrest warrants .....	10
A.  The circuit court correctly ruled that the arrest warrants were valid as a matter of law.....	10
B.  The circuit court correctly ruled that the arrest warrants barred Appellant’s claims for false arrest and false imprisonment and were a proper factor to consider in determining whether there was probable cause as a matter of law on the malicious prosecution claim .....	13
V.    The circuit court properly granted summary judgment to the City since Appellant has not shown any genuine issue of material fact that would have precluded that award .....	15
VI.  The circuit court properly granted summary judgment on the false arrest, false imprisonment, and malicious prosecution claims because the City had probable cause to arrest Horton as a matter of law .....	19
Conclusion .....	21

## TABLE OF AUTHORITIES

### **Cases**

<u>Atlantic Coast Builders and Contractors, LLC v. Lewis,</u> 348 S.C. 323, 730 S.E.2d 282 (2012) .....	9
<u>Biales v. Young,</u> 315 S.C. 166, 432 S.E.2d 482 (1993) .....	8
<u>Charleston Lumber Co. v. Miller Hous. Corp.,</u> 338 S.C. 171, 525 S.E.2d 869 (2000) .....	9
<u>Cheap-O’s Truck Stop v. Cloyd,</u> 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct.App. 2002).....	5
<u>Culbertson v. Clemens,</u> 322 S.C. 20, 471 S.E.2d 163 (1996) .....	5
<u>Dorn v. Town of Prosperity,</u> 375 Fed.Appx. 284, 2010 WL 997175 (4th Cir. 2010).....	13
<u>Elam v. S.C. Dept. of Transp.,</u> 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) .....	8
<u>Franks v. Delaware,</u> 438 U.S. 154, 155-56 (1978) .....	11, 12, 13
<u>Gist v. Berkeley County Sherriff’s Dep’t,</u> 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct.App. 1999).....	14
<u>Jackson v. City of Abbeville,</u> 366 S.C. 662, 623 S.E.2d 656 (Ct.App. 2005).....	19, 20
<u>Jones v. Lott,</u> 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) .....	9
<u>Law v. South Carolina Dept. of Corrections,</u> 368 S.C. 424, 629 S.E.2d 642 (2006) .....	13, 20
<u>Lindsay v. Lindsay,</u> 328 S.C. 329, 491 S.E.2d 583 (Ct.App. 1997).....	8
<u>Manley v. Manley,</u> 291 S.C. 325, 353 S.E.2d 312 (Ct.App. 1987).....	15

<u>McBride v. School District of Greenville County</u> , 389 S.C. 546, 698 S.E.2d 845 (Ct.App. 2010).....	15, 20
<u>Metts v. Mims</u> , 384 S.C. 491, 682 S.E.2d 813 (2009) .....	5, 6
<u>Miller v. Prince George’s County</u> , 475 F.3d 621, 627 (4th Cir. 2007) .....	11
<u>USAA Property &amp; Casualty Ins. Co. v. Clegg</u> , 377 S.C. 643, 661 S.E.2d 791 (2008) .....	8
<u>Watkins v. Mobil Oil Corp.</u> , 281 S.C. 79, 313 S.E.2d 641 (Ct.App. 1984).....	13
<u>Wilkins v. Harley</u> , 2011 WL 379747 (D.S.C. 2011).....	13

**Statutes and Rules**

S.C. Code Ann. § 14-3-330.....	5
S.C. Code Ann. § 14-3-330(1).....	5
S.C. Code Ann. § 14-25-115.....	3
S.C. Code Ann. § 15-78-60(5).....	9
Rule 201(a), SCACR .....	5
Rule 203(b)(1), SCACR.....	7
Rule 56, SCRCP.....	11
Rule 59(e), SCRCP .....	8

**Other Authorities**

32 Am.Jur.2d, <u>False Imprisonment</u> § 2.....	13
Hubbard & Felix, <u>The South Carolina Law of Torts</u> , 410 (2d ed. 1997) .....	13

## STATEMENT OF ISSUES ON APPEAL

- I. Should the appeal be dismissed because Appellant did not appeal the final order?
- II. Even if Appellant were permitted to substitute the final order in its notice of appeal, should the appeal still be dismissed since it was untimely?
- III. Should the appeal be dismissed as procedurally barred because all claims have been abandoned or are subject to the two issue rule?
- IV. Did the circuit court properly rule on the validity and effect of the arrest warrants?
  - A. Did the circuit court correctly rule that the arrest warrants were valid as a matter of law?
  - B. Did the circuit correctly rule that the arrest warrants barred Appellant's claims for false arrest and false imprisonment and were a proper factor to consider in determining whether there was probable cause as a matter of law on the malicious prosecution claim?
- V. Did the circuit court properly grant summary judgment to the City when Appellant has not shown any genuine issue of material fact that would have precluded that award?
- VI. Did the circuit court properly grant summary judgment on the false arrest, false imprisonment, and malicious prosecution claims because the City had probable cause to arrest Horton as a matter of law?

## STATEMENT OF THE CASE

This is an appeal from the circuit court's grant of summary judgment on all causes of action to the City of Columbia Police Department (City or CPD).

The City disagrees with Appellant's Statement of the Case, which contains misstated facts and alters the chronology of events.

This action was commenced by Appellant Horton (Horton) by the filing of a Summons and Complaint on May 19, 2010. Horton filed an Amended Complaint on May 28, 2010. (R. pp. 20-29). The action stems from Horton's arrest and the subsequent

dismissal of those charges. The Amended Complaint asserted tort claims for negligence, malicious prosecution, false arrest, false imprisonment, assault and battery.

The City filed an Answer on June 9, 2010, in which it raised a number of factual and legal defenses, including common law defenses and defenses under the South Carolina Tort Claims Act. (R. pp. 30-37).

The City filed a motion for summary judgment on all claims on April 29, 2011. (R. pp. 260-262). A hearing on that motion was held on June 30, 2011. On August 26, 2011, the circuit court issued a Form 4 order finding that the City's motion for summary judgment should be granted as to all claims. (R. pp. 14-16). That order specifically provided that a formal order would follow. (R. p. 15). The Form 4 order was filed and mailed to counsel for the parties on August 30, 2011. (R. pp. 15-16).

On September 6, 2011, Horton filed a motion to reconsider the decision of the circuit court. (R. p. 291).

On September 29, 2011, the circuit court issued the final order granting summary judgment to the City on all causes of action. (R. pp. 3-13).

The circuit court issued an order dated March 28, 2012 that denied Horton's motion to reconsider. (R. p. 2).

On April 12, 2012, Horton filed a notice of appeal with the South Carolina Court of Appeals. (R. pp. 314-315). The notice appealed the Form 4 order dated August 26, 2011. (*Id.*). A copy of the Form 4 order was attached to the notice. (R. pp. 318-319).

Horton has not filed a motion to reconsider or a notice of appeal addressed to the final order dated September 29, 2011.

## STATEMENT OF 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. p. 255 ¶ 5). Crime Scene Officer Pete Currie of the City of Columbia Police Department (City or CPD) lifted a partial latent fingerprint from the door where the glass had been pushed up to gain entry. (Id.). Officer Currie ran the print through the Automatic Fingerprint Identification System (AFIS) of the South Carolina Law Enforcement Division (SLED). (Id. ¶ 6). AFIS returned twenty possible matches, with the fingerprint of Horton identified as the most probable match. (R. p. 131, l. 23-25, p. 132, l. 8-13; R. p. 256 ¶ 6). Officer Currie then conducted an extensive review of that print and determined that it matched the latent print taken from the crime scene. (R. p. 256 ¶ 7). Pursuant to standard operating procedure at CPD, Officer Currie showed the latent fingerprint to two other qualified crime scene officers and they verified that it matched the Horton fingerprint. (Id. ¶ 8).

Investigator Roberta Tyler of CPD was assigned to investigate this crime. (Horton Statement of the Facts). Officer Currie informed her that he had matched the fingerprint of the robber and identified Horton as the person who broke into the restaurant. (R. p. 256 ¶ 9). Investigator Tyler received authorization from an Assistant Solicitor to seek warrants. (R. p. 136, l. 7-12). On September 17, 2009, Investigator Tyler appeared before a ministerial recorder<sup>1</sup> of the City of Columbia and applied for warrants stemming from the robbery investigation. (Horton Statement of Facts; R. pp. 211-212). The ministerial recorder found probable cause to believe that Horton committed the crime and issued warrants for Burglary 2nd and Petit Larceny. (Id.).

---

<sup>1</sup> Ministerial recorders are municipal officers with the power to issue arrest warrants. S.C. Code Ann. § 14-25-115.

Investigator Tyler sent copies of the warrants to Horton's probation officer in Bennettsville, South Carolina, where Horton resides. (R. p. 157, l. 17-p. 158, l. 1; p. 158, l. 24-p. 159, l. 9; p. 159, l. 18-23). The probation officer assisted in having Horton turn herself in to Marlboro County law enforcement officers on September 17, 2009. (Id.; Horton Statement of the Facts). Investigator Tyler picked Horton up, brought her to Columbia, and then took her to the detention center on September 18, 2009. (Horton Depo. p. 165, l. 19-p. 166, l. 6; p. 170, l. 24-p. 171, l. 5).

On Monday, September 21, 2009, Officer Currie became aware that Horton was incarcerated and took fresh fingerprints from her as was his custom. (R. p. 256 ¶ 10). It still appeared to him that her fingerprints matched that of the person who committed the robbery. (Id.). However, because of Horton's protests that she could not have committed the crime, he took the fingerprints to SLED for review. (R. p. 257 ¶ 10.). The SLED analyst indicated that the fingerprints were very close but that he could not confirm a match for certain. (Id.).

Given the lack of confirmation from the SLED analyst, the charges were dismissed and Horton was driven home that same day. (R. p. 257 ¶ 11).

## ARGUMENTS

### **I. THE APPEAL SHOULD BE DISMISSED BECAUSE APPELLANT DID NOT APPEAL THE FINAL ORDER.**

In her Notice of Appeal, Horton appeals the order of the circuit court dated August 26, 2011, and the subsequent order denying her motion to reconsider dated March 28, 2012. (R. p. 314). The appeal should be dismissed because the order dated August 26, 2011, is not an appealable order.

On June 30, 2011, the circuit court heard arguments on the City's motion for summary judgment. On August 26, 2011, the circuit court issued a Form 4 order finding that the City's motion should be granted as to all claims. (R. pp. 14-15). That order specifically provided that a formal order would follow. (R. p. 15). On September 6, 2011, Horton filed a motion to reconsider addressed to the Form 4 order. (R. p. 291). On September 29, 2011, the circuit court issued its final order (Final Order) granting summary judgment to the City on all causes of action. (R. pp. 3-13). Horton has not filed a motion to reconsider or a notice of appeal addressed to the Final Order.

A judgment or order must be final before it can be appealed. See Culbertson v. Clemens, 322 S.C. 20, 471 S.E.2d 163 (1996). Appeal may be taken from any final judgment, appealable order or decision. Rule 201(a), SCACR. Further guidance is provided by S.C. Code Ann. § 14-3-330(1), which creates appellate jurisdiction from a final order.<sup>2</sup> A Form 4 order is not a final order unless nothing else remains to be done after it is signed. Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009), citing Cheap-O's Truck Stop v. Cloyd, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct.App. 2002). In this

---

<sup>2</sup> S.C. Code Ann. § 14-3-330 also provides for appellate jurisdiction from interlocutory orders involving the merits, affecting a substantial right, or involving the appointment of a receiver. None of these provisions are applicable in the case at hand.

case, the Form 4 order was not a final order since it clearly stated that a formal order would be issued later. Metts at 499, 682 S.E.2d at 817. Horton did not appeal the Final Order in this matter but instead appealed the interlocutory, unappealable Form 4 order.

Apparently realizing that she appealed the wrong order, Horton attempts to cure this problem by referring to the Final Order, rather than the Form 4 order from which she appealed, in her Designation of Matter to be Included in the Record on Appeal and in her Statement of the Case.<sup>3</sup> (R. p. 322; Appellant's Brief). This is a substantive change, not the correction of a mere clerical error, and should not be permitted. Her motion to reconsider the grant of summary judgment was addressed to the Form 4 order and was filed before the Final Order was even issued. In its Memorandum in Opposition to Plaintiff's Motion to Reconsider, the City argued that the Motion to Reconsider was premature. (R. p. 304). Despite this notice that her efforts were addressed to the wrong order, Horton appealed the Form 4 order and attached a copy of it to the notice of appeal. (R. pp. 314, 318-319). Horton should not now be allowed to unilaterally change the order that has been appealed.

Because Horton failed to appeal the Final Order in this matter and instead attempted to appeal an unappealable Form 4 order, this appeal should be dismissed.

---

<sup>3</sup> Horton's Designation of Matter to be Included in the Record on Appeal does not include the Form 4 order from which she appealed. (R. p. 322). Her Statement of the Case does not mention the Form 4 order but only addresses the Final Order. (Appellant's Brief). In fact, the Statement of the Case is written in a way that suggests that Horton's motion to reconsider followed the Final Order, which is incorrect. The motion was filed on September 6, 2011, and the Final Order was not issued until September 29, 2011.

**II. EVEN IF APPELLANT WERE PERMITTED TO SUBSTITUTE THE FINAL ORDER IN HER NOTICE OF APPEAL, THE APPEAL SHOULD STILL BE DISMISSED SINCE IT WAS UNTIMELY.**

As noted above, Appellant appealed the Form 4 order rather than the Final Order granting summary judgment in this matter. Even if the Court were to deem the designation of the Form 4 order in the notice of appeal as a mere clerical error and allow substitution of the Final Order, the appeal should still be dismissed as untimely.

In appeals from the court of common pleas, a notice of appeal must be served on respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. The Final Order in this case, dated September 29, 2011, was enrolled on October 4, 2011 and mailed by the Richland County Clerk of Court to attorneys of record that same date. (R. pp. 3-13). To have been timely, the notice of appeal would have had to have been served by November 6, 2011 or shortly thereafter.<sup>4</sup> However, the notice of appeal was not served until April 12, 2012, over five months past the time permitted. (R. p. 316).

Horton may argue that the time in which to serve the notice of appeal was extended by the filing of her motion to reconsider. When a timely motion to alter or amend the judgment has been made, the time for appeal for all parties is stayed and runs from receipt of written notice of entry of the order granting or denying such motion. Rule 203(b)(1), SCACR. That rule is inapplicable in this case, however, because the motion to reconsider was addressed to the Form 4 order and was filed before the Final

---

<sup>4</sup> Since Horton appealed from the wrong order, her notice of appeal does not disclose when she received the Final Order. It was received by counsel for the City on October 7, 2011.

Order was issued.<sup>5</sup> Horton never made a motion to reconsider the Final Order in this case and the time in which to appeal that order was not extended.

Service of the notice of appeal is a jurisdictional requirement and an appellate court has no authority to extend or expand the time in which the notice of intent to appeal must be served. USAA Property & Casualty Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008); Elam v. S.C. Dept. of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Horton has never appealed the Final Order in this case. Even if she were permitted to amend the notice of appeal in this case to substitute the Final Order as the one from which the appeal is taken, the appeal is still untimely and should be dismissed.

**III. THE APPEAL SHOULD BE DISMISSED AS PROCEDURALLY BARRED BECAUSE ALL CLAIMS HAVE BEEN ABANDONED OR ARE SUBJECT TO THE TWO ISSUE RULE.**

It is unnecessary to reach the merits of Horton's argument since it is procedurally barred by issues that have been abandoned and by the two issue rule.

The causes of action for assault, battery, negligence and gross negligence have been abandoned on appeal. It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling. Biales v. Young, 315 S.C. 166, 432 S.E.2d 482 (1993); Lindsay v. Lindsay, 328 S.C. 329, 491 S.E.2d 583 (Ct.App. 1997). Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. Id. The unchallenged ruling, right or

---

<sup>5</sup> The order of the circuit court dated March 28, 2012, indicates that the court denied Horton's motion pursuant to Rule 59(e), SCRPC, to alter or amend the order dated September 29, 2011 (Final Order). (R. p. 2). This appears to be a clerical error since the motion was addressed to the Form 4 order and was filed before the Final Order was issued. That error should not be regarded as transforming Horton's motion into a motion to reconsider the Final Order. Horton had an opportunity to file such a motion and chose not to do so.

wrong, is the law of the case and requires affirmance. Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 525 S.E.2d 869 (2000).

In this case, the circuit court found that the City was entitled to summary judgment on Horton's causes of action for assault, battery, negligence and gross negligence.<sup>6</sup> (R. pp. 10-12). Horton has not appealed these rulings and they therefore become the law of the case and must be affirmed on appeal.

The two issue rule procedurally bars consideration of the remaining causes of action. Under this rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case. Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012); Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). The circuit court ruled that Horton's causes of action for false arrest, false imprisonment, malicious prosecution and negligence were barred by S.C. Code Ann. § 15-78-60(5) of the South Carolina Tort Claims Act. (Final Order pp. 9-10). Horton has not appealed that ruling. Accordingly, the grant of summary judgment on these causes of action should be affirmed.

For these reasons, the appeal should be dismissed as procedurally barred.<sup>7</sup>

---

<sup>6</sup> The circuit court found that, since Horton did not allege the use of excessive force, her cause of action for assault and battery failed because any touching by the police officers was lawful pursuant to a facially valid arrest warrant. (R. p. 10). As to the claim for negligence or gross negligence, the circuit court first found that the allegations failed to state facts sufficient to constitute a cause of action since a claim of this nature must be brought either as false arrest or malicious prosecution. (R. pp. 10-11). Secondly, even if such a cause of action existed, the circuit court found that there was no evidence in this case that a City employee was negligent or that the City has been negligent training its employees. (R. pp. 11-12). None of these rulings were appealed by Horton.

<sup>7</sup> Other instances of abandoned rulings or matters subject to the two issue rule are included in the discussion of the substantive arguments that follow.

**IV. THE CIRCUIT COURT PROPERLY RULED ON THE VALIDITY AND EFFECT OF THE ARREST WARRANTS.**

Horton contends that there are genuine issues of material fact related to the validity and proper effect of the arrest warrants in this case and that summary judgment should not have been awarded. Her position is not supported by the record in this case or by applicable law.

**A. THE CIRCUIT COURT CORRECTLY RULED THAT THE ARREST WARRANTS WERE VALID AS A MATTER OF LAW.**

Horton maintains that the arrest warrants were invalid because Investigator Tyler failed to disclose material information that would have negated a finding of probable cause by the ministerial recorder. Specifically, Horton contends that Investigator Tyler should have told the ministerial recorder that she had spoken with Horton's probation officer and had been told that Horton lives almost two hours away from Columbia 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.<sup>8</sup> She maintains that this omission created a factual question whether Investigator Tyler knew or should have

---

<sup>8</sup> Horton does not cite to the record to establish these matters as disputed facts. The record does support the assertion that Horton volunteered to submit to DNA and fingerprint testing. (R. p. 168, l. 7-16). However, as Horton's counsel conceded at the hearing on the motion for summary judgment, Horton did not offer to submit to those tests until she was being arrested and that was not a factor in determining probable cause. (R. p. 77, l. 12-p. 78, l. 6). The remaining alleged omissions have no support in the record.

known that providing this information would have negated a finding of probable cause by the ministerial recorder.

There is no competent factual basis for Horton's claim. Her position is based upon a written statement from Agent Albert R. Smith of the Department of Probation, Parole & Pardon Services, dated July 26, 2010, which Horton attempted to use at the summary judgment hearing. (R. p. 210). The statement is not in affidavit form and was not served on defense counsel two days before the summary judgment hearing as required by Rule 56, SCRCR. (R. p. 42, l. 18-p. 44, l. 6). The circuit court properly ruled that the statement could not be considered in the summary judgment hearing. (R. p. 7). That ruling has not been appealed and is the law of the case. There is therefore no factual basis for Horton's claim that Investigator Tyler withheld material information from the ministerial recorder.

Further, even if Agent Smith's statement were considered, the circuit court properly ruled that the failure to relate its contents to the ministerial recorder did not invalidate the warrants. (R. pp. 7-8). A facially valid arrest warrant can only be attacked if the party makes "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit . . .". Franks v. Delaware, 438 U.S. 154, 155-56 (1978); Miller v. Prince George's County, 475 F.3d 621, 627 (4th Cir. 2007). The showing must be more than conclusory and must be accompanied by a detailed offer of proof. Franks, 438 U.S. at 171. With regard to alleged omissions in the affidavit, a party must establish that the officer failed to inform the magistrate of facts the officer knew would negate a finding of probable cause. Miller, 475 F.3d at 627. Allegations of negligence or honest mistake are insufficient. Id. at 627-28. If a Franks hearing is required and an affiant's material

perjury or recklessness is established by a preponderance of the evidence, and with the false material set aside the remaining content is insufficient to constitute probable cause, the warrant must be voided. Franks, 438 U.S. at 156.

The statement from Agent Smith says only that he informed Investigator Tyler that Horton was the mother of a newborn baby and that she recently had issues with transportation. (R. p. 210). It does not say that he contends that it was impossible or even improbable that Horton committed the robbery. At most, it would suggest only that Horton would have had to borrow a car and get a babysitter to do so. These are not material issues that would call into question Horton's ability to commit the crime. In fact, Horton would need to make these same arrangements in order work at a job. Further, there is no evidence in the record that Investigator Tyler believed that there was any question that Horton had committed the robbery. Based upon the facts as she knew them, an extremely well-trained and experienced crime scene investigator<sup>9</sup> had determined that Horton's fingerprint matched the latent print from the robbery location. The circuit court correctly found that there was no evidence that Investigator Tyler knowingly or recklessly omitted material information to obtain the warrants and there was therefore no basis to invalidate the arrest warrants. (R. p. 8).

---

<sup>9</sup> Officer Currie worked in the Crime Scene Unit of the Columbia Police Department for approximately 14 years. (R. pp. 254-255 ¶ 3). He received extensive training as a crime scene analyst. (R. p. 255 ¶ 4). He successfully completed a one-week course of study entitled "Basic Fingerprints" at the South Carolina Criminal Justice Academy. (Id.). He also completed a two-week advanced fingerprint course taught by the FBI at the Criminal Justice Academy. (Id.). He took courses and received certification in the Automatic Fingerprint Identification System (AFIS) and was a member of the International Association for Identification. (Id.). He also received other training while on the job. (Id.). He has reviewed literally thousands of possible fingerprint matches and, as far as he knows, the Horton fingerprint is the only one that has ever been called into question. (R. p. 257 ¶ 12).

Finally, Horton suggests that the issue of the validity of the warrants is disputed and should have been submitted to the jury. That proposition finds no support in applicable law. The circuit court correctly found that the determination of the validity of a warrant is an issue of law to be determined by the court, citing Franks v. Delaware, 438 U.S. 154 (1978). (R. p. 7). That ruling has not been appealed and is now the law of the case.

The circuit court properly ruled that there were no material facts in dispute and that the arrest warrants are valid as a matter of law.

**B. THE CIRCUIT COURT CORRECTLY RULED THAT THE ARREST WARRANTS BARRED APPELLANT'S CLAIMS FOR FALSE ARREST AND FALSE IMPRISONMENT AND WERE A PROPER FACTOR TO CONSIDER IN DETERMINING WHETHER THERE WAS PROBABLE CAUSE AS A MATTER OF LAW ON THE MALICIOUS PROSECUTION CLAIM.**

Horton argues that the circuit court erred in finding that the arrest warrants conclusively preclude her claims for false arrest, false imprisonment and malicious prosecution.

The circuit court properly found that a facially valid arrest warrant issued by a neutral, detached ministerial recorder bars a cause of action for false arrest or false imprisonment.<sup>10</sup> (R. pp. 6-7). See Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006) (warrant supplemented by oral testimony bars false imprisonment claim); Watkins v. Mobil Oil Corp., 281 S.C. 79, 313 S.E.2d 641 (Ct.App. 1984); Dorn v. Town of Prosperity, 375 Fed.Appx. 284, 2010 WL 997175 (4th Cir. 2010); Wilkins v. Harley, 2011 WL 379747 (D.S.C. 2011); Hubbard & Felix, The South

---

<sup>10</sup> False arrest and false imprisonment are not separate torts. False arrest is one way to commit false imprisonment. Since an arrest involves a restraint, it always involves imprisonment. 32 Am.Jur.2d, False Imprisonment § 2.

Carolina Law of Torts, 410 (2d ed. 1997) (if arrest is based on a proper warrant, no action for false imprisonment shall succeed).

Horton argues that a facially valid warrant does not shield a governmental entity from tort liability where a plaintiff has shown that the warrant was secured without probable cause, citing Gist v. Berkeley County Sherriff's Dept., 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct.App. 1999). In that case, Gist was arrested on a warrant for the robbery of a convenience store and the charges were later dismissed. Gist then sued the sheriff's department for false arrest and imprisonment. The trial court granted summary judgment to the sheriff's department because a detached magistrate had determined that there was probable cause. However, the warrant's affidavit did not contain any facts linking Gist to the robbery. On appeal, the sheriff's department conceded that the affidavit was insufficient to establish probable cause but argued that it had been supplemented by sworn oral testimony. The Court of Appeals found there was a disputed fact as to whether the affidavit was supplemented with adequate testimony to establish probable cause and reversed. The holding in Gist is inapplicable to the facts in this case. Here, there is no question that the affidavits, setting out that Horton's fingerprints matched the print from the robbery, are sufficient to establish probable cause.<sup>11</sup> Unlike Gist, they do not need to be supplemented orally. The warrants are valid on their face and therefore bar claims for false arrest and false imprisonment.

On the malicious prosecution claim, the circuit court correctly held that a warrant is not preclusive but is one of the factors that can be considered in determining whether

---

<sup>11</sup> Appellant conceded that the warrants are facially valid in the summary judgment hearing on June 30, 2011 before the circuit court. (R. p. 90, l. 14-15). She also appears to concede that point in her Memorandum in Opposition to Defendant's Motion for Summary Judgment. (R. pp. 286-287).

there is probable cause as a matter of law. (R. pp. 8-10). See McBride v. School District of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct.App. 2010).

Horton argues that the holding of the circuit court was “viciously circular.” She characterizes it as “a belief that whenever a warrant is issued, there must have been probable cause for the issuance simply because a warrant may only be issued on probable cause.” She appears to misunderstand the court’s ruling. A warrant bars a claim for false imprisonment because it establishes that the arrest was lawful. It does not, however, bar a claim for malicious prosecution. Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct.App. 1987) (If a lawful arrest has been improvidently procured without probable cause, the remedy is an action for malicious prosecution).

The circuit court correctly ruled that the arrest warrants bar Horton’s claims for false arrest and false imprisonment and are relevant to a determination of probable cause in the malicious prosecution claim.

**V. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO THE CITY SINCE APPELLANT HAS NOT SHOWN ANY GENUINE ISSUE OF MATERIAL FACT THAT WOULD HAVE PRECLUDED THAT AWARD.**

Horton alleges a factual issue based upon alleged discrepancies in the affidavit and deposition testimony of Crime Scene Officer Peter Currie and a discovery response made by the City. These items address Officer Currie’s reason for taking Horton’s fingerprints after her arrest and his reaction to a comparison of her AFIS print with the one taken from the robbery scene.

At the outset, it is not clear that this issue is preserved for review. The Final Order of the circuit court does not specifically address these contentions. Horton’s motion to reconsider only asked the court to amend the Form 4 order “to accurately

reflect the record.” (R. p. 291). Horton did not raise these issues until she filed her Memorandum in Support of Plaintiff’s Motion to Reconsider five months later. (R. pp. 293-300). In its Memorandum in Opposition to Plaintiff’s Motion to Reconsider, the City argued that the motion is defective for failing to state its grounds and does not preserve any issue for appeal. (R. pp. 304-306). The City therefore submits that this issue is not properly before the Court. Regardless, a review of those statements reveals that the alleged inconsistencies stem from misunderstandings of the facts and, in any event, they are not material to the outcome of this case.

Horton attempts to demonstrate a factual dispute between Officer Currie’s affidavit and his deposition testimony about his conversation with Horton on Monday, September 21, 2009. Officer Currie testified in his affidavit that, when he came to work that day, he became aware that Horton had been picked up and was incarcerated. (R. p. 256 ¶ 10). As was his custom, he took fresh fingerprints from her to compare to the fingerprint that was taken from the crime scene. (Id.). It appeared to him that they matched. (Id.). However, because Horton related facts which, if true, would have negated her ability to commit the crime, he took the fingerprints to experts at SLED for additional review. (R. p. 257 ¶ 10). Horton contrasts that to Officer Currie’s deposition testimony that, when he fingerprinted her, his conversation consisted of “[h]ey, how are you...”. (R. p. 138, l. 15-18). Horton apparently contends that these two statements are inconsistent. However, the deposition testimony is clearly very general while the affidavit is more specific. In fact, the deposition testimony indicates that Officer Currie had two conversations with Horton that day, totaling fifteen to twenty minutes. (R. p. 138 l. 17-22). Further, the statement in his affidavit that Horton related facts that caused him to seek a second opinion from SLED is not necessarily based upon a conversation

directly with Horton but could have been based on facts related to him by Investigator Tyler. There is no evidence of a factual discrepancy here. In any event, even if a discrepancy existed, it would not be material. There is no dispute that Officer Currie did take fresh fingerprints from Horton, that he took them to SLED and SLED representatives could not confirm a match with the latent print, and that Horton was therefore released from custody later that day. (R. pp. 256-257 ¶¶ 10, 11). The specifics of the conversation that led Officer Currie to seek that second opinion are not material.

Horton also alleges that Officer Currie gave deposition testimony that differs from the City's response to written discovery concerning the City's procedures for taking the fingerprints of a person after they are taken into custody. She cites the City's response to Plaintiff's Interrogatory 11 in which it stated that "...the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility."<sup>12</sup> Horton contrasts that to Officer Currie's deposition testimony, which she says is that it is the "Departments' procedure to fingerprint the individual in custody and to confirm the match as soon as possible." Horton apparently misunderstands Officer Currie's testimony. The response to Interrogatory 11 is consistent with Officer Currie's testimony that there is no departmental practice to fingerprint in those circumstances but that it is left up to the individual crime scene officer. (R. p. 136, l. 13-p. 137, l. 12). It is his practice to take fingerprints of a person after apprehension so he can later testify that he

---

<sup>12</sup> Interrogatory 11 asked "Please list any and all policies regarding Defendant's procedures once an individual is arrested and booked, including but not limited to, the number of hours a Defendant may be held prior to being fingerprinted. The City responded "The Defendant objects to this Interrogatory on the ground that it is too vague to permit an informed response. Subject to that objection, the arresting agency does not ordinarily take fingerprints after a person has been booked into a detention facility." (R. p. 222). This response is based on the fact that detention center personnel handle the fingerprinting of a person who is booked into their facility. It was not directed to the practice of individual police officers.

took fresh fingerprints and re-examined them to confirm a match. (Id.). He likes to do so as soon as possible, after taking into account his work schedule. (R. p. 137, l. 13-21). That is also consistent with his affidavit testimony which states that it is his custom to take fresh fingerprints. (R. p. 256 ¶ 10). Regardless, any perceived discrepancy is immaterial since there is no legal requirement that a suspect be fingerprinted after being brought to a detention center.

Horton also points to testimony from Officer Currie, in comparing a print from AFIS (which she contends was her print) to the latent print, that "...it is completely different than this one here.... It doesn't add up". (R. p. 135, l. 5-19). Although the argument is not made very clearly, Horton appears to call into question Officer Currie's affidavit testimony that it appeared to him that her AFIS print matched the latent print. (R. p. 256 ¶ 7). There is no contradiction. Officer Currie's deposition testimony cited by Horton does not involve a review of her fingerprints. Officer Currie testified that the AFIS system returned a list of twenty fingerprints similar to the one submitted. (R. p. 131, l. 12-24; R. p. 256 ¶ 6). Those prints are ranked in order from most likely to least likely to match.<sup>13</sup> (R. p. 256 ¶ 6). In his deposition, Officer Currie initially discussed the first print from AFIS and indicated that it was the only one of the twenty that came close to matching the crime scene print. (R. p. 132, l. 13-24). The first print from AFIS was Horton's. (R. p. 256 ¶ 6). In his deposition, Officer Currie was then asked to examine fingerprint number two (second most likely to match the latent print) from AFIS. (R. p. 135, l. 5-6). When asked why he found that print to be a less likely match, Officer Currie

---

<sup>13</sup> AFIS does not match fingerprints found at a crime scene to fingerprints found in its computer database. AFIS only finds a number of fingerprints that most nearly have the characteristics marked by the requestor. It is up to the crime scene analyst to look at each of them to determine whether there is a match. (R. p. 256 ¶ 7).

pointed out the different characteristics between that print and the latent print. (R. p. 135, l. 12-19). It was this print, not Horton's print, that Officer Currie said was "completely different" and "doesn't add up." (Id.).

Finally, Horton asserts that "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." However, she does not demonstrate how any of that testimony creates a factual dispute or how it is material. Her general statement is insufficient to preserve any issue for review or to justify reversing the order of the circuit court.

Horton has not preserved the issue of alleged factual disputes regarding the fingerprints and, at any rate, has not demonstrated any disputed material fact that would have prevented the grant of summary judgment to the City.

**VI. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE FALSE ARREST, FALSE IMPRISONMENT, AND MALICIOUS PROSECUTION CLAIMS BECAUSE THE CITY HAD PROBABLE CAUSE TO ARREST HORTON AS A MATTER OF LAW.**

The circuit court correctly disposed of the claims for false arrest, false imprisonment, and malicious prosecution by finding that the City had probable cause as a matter of law to arrest Horton for the robbery at Roly Poly. (R. pp. 8-10).

An essential element in claims for false imprisonment and malicious prosecution is the lack of probable cause for the arrest. Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct.App. 2005). The party bringing the action has the burden of demonstrating the lack of probable cause. Id. Probable cause turns not on the individuals' actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty

of a crime. Id. Probable cause is determined as of the time of arrest based on facts and circumstances known to the arresting officer. Id. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). The appellate courts of this state have found probable cause as a matter of law in a number of recent decisions. See, e.g., Law v. South Carolina Dept. of Corrections, supra; McBride v. School District of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct.App. 2010); Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct.App. 2005).

The circuit court properly found probable cause as a matter of law in this case. It found that Officer Currie conducted a thorough investigation that developed facts appearing to establish Horton's guilt; that an Assistant Solicitor authorized a warrant against Horton; and finally, that a ministerial recorder then found probable cause and issued warrants against her. (R. p. 8). Taken together, the court found that these facts established probable cause as a matter of law. (Id.). See McBride, supra (relying inter alia on evidence of a thorough investigation, testimony from an Assistant Solicitor, and the issuance of a warrant). Horton does not address this finding in her brief and it is now the law of the case.

As an alternative ground, the circuit court found that probable cause was established as a matter of law because both Investigator Tyler and Officer Currie had a reasonable belief that the fingerprint evidence was accurate and that Horton had

committed the crime. (R. pp. 8-9). That finding is fully supported by the record.<sup>14</sup> Horton has not appealed that ruling and it has become the law of the case.

For the reasons above, the circuit court correctly found that the police officers in this case had probable cause as a matter of law to arrest Horton for crimes at the Roly Poly restaurant and that her claims for false arrest, false imprisonment and malicious prosecution are barred.

### CONCLUSION

For the reasons stated, the Respondent respectfully requests that this Court dismiss the appeal or, in the alternative, affirm the judgment of the circuit court.

*[Signature on following page]*

---

<sup>14</sup> Officer Currie is well trained in fingerprint analysis. (R. p. 255 ¶ 4). He was a seasoned veteran in the crime scene unit with approximately fourteen years of experience. (R. pp. 254-255 ¶ 3). He obtained a fingerprint from the crime scene that he believed was from the person who committed the break-in. (R. p. 255 ¶ 5). He ran the print through the AFIS system and Horton's fingerprint was found to be the most probable match out of all of the fingerprints in that database. (R. pp. 255-256 ¶ 6). Officer Currie then conducted an extensive comparison of the latent print from the crime scene and the print of Horton that was on file with SLED and determined that they matched. (R. p. 256 ¶ 7). He had two additional crime scene analysts review the prints and both agreed that they were a match. (R. p. 256 ¶ 8). In fourteen years of fingerprint analysis, involving literally thousands of fingerprint comparisons, the present case is the only one in which Officer Currie's conclusion has been called into question. (R. p. 257 ¶ 12). Officer Currie followed his training and the professional standards applicable to fingerprint analysis and believed in good faith that the fingerprints matched and constituted probable cause for the arrest of Horton. (R. pp. 257-258 ¶¶ 13, 14). Investigator Tyler acted upon that information to obtain arrest warrants against Horton. (R. p. 256 ¶ 9). Investigator Tyler justifiably relied upon Officer Currie's positive and unequivocal identification of Horton as a result of the fingerprint analysis.

Respectfully submitted,



ROBERT G. COOPER  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
(803) 737-4242

Attorney for Respondent

Columbia, South Carolina

November 1, 2012

**RECEIVED**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

NOV 01 2012

**SC Court of Appeals**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

Tynyasha Horton.....Appellant,

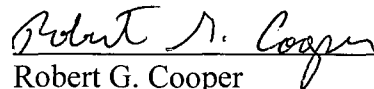
v.

City of Columbia Police Department..... Respondent.

**PROOF OF SERVICE**

I certify that I have served the final Brief of Respondent on Tynyasha Horton by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2012, addressed to her attorney of record, Dylan W. Goff, 1422 Laurel Street, Columbia, South Carolina 29201.

November 1, 2012



Robert G. Cooper  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
(803) 737-4242

Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**  
NOV 01 2012

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Alison R. Lee, Circuit Court Judge

Case No. 2010-CP-40-3299

Tynyasha Horton.....Appellant,

v.

City of Columbia Police Department..... Respondent.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that the final Brief of Respondent complies with Rule 211(b), SCACR.

November 1, 2012

*Robert G. Cooper*

Robert G. Cooper  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
(803) 737-4242

Attorney for Respondent