

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Re: Keith Kelly, Judge

Appellate Case No.: 2017-001009

RECEIVED
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SC Court of Appeals

Caitlyn Langham,

Appellant,

vs.

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

Respondents.

APPELLANT'S RECORD ON APPEAL



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Anderson, South Carolina
May 4, 2018

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INDEX

Summons and Complaint, filed April 8, 2016	1
Defendant WALMART Stores, Inc. Answer, filed May 16, 2016	19
Defendant WALMART Stores, Inc's. Motion to Dismiss, filed May 16, 2016	37
Defendants Officer Russel Porter, City of Spartanburg and Spartanburg Police Department's Answer, filed May 16, 2016	43
Plaintiff's Opposition to Defendant WALMART's Motion to Dismiss, filed August 24, 2016	60
Order Granting Defendant WALMART's Partial Motion to Dismiss, filed November 15, 2016	69
Plaintiff's Motion for Reconsideration, dated November 21, 2016	75
Defendants Officer Russel Porter, City of Spartanburg and Spartanburg Police Department's Motion to Dismiss and/or Motion for Summary Judgment, dated December 8, 2016	81
Defendants Porter, City of Spartanburg and Spartanburg Police Department's Memorandum in Support of Motion for Summary Judgment, dated February 24, 2017 With Exhibits 1 to 4	84
Plaintiff's Opposition to Defendants Porter, City of Spartanburg and Spartanburg Police Department's in Opposition to Motion for Summary Judgment, dated February 28, 2017	108
Order Denying Plaintiff's Motion for Reconsideration, filed March 22, 2017	124
Order Granting Defendants Porter, City of Spartanburg and Spartanburg Police Department's Summary Judgment, dated March 23, 2017	129
Defendant WALMART Stores, Inc's Motion for Summary Judgment, filed May 15, 2017	138
Response in Opposition to Defendant WALMART's Motion for Summary Judgment, Dated July 14, 2017	145
Order Granting Defendant WALMART's Motion for Summary Judgment, dated July 14, 2017	152
Plaintiff's Motion for Reconsideration, dated July 19, 2017	159
Order Denying Plaintiff's Motion for Reconsideration, dated October 3, 2017	170

INDEX

Notice of Appeal, filed April 18, 2017	174
Order Consolidating Plaintiff's Appeal, filed November 27, 2017	181
Excerpts of Criminal Trial, dated September 17, 2014, pp. 8-9 and 22-23	183
Excerpt of Caitlyn Langham Deposition, dated January 18, 2017, pp. 12-14	189
Excerpt of Ronnee Miller Deposition, dated January 18, 2017, pp. 11-14	194
Transcript of Motion for Summary Judgment, held on February 28, 2017	200
Certification of Counsel	216

SUMMONS AND COMPLAINT

April 8, 2016

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff(s)

vs.

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

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 42- _____

2016-CP-42-1280

Submitted By: Donald Smith

Address: 122 N. Main Street Anderson, SC 29621

SC Bar #: Telephone #: 864-642-9284 Fax #: 864-642-9285 Other: E-mail: attorneydonaldsmith@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Libel (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of-State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOJ (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)

Submitting Party Signature:

[Handwritten Signature]

Date:

4/8/16

SPARTANBURG COUNTY COURT CLERK'S OFFICE 2016 APR - 8 PM 4:25 M. HOPE BLANK

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-1280

Caitlyn Langham,

Plaintiff,

v.

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


Defendants.

SUMMONS

(JURY TRIAL DEMANDED)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Complaint on the undersigned at 122 N. Main St., Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.


Donald L. Smith
Attorney for Plaintiff
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

M. HOPE BLACKLEY

2016 APR -8 PM 4: 26

CLERK OF COURT
SPARTANBURG COUNTY

Anderson, South Carolina
April 8, 2016.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-OP-42-1280

Caitlyn Langham,

Plaintiff,

v.

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

Defendants.

COMPLAINT

(JURY TRIAL DEMANDED)

COMPLAINT FOR DAMAGES

Caitlyn Langham, by and through her undersigned attorney, hereby files this Complaint seeking damages against defendants sued in their individual and official capacities for violations of her constitutional rights under the due process clause of the Fourteenth Amendment, for violation of her constitutional rights under the reasonableness clause of the Fourth Amendment, false imprisonment, malicious prosecution, and defamation, and avers as follows:

SUBJECT MATTER JURISDICTION

1. This Court possesses subject matter jurisdiction over the Complaint.

PERSONAL JURISDICTION

2. This Court has personal jurisdiction over the defendants in their individual and official capacities because each of the defendants reside in South Carolina; and, their acts or omissions giving rise to Plaintiff's claims occurred in South Carolina.

VENUE

CLERK OF COURT
SPARTANBURG COUNTY
2016 APR -8 PM 4: 28
M. HOPE BLACKLEY

3. Venue is proper because the defendants reside in the County of Spartanburg, State of South Carolina; and, their acts or omissions giving rise to Plaintiff's claims occurred in this County of Spartanburg, State of South Carolina.

PARTIES

4. The plaintiff, Caitlyn Langham, was at the Wal-Mart store located at 141 Dorman Centre Drive, Spartanburg, South Carolina, to purchase a number of food and personal products, when she was unreasonably searched and seized by Defendants. The plaintiff is a citizen and resident of Spartanburg County, South Carolina.
5. Sued in his individual and official capacities, Defendant Russell Porter was working as a security guard at the above-identified Wal-Mart store on the day of the subject incident. Defendant Porter unreasonably searched and seized Plaintiff, in violation of her constitutional rights. At the time of the subject incident, Defendant Porter was employed by the City of Spartanburg Police Department, located at 145 West Broad Street, Spartanburg, South Carolina.
6. Defendant City of Spartanburg failed to correct prior instances of unconstitutional behavior by Defendant Porter, thus tacitly authorizing his conduct; the failure to correct Defendant Porter's conduct amounts to a custom or policy of allowing such conduct. Defendant City of Spartanburg is located at 145 West Broad Street, Spartanburg, South Carolina.
7. Defendant Wal-Mart Stores, Inc. employed Defendant Porter on the date of the subject incident. Defendant Porter was acting at the direction of Defendant Wal-Mart Stores, Inc. when he, under color of law, unconstitutionally searched and seized Plaintiff inside

the Wal-Mart store. Defendant Wal-Mart Stores, Inc. is located at 141 Dorman Centre Drive, Spartanburg, South Carolina.

8. On Christmas Eve, 2013, Plaintiff entered the Wal-Mart store on Dorman Centre Drive in Spartanburg, South Carolina to purchase dog food, soda for herself and her grandmother, and Christmas cookies for her younger sister.
9. While shopping, Plaintiff decided to pick up a few personal cosmetic items.
10. Plaintiff cosmetic products such as mascara and eyeliner in her shopping car, along with the dog food, soda, and cookies.
11. Upon reaching the cashier to pay for her items, Plaintiff realized that she did not have enough money on her person to pay for all of the items in her cart.
12. As a result, Plaintiff removed the cosmetic items from her cart and placed them on a shelf near the checkout line, so that she could purchase the food items and retrieve enough money from her car to return and pay for the cosmetic items.
13. Employees of Defendant Wal-Mart Stores, Inc. told Defendant Porter that they witnessed Plaintiff placing items in her purse.
14. Plaintiff did not place any items in her purse; she placed them in her shopping cart.
15. Defendant Porter did not witness Plaintiff place any items in her purse.
16. After she removed the cosmetic items from her purse and before she able to purchase the food items, Defendant Porter approached Plaintiff from behind, forcefully grabbed her arm, and identified himself as a police officer.
17. Plaintiff told Defendant Porter that his grabbing Plaintiff's arm was hurting her.
18. Defendant Porter grabbed Plaintiff's arm so hard that a bruise in the shape of Defendant's thumb was left on her arm.

19. Defendant Porter grabbed an area of Plaintiff's arm in which an internal contraceptive device is located, causing her to flinch.
20. When Plaintiff's arm flinched, Defendant Porter forcefully threw Plaintiff to the ground.
21. Plaintiff is 5'2" in height, and weighs 115 pounds; Defendant Porter is 6'1" in height and regularly works out.
22. As a result of being thrown to the ground, Plaintiff sustained significant bruising to her arm, as well as injuries to her head and face.
23. Defendant Porter has a history of excessive force complaints.
24. Defendant Porter was not subject to discipline adequate to deter him from committing similar unreasonable searches and seizures in the future.
25. After Defendant Porter threw Plaintiff to the floor, he began searching through her purse.
26. Defendant Porter did not have a warrant to search Plaintiff's purse, and had not arrested Plaintiff when he began the search.
27. Defendant Porter did not witness Plaintiff attempt to shoplift, and Plaintiff was in line to pay for her items when Defendant Porter approached her; essentially, Defendant Porter was acting in anticipation of some future act that he believed Plaintiff would attempt to commit.
28. After slamming Plaintiff to the floor and searching through her purse, Defendant Porter detained Plaintiff at the Wal-Mart store until a patrol unit from Spartanburg Police Department arrived.

29. Defendant Porter told the responding officer that he witnessed Plaintiff placing items in her purse, despite witnessing nothing of the sort.
30. As a result of Defendant Porter's misperceptions and false statements to the responding officer, Plaintiff was transported to the jail.
31. Defendants have maintained that no video evidence of the subject incident exists, despite the fact that it took place near the checkout aisle of a Wal-Mart store.
32. Plaintiff was acquitted of shoplifting by a jury on September 17, 2014.

PLAINTIFF'S FIRST CAUSE OF ACTION

42 U.S.C. § 1983 – VIOLATION OF CIVIL RIGHTS - UNREASONABLE SEIZURE AS AGAINST DEFENDANT PORTER

33. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-32 above.
34. The Fourth Amendment to the United States Constitution prohibits law enforcement officers from effecting unreasonable seizures of individuals.
35. Seizures of individuals effected without probable cause are unreasonable.
36. Defendant Porter did not witness Plaintiff place merchandise in her purse, and she was in line to pay for items in her shopping cart when Defendant Porter seized her.
37. Plaintiff's detention and subsequent arrest were conducted without probable cause, and thus violated Plaintiff's constitutional right to be free from unreasonable seizure.
38. No reasonable officer in Defendant Porter's position would have believed that the seizure of Plaintiff, absent a warrant or probable cause therefor, was permitted by the Fourth Amendment.
39. As a direct and proximate result of Defendant Porter's unreasonable seizure, Plaintiff has been damaged, which damages include but are not limited to a deprivation of her

constitutional rights, physical injury, damage to her reputation, public humiliation, and mental anguish, and for which Defendant Porter is liable.

PLAINTIFF'S SECOND CAUSE OF ACTION

**42 U.S.C. § 1983 – VIOLATION OF CIVIL RIGHTS – UNREASONABLE SEARCH
AS AGAINST DEFENDANT PORTER**

40. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-39 above.
41. The Fourth Amendment to the United States Constitution prohibits law enforcement officers from conducting unreasonable searches.
42. Warrantless searches are *per se* unreasonable.
43. Defendant Porter lacked probable cause or a warrant to search Plaintiff's purse, Plaintiff was not under arrest when Defendant Porter searched her purse, and the search did not otherwise fall within one of the few recognized exceptions to the warrant requirement.
44. No reasonable officer in Defendant Porter's position would have believed that the warrantless search of Plaintiff's purse was permissible under the Fourth Amendment.
45. As a direct and proximate result of Defendant Porter's unreasonable search, Plaintiff has been damaged, which damages include but are not limited to a deprivation of her constitutional rights, physical injury, damage to her reputation, public humiliation, and mental anguish, and for which Defendant Porter is liable.

PLAINTIFF'S THIRD CAUSE OF ACTION

**42 U.S.C. § 1983 – VIOLATION OF CIVIL RIGHTS – EXCESSIVE FORCE
AS AGAINST DEFENDANT PORTER**

46. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-45 above.
47. The Fourth Amendment to the United States Constitution prohibits law enforcement officers from effecting unreasonable seizures of individuals.
48. The Fourth Amendment's right to be free from unreasonable seizures includes the right to be free from seizures carried out with excessive force.
49. After Defendant Porter forcefully grabbed Plaintiff's arm in an area in which an internal contraceptive is located, leaving bruises and causing Plaintiff to flinch, Defendant Porter slammed Plaintiff to the floor, causing injuries to Plaintiff's arm, head, and face.
50. Plaintiff, who is 5'2" tall and weighs 115 pounds, did not pose a threat to the safety of Defendant Porter, who is 6'1" tall and regularly works out, and was not attempting to flee.
51. No reasonable officer in Defendant Porter's position would have concluded that such force was justified in apprehending Plaintiff.
52. As a direct and proximate result of Defendant Porter's use of excessive force, Plaintiff has been damaged, which damages include but are not limited to a deprivation of her constitutional rights, physical injury, damage to her reputation, public humiliation, and mental anguish, and for which Defendant Porter is liable.

PLAINTIFF'S FOURTH CAUSE OF ACTION

**FALSE IMPRISONMENT
AS AGAINST DEFENDANT PORTER**

53. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-52 above.

54. Defendant did not witness Plaintiff commit any unlawful act, and relied upon uncorroborated statements of third-parties to detain and arrest Plaintiff.
55. Defendant Porter lacked probable cause to detain or arrest Plaintiff.
56. As a direct and proximate result of Defendant Porter's false imprisonment of Plaintiff, Plaintiff has been damaged, which damages include but are not limited to a deprivation of her constitutional rights, physical injury, damage to her reputation, public humiliation, and mental anguish, and for which Defendant Porter is liable.

PLAINTIFF'S FIFTH CAUSE OF ACTION

**DEFAMATION
AS AGAINST DEFENDANT PORTER**

57. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-56 above.
58. In the middle of a busy Wal-Mart store, on Christmas Eve, Defendant Porter approached Plaintiff, slammed her to the floor, and falsely accused her of shoplifting in front of numerous Wal-Mart customers.
59. As a direct and proximate result of Defendant Porter's defamation of Plaintiff, Plaintiff has been damaged, which damages include but are not limited damage to her reputation, public humiliation, and mental anguish, and for which Defendant Porter is liable.

PLAINTIFF'S SIXTH CAUSE OF ACTION

**ASSAULT AND BATTERY
AS AGAINST DEFENDANT PORTER**

60. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-59 above.

61. Defendant Porter's unjustified use of excessive force amounted to a vicious assault and battery on Plaintiff's person.
62. As a direct and proximate result of Defendant Porter's assault and battery of Plaintiff, Plaintiff has been damaged, which damages include but are not limited to physical injury, public humiliation, and mental anguish, and for which damages Defendant Porter is liable.

PLAINTIFF'S SEVENTH CAUSE OF ACTION

**MALICIOUS PROSECUTION
AS AGAINST ALL DEFENDANTS**

63. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-62 above.
64. A charge of shoplifting was instituted against Plaintiff at the instance of Defendants, despite a glaring lack of probable cause.
65. Plaintiff was acquitted of the charge after a jury trial.
66. The institution of the shoplifting charge resulted in injury to Plaintiff, including damage to her reputation, public humiliation, mental anguish, and costs associated with defending the charge.
67. As a direct and proximate result of Defendants' malicious prosecution of Plaintiff, Plaintiff has been damaged, for which damages Defendants are liable.

PLAINTIFF'S EIGHT CAUSE OF ACTION

**42 U.S.C. § 1983 – VIOLATION OF CIVIL RIGHTS – MONNELL LIABILITY
AS AGAINST DEFENDANT CITY OF SPARTANBURG**

68. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-67 above.

69. At the time of the subject incident, Defendant was employed as an investigative officer with the Spartanburg Police Department.
70. Defendant Porter identified himself as a police officer to Plaintiff when he detained her for allegedly shoplifting cosmetic items from Wal-Mart.
71. Defendant Porter had a history of complaints, including complaints of excessive force, at the time of the subject incident.
72. Defendant City of Spartanburg failed to respond to past complaints made against Defendant Porter in a manner that would adequately deter him from committing future violations of the United States Constitution.
73. Defendant City of Spartanburg's failure to take proper remedial action in response to prior complaints against Defendant Porter constitutes a display of deliberate indifference toward his misconduct.
74. Defendant City of Spartanburg's deliberate indifference toward Defendant Porter's misconduct amounts to a policy or custom of allowing such conduct.
75. In effect, Defendant City of Spartanburg has been deliberately indifferent to Defendant Porter's misconduct by failing to properly train and failing to properly discipline Defendant Porter for his constitutional violations.
76. As a result of Defendant City of Spartanburg's continued failure to train, supervise, discipline, or otherwise prevent Defendant Porter's constitutional violations, Plaintiff has damaged, as which damages include but are not limited to the deprivation of her constitutional rights, physical injury, public humiliation, the tarnishing of her reputation, and mental anguish, and for which Defendant Porter is liable.

PLAINTIFF'S NINTH CAUSE OF ACTION

RESPONDEAT SUPERIOR
AS AGAINST DEFENDANT WAL-MART STORES, INC.

77. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-76 above.
78. Defendant Porter's acts and/or omissions, which gave rise to Plaintiff's Causes of Action outlined above, were carried out by Defendant Porter in the course and scope of his employment with Defendant Wal-Mart Stores, Inc.
79. Under the doctrine of *respondeat superior*, Defendant Wal-Mart Stores, Inc. is liable to Plaintiff for the tortious acts and/or omissions of Defendant Porter which led to Plaintiff's Causes of Action outlined above.

DAMAGES

80. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-79 above.
81. As a direct and proximate result of the violations of Plaintiff's constitutional rights and tortious conduct committed by Defendants herein identified, Plaintiff suffered numerous injuries.
82. As a direct and proximate result of Defendants' constitutional violations and tortious conduct, Plaintiff incurred the following:
- a. Deprivation of her constitutional rights;
 - b. Conscious mental pain, suffering, and distress;
 - c. Physical injuries to her arm, face, head, and neck;
 - d. Damage to her good name and reputation;
 - e. Psychological distress; and
 - f. Compensatory and punitive damages.

83. Plaintiff is entitled to recover actual and punitive damages from defendants in an amount to be determined by this Court.

PUNITIVE DAMAGES

84. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 83 above.

85. The acts and/or omissions of Defendants, as stated above, were a willful, wanton, and/or reckless disregard for the well-being of Plaintiff.

86. As a direct and proximate result of the willful, wanton, and/or reckless acts and omissions of the defendants, Plaintiff suffered.

87. The conduct of Defendants as set forth above justifies an award of punitive damages for each of Plaintiff's causes of action as set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that she have and recover from Defendants as follows:

1. Actual damages in an amount to be determined by a jury.
2. Punitive damages in an amount sufficient to punish Defendants for their reckless, willful and wanton acts, and to deter Defendants and others from committing similar acts.
3. Attorney fees, costs, and interest as provided by law; and
4. For such other and further relief as the Court may deem just and proper.

JURY TRIAL

Plaintiff demands a trial by jury on all issues and causes of action described herein.

Respectfully submitted,



Donald L. Smith, #06699

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Attorney for Plaintiff

April 8, 2016

2016 APR -8 PM 4: 27
SPARTANBURG COUNTY
M. HOPE BLACKLEY

Common Pleas
 Clerk : M Hope Blackley
 Spartanburg County
 Spartanburg, SC 29304
 (864) 596-2591

Received From: Smith, Donald Loren
 122 N. Main St.
 Anderson, SC 29621

Date: 4/ 8/2016
 Receipt #: 96637
 Clerk: c42amiller

Paying for: Langham, Caitlyn

Transaction Type: Payment

Reference #: 4353

Payment Type: Check \$150.00

Comment:
 Non-Refundable

Total Paid: \$150.00

Total Received: \$150.00

Change Due: \$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP4201280	Caitlyn Langham VS Russell Porter	\$150.00	\$150.00	\$0.00

Total Cases: 1	\$150.00	\$150.00	\$0.00
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DEFENDANT WALMART STORES, INC.'S
ANSWER
(May 16, 2016)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

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

Defendants.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**DEFENDANT WAL-MART STORES,
INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT
(Jury Trial Requested)**

TO: PLAINTIFF AND HER COUNSEL, DONALD L. SMITH, ESQUIRE:

Defendant Wal-Mart Stores, Inc.¹ (hereinafter "Wal-Mart"), by and through undersigned counsel, hereby answers Plaintiff's Complaint in the above-captioned case as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's Complaint is denied unless specifically admitted herein; further, Wal-Mart hereby requests a jury trial.
2. The allegations contained in Plaintiff's "Complaint for Damages" do not require a response. To the extent a response may be required, Wal-Mart denies the allegations.
3. The allegations of Paragraph 1 are jurisdictional in nature and, thus, do not require a response. To the extent a response may be required, Wal-Mart does not contest the subject matter jurisdiction of this Court.
4. The allegations of Paragraph 2 are jurisdictional in nature and, thus, do not require a response. To the extent a response may be required, Wal-Mart does not contest the personal jurisdiction of this Court but, specifically denies that it is a resident of South Carolina as

¹ The named Defendant Wal-Mart Stores, Inc. is not a proper party to this action; Wal-Mart Stores East, LP is the only proper corporate entity. Counsel for Defendant will accept service of an Amended Summons and Complaint naming the proper entity or, in the alternative, stipulate to amend the caption.

it is a foreign business entity with its principal place of business in Arkansas; further, Walmart denies that it committed any acts or omissions giving rise to the causes of action alleged in Plaintiff's Complaint.

5. Paragraph 3 pertains to venue; thus, it does not require a response. However, to the extent a response may be required, Wal-Mart does not contest the propriety of venue. Wal-Mart does specifically deny that it resides in Spartanburg County, South Carolina.

6. Wal-Mart admits the allegations of Paragraph 4 only to the extent that they allege Plaintiff was previously present at the Wal-Mart store located at 141 Dorman Centre Drive, Spartanburg, South Carolina. Wal-Mart has insufficient information to admit or deny the allegations contained in Paragraph 4 pertaining to Plaintiff's citizenship and residency; thus, Wal-Mart neither admits nor denies the allegations. Wal-Mart denies all remaining allegations.

7. Wal-Mart admits the allegations of Paragraph 5 upon information and belief only to the extent that they allege Defendant Officer Russell Porter was working and present at the subject Wal-Mart store on the date of the alleged incident and that he was employed by the City of Spartanburg Police Department at that time. Defendant denies the remaining allegations.

8. The allegations of Paragraph 6 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

9. Wal-Mart admits the allegations of Paragraph 7 only to the extent they allege that the subject store is located at 141 Dorman Centre Drive, Spartanburg, South Carolina. Defendant denies all remaining allegations at this time upon information and belief.

10. Wal-Mart admits the allegations of Paragraph 8 only to the extent that they allege Plaintiff was present in the subject store on or about Christmas Eve, 2013. Wal-Mart has insufficient information to admit or deny the remaining allegations of Paragraph 8; thus, Wal-

2016 MAY 19
M. HOPE B. ACCREDITED
AUG 10: 10

Mart neither admits nor denies the allegations pertaining thereto. To the extent a response may be required, Wal-Mart denies the allegations.

11. Wal-Mart has insufficient information to admit or deny the allegations of Paragraph 9; thus, it neither admits nor denies the allegations. To the extent a response may be required, Wal-Mart denies the allegations.

12. Wal-Mart denies the allegations of Paragraph 10 upon information and belief.

13. Wal-Mart denies the allegations of Paragraph 11 upon information and belief.

14. Wal-Mart denies the allegations of Paragraph 12 upon information and belief.

15. Wal-Mart has insufficient information to admit or deny the allegations of Paragraph 13; thus, it neither admits nor denies the allegations. To the extent a response may be required, Wal-Mart denies the allegations as phrased.

16. Wal-Mart denies the allegations of Paragraph 14.

17. The allegations of Paragraph 15 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart has insufficient information to admit or deny the allegations; thus, it neither admits nor denies the allegations.

18. Wal-Mart admits the allegations of Paragraph 16 only to the extent that they allege Plaintiff had concealed items in her purse. The remaining allegations do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

19. Wal-Mart has insufficient information to admit or deny the allegations of Paragraph 17; thus, Wal-Mart neither admits nor denies the allegations. To the extent a response may be required, Wal-Mart denies the allegations.

20. Wal-Mart has insufficient information to admit or deny the allegations of

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Paragraph 18; thus, Wal-Mart neither admits nor denies the allegations. To the extent a response may be required, Wal-Mart denies the allegations.

21. The allegations of Paragraph 29² do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

22. The allegations of Paragraph 30 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

23. Wal-Mart has insufficient information to admit or deny the allegations of Paragraph 31. Therefore, to the extent a response may be required, Wal-Mart denies the allegations.

24. Wal-Mart has insufficient information to admit or deny the allegations of Paragraph 32; thus, it neither admits nor denies the allegations.

25. Paragraph 33 incorporates previous allegations and does not pertain to Wal-Mart; thus, it does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

26. The allegations of Paragraph 34 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

27. The allegations of Paragraph 35 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

28. The allegations of Paragraph 36 do not pertain to Wal-Mart; thus, no response is

² Plaintiff's Complaint omits Paragraph 19-28. To the extent a page of Plaintiff's Complaint was omitted, Wal-Mart has insufficient information to admit or deny the allegations contained therein; thus, it neither admits nor denies the allegations. To the extent a response may be required, Wal-Mart denies all allegations contained in the omitted page.

required. To the extent a response may be required, Wal-Mart denies the allegations.

29. The allegations of Paragraph 37 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

30. The allegations of Paragraph 38 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

31. The allegations of Paragraph 39 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

32. Paragraph 40 incorporates previous allegations and does not pertain to Wal-Mart; thus, it does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

33. The allegations of Paragraph 41 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

34. The allegations of Paragraph 42 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

35. The allegations of Paragraph 43 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

36. The allegations of Paragraph 44 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

37. The allegations of Paragraph 45 do not pertain to Wal-Mart; thus, no response is

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required. To the extent a response may be required, Wal-Mart denies the allegations.

38. Paragraph 46 incorporates previous allegations and does not pertain to Wal-Mart; thus, it does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

39. The allegations of Paragraph 47 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

40. The allegations of Paragraph 48 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations, which set forth a legal conclusion.

41. The allegations of Paragraph 49 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

42. The allegations of Paragraph 50 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

43. The allegations of Paragraph 51 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

44. The allegations of Paragraph 52 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

45. Paragraph 53 incorporates previous allegations and does not pertain to Wal-Mart; thus, it does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

46. The allegations of Paragraph 54 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

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47. The allegations of Paragraph 55 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

48. The allegations of Paragraph 56 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

49. Paragraph 57 incorporates previous allegations and does not pertain to Wal-Mart; thus, it does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

50. The allegations of Paragraph 58 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

51. The allegations of Paragraph 59 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

52. Paragraph 60 incorporates previous allegations and does not pertain to Wal-Mart; thus, it does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

53. The allegations of Paragraph 61 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

54. The allegations of Paragraph 62 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

55. Paragraph 63 incorporates previous allegations and thus, does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

56. Wal-Mart admits the allegations of Paragraph 64 only to the extent that they allege that Plaintiff was charged with shoplifting as a result of the subject events. Wal-Mart denies all remaining allegations.

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57. Wal-Mart has insufficient information to admit or deny the allegations of Paragraph 65; thus, Wal-Mart neither admits nor denies the allegations. To the extent a response may be required, Wal-Mart denies the allegations.

58. Wal-Mart denies the allegations of Paragraph 66.

59. Wal-Mart denies the allegations of Paragraph 67.

60. Paragraph 68 incorporates previous allegations and does not pertain to Wal-Mart; thus, it does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

61. The allegations of Paragraph 69 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart admits the allegations upon information and belief to the extent they reference Defendant Porter.

62. The allegations of Paragraph 70 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart has insufficient information to admit or deny the allegations.

63. The allegations of Paragraph 71 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

64. The allegations of Paragraph 72 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

65. The allegations of Paragraph 73 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

66. The allegations of Paragraph 74 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

67. The allegations of Paragraph 75 do not pertain to Wal-Mart; thus, no response is

2016 MAY 16 AM 10:47
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required. To the extent a response may be required, Wal-Mart denies the allegations.

68. The allegations of Paragraph 76 do not pertain to Wal-Mart; thus, no response is required. To the extent a response may be required, Wal-Mart denies the allegations.

69. Paragraph 77 incorporates previous allegations and thus, does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

70. The allegations of Paragraph 78 state a legal conclusion, which does not require a response. To the extent a response may be required, Wal-Mart denies the allegations and specifically denies that it committed any acts or omissions allegedly giving rise to the causes of action set forth in Plaintiff's Complaint.

71. The allegations of Paragraph 79 state a legal conclusion, which does not require a response. To the extent a response may be required, Wal-Mart denies the allegations and specifically denies that it committed any acts or omissions allegedly giving rise to the causes of action set forth in Plaintiff's Complaint.

72. Paragraph 80 incorporates previous allegations and thus, does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

73. The allegations of Paragraph 81 state a legal conclusion, which does not require a response. To the extent a response is required, Wal-Mart denies the allegations and, further, specifically denies any factual allegations contained in Paragraph 81.

74. The allegations of Paragraph 82 state a legal conclusion, which does not require a response. To the extent a response is required, Wal-Mart denies the allegations and, further, specifically denies any factual allegations contained in Paragraph 82.

75. The allegations of Paragraph 83 state a legal conclusion, which does not require a response. To the extent a response is required, Wal-Mart denies the allegations.

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76. Paragraph 84 incorporates previous allegations and thus, does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

77. Wal-Mart denies the allegations of Paragraph 85.

78. The allegations of Paragraph 86 state a legal conclusion, which does not require a response. To the extent a response may be required, Wal-Mart denies the allegations.

79. Wal-Mart denies the allegations of Paragraph 87.

80. To the extent that Plaintiff's prayer for relief, including its subparts, contains allegations against Wal-Mart, Wal-Mart denies all such allegations.

FOR A SECOND DEFENSE

81. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

82. Plaintiff fails to state a claim for which relief may be granted on her causes of action based on 42 U.S.C. § 1983 as Plaintiff cannot establish that Wal-Mart's alleged acts or omissions constituted governmental action as required under the statute. Wal-Mart is a private corporate entity; thus, none of its actions may be characterized as governmental action. Therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

83. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

84. Plaintiff fails to state a claim for which relief may be granted on her cause of action for false imprisonment as such claim is barred by the applicable statute of limitations. Thus, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina

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Rules of Civil Procedure.

FOR A FOURTH DEFENSE

85. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

86. Plaintiff fails to state a claim for which relief may be granted on her cause of action for false imprisonment as Plaintiff cannot establish that Wal-Mart or its associates acted without reasonable and/or probable cause or that Plaintiff's detention was unlawful. Further, Wal-Mart is entitled to the "Merchant's Defense" in this case because Wal-Mart's agents acted in good faith and in accordance with the provisions of S.C. Code § 16-13-140. Thus, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE

87. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

88. Wal-Mart asserts the "Merchant's Defense" in this case pursuant to S.C. Code § 16-13-140. Plaintiff cannot establish that Wal-Mart delayed her in an unreasonable manner, for an unreasonable length of time to permit an investigation, and without reasonable cause to believe that she had committed the crime of shoplifting.

FOR A SIXTH DEFENSE

89. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

90. Wal-Mart at all times acted reasonably, in good faith, and with probable cause so as to bar any recovery against Wal-Mart.

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FOR A SEVENTH DEFENSE

91. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

92. Plaintiff fails to state a claim for which relief may be granted on her cause of action for assault as Plaintiff cannot establish that Wal-Mart or its associates placed Plaintiff in reasonable apprehension of any impending unlawful, unauthorized violence on her person. As such, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN EIGHTH DEFENSE

93. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

94. Plaintiff fails to state a claim for which relief may be granted on her cause of action for battery as Plaintiff cannot establish that Wal-Mart inflicted any unlawful, unauthorized violence on her person; therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A NINTH DEFENSE

95. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

96. Plaintiff fails to state a claim for which relief may be granted on her cause of action for defamation as such claim is barred by the applicable statute of limitations. Thus, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A TENTH DEFENSE

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M. HOPE SLACKLEY
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97. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

98. Plaintiff fails to state a claim for which relief may be granted on her cause of action for defamation against Wal-Mart as Plaintiff cannot establish that Wal-Mart made any statement that is defamatory or actionable. Specifically, Plaintiff cannot prove that Wal-Mart (a) made any statement with a defamatory meaning; (b) published any statement with actual or implied malice; (c) made any false statement regarding Plaintiff; (d) published any false statement regarding Plaintiff; and (e) Plaintiff cannot show legally presumed or special damages as a result of the alleged defamation. Moreover, to the extent any alleged statement was made, it is protected by a qualified or absolute privilege. Finally, any statements about Plaintiff were either true, substantially true, or were made with a good faith belief in the truth of the statements. As such, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN ELEVENTH DEFENSE

99. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

100. Plaintiff fails to state a claim for which relief may be granted on her cause of action for malicious prosecution against Wal-Mart as Plaintiff cannot prove that Wal-Mart: (a) instituted original criminal judicial proceedings against the Plaintiff; (b) which were terminated in her favor; (c) that Wal-Mart acted with actual or implied malice in bringing any alleged criminal charges; (d) that Wal-Mart lacked probable cause; or (e) that Plaintiff sustained any resulting injury or damages. As such, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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MICHAEL BLACHELEY

FOR A TWELFTH DEFENSE

101. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

102. Wal-Mart at all times acted reasonably and in good faith in the exercise of its legal rights and at no time breached any duty, acted with any malice or ill-will toward the Plaintiff, or recklessly or wantonly, or with a conscious disregard for the Plaintiff's rights; thus, the Plaintiff cannot sustain a claim for punitive damages against Wal-Mart. Further, punitive damages as sought by the Plaintiff are excessive, unconstitutional and violate the Due Process Clause of the United States and South Carolina Constitutions.

FOR A THIRTEENTH DEFENSE

103. Wal-Mart adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

104. The facts not having been fully developed, Wal-Mart reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Complaint, Wal-Mart prays that the Court dismiss the Complaint and also prays for such other relief as this Court may deem appropriate.

{Signature page follows.}

2016 MAY 16 AM 10:47
M. HOPE BLAOKLEY

Randi Lynn Roberts

Lee Ellen Bagley, SC Bar No. 77672

Randi Lynn Roberts, SC Bar No. 78888

GAFFNEY LEWIS & EDWARDS, LLC

3700 Forest Drive, Suite 400

Columbia, South Carolina 29204

803.790.8838 (office)

803.790.8841 (fax)

May 13, 2016

Attorneys for Defendant

Wal-Mart Stores, Inc.

2016 MAY 16 AM 10:47
M. HOPE BLASLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

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

Defendants.


COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

CERTIFICATE OF SERVICE

I do hereby certify, on this 13 day of May, 2016, that a copy of the foregoing **Defendant Wal-Mart Stores, Inc.'s Motion to Dismiss and Answer** was served by depositing a copy of the same in the United States Mail, first-class, postage prepaid, addressed to counsel of record as follows:

Donald L. Smith, Esquire
122 N. Main Street
Anderson, SC 29621



Ashley Cashdollar, Legal Assistant

Columbia, South Carolina

2016 MAY 16 AM 10:47
M. HOPE BLACKLEY



**GAFFNEY LEWIS
& EDWARDS**

3700 Forest Drive, Suite 400, Columbia, SC 29204 | T: 803.790.8838 | F: 803.790.8841
www.glelawfirm.com

May 13, 2016

The Honorable Hope Blackley
Spartanburg County Clerk of Court
PO Box 3483
Spartanburg, SC 29304

**Re: Caitlyn Langham v. Officer Russell Porter, City of Spartanburg Police
Department and Wal-Mart Stores, Inc.
Civil Action No: 2016-CP-42-1280**

2016 MAY 16 AM 10:47
M. HOPE BLACKLEY

Dear Ms. Blackley:

Enclosed for filing are the original and one (1) copy of Defendant Wal-Mart Stores, Inc.'s Motion to Dismiss Pursuant to Rule 12(b)(6), SCRPC and Answer in the above-referenced matter. We would appreciate your filing the original and returning a stamped copy for our files in the enclosed envelope provided for your convenience. We have enclosed our firm's check in the amount of \$25.00 which is the fee associated with this request.

By copy of this letter, we are serving a copy of the Motion upon counsel for Plaintiff. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact our office.

Sincerely,

Ashley Cashdollar
Legal Assistant

/amc
Enclosure(s)

cc: Donald Smith, Esq.

DEFENDANT WALMART STORES INC.'S
MOTION TO DISMISS
(May 16, 2016)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

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

Defendants.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**DEFENDANT WAL-MART'S
MOTION TO DISMISS
PURSUANT TO
RULE 12(b)(6), SCRPC**

PLEASE TAKE NOTICE that Defendant Wal-Mart Stores, Inc. (hereinafter, "Wal-Mart") hereby moves this Court for an Order dismissing Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 against Wal-Mart pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiff's causes of action for false imprisonment and defamation, as set forth in her Complaint filed April 8, 2016, were not filed within the applicable statutes of limitations and are thereby barred as untimely. Additionally, 42 U.S.C. §1983 does not create a cause of action against private entities and is indeed inapplicable to a private corporation's actions; thus, to the extent Plaintiff asserts violations of 42 U.S.C. §1983 against Wal-Mart, this Honorable Court should dismiss those causes of action.

Plaintiff's Complaint alleges that on December 24, 2013, she was accused of and arrested for shoplifting at the Wal-Mart store located at 141 Dorman Centre Drive, Spartanburg, South Carolina. Pl.'s Compl., attached hereto as Exhibit A, ¶ 8. As a result of the alleged incident, Plaintiff sets forth in her Complaint a cause of action against Wal-Mart for malicious prosecution. See Ex. A, Pl.'s Compl., ¶¶ 63-67. Additionally, Plaintiff asserts that Wal-Mart is vicariously liable under the doctrine of *respondeat superior* for the alleged acts and omissions of

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CLERK OF COURT

Defendant Porter, against whom Plaintiff alleges causes of action for violations of 42 U.S.C. § 1983, false imprisonment, defamation, and assault and battery.

Plaintiff's claims for false imprisonment and defamation are governed by section § 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. Plaintiff's Complaint alleges the incident occurred on December 24, 2013. See Ex. A, Pl.'s Compl., at ¶ 8. Thus, Plaintiff filed her Complaint well past the applicable two-year statute of limitations, which would have expired on December 24, 2015. As Plaintiff did not file her Complaint until April 8, 2016, approximately three and one-half (3.5) months after the controlling deadline passed, her causes of action for false imprisonment and defamation do not state facts sufficient to constitute a cause of action, are untimely, and should be dismissed with prejudice pursuant to Rule 12(b)(6), SCRPC.

Additionally, to the extent Plaintiff asserts claims against Walmart arising under 42 U.S.C. § 1983, those claims also fail as a matter of law. 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court of the United States previously held that local governing bodies, such as a city municipality, are liable under § 1983 for constitutional violations arising from the government's implementation of policy or custom. *Monell v. Dept. of Soc. Serv. of City of N.Y.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). The plaintiff must show that such policy or custom amounted to a "deliberate indifference" to the plaintiff's constitutional rights. *Pembaur v. Cincinnati*, 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986); *Todd v. Smith*,

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M. HOPE BLANCHARD
CLERK OF COURT

305 S.C. 227, 407 S.E.2d 644 (1991).

Wal-Mart is a private corporate entity; therefore, any of its alleged actions on the date of the alleged incident cannot be characterized as governmental action or pursuant to governmental policy. Plaintiff does not present any allegations that Wal-Mart acted under the color of state or federal law. Indeed, to the extent Plaintiff asserts violations of 42 U.S.C. § 1983 against Wal-Mart, which are inapplicable as explained above, she does so through the theory of *respondeat superior*; however, municipal liability under 42 U.S.C. § 1983 cannot be based on the traditional theory of *respondeat superior*. *Bd. of the County Comm'Rs v. Brown*, 520 U.S. 397, 416 (U.S. 1997) (citing *Monell*, 436 U.S. at 691).

Based upon the foregoing, Plaintiff's claims for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 fail as a matter of law. Therefore, this Honorable Court should dismiss her claims for false imprisonment and defamation as untimely and barred by the applicable statutes of limitation, as well as dismiss any claims against Wal-Mart purportedly arising under 42 U.S.C. § 1983 as said statute does not provide for a cause of action against a private entity.

WHEREFORE, Wal-Mart respectfully requests that this Honorable Court grant the following relief:

- a) issue an Order dismissing with prejudice Plaintiff's causes of action against Wal-Mart for false imprisonment, defamation, and violations of 42 U.S.C. § 1983;
- b) schedule a hearing on this matter should the Court deem a hearing necessary; and
- c) such other and further relief as the Court deems appropriate.

This Motion is based on the applicable statutory and case law, the South Carolina Rules of Civil Procedure, any memorandum in support of this Motion that Defendant Wal-Mart may

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submit, as well as the pleadings and arguments of counsel to be offered at any hearing scheduled on this matter.

Given the nature of this Motion, Rule 11 of the South Carolina Rules of Civil Procedure does not require consultation with opposing counsel prior to the filing hereof.

Respectfully submitted,



Lee Ellen Bagley, SC Bar No. 77672
Randi Lynn Roberts, SC Bar No. 78888
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
(803) 790-8838 (telephone)
(803) 790-8841 (fax)

Attorneys for Defendant Wal-Mart Stores, Inc.

May 13, 2016

2016 MAY 16 AM 10:47
H. HOPE BLADNLEY

DEFENDANT OFFICER RUSSEL PORTER, CITY OF SPARTANBURG
AND SPARTANBURG POLICE DEPARTMENT'S ANSWER
(May 16, 2016)

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,)
)
 _____)

ANSWER ON BEHALF OF
RUSSELL PORTER,
CITY OF SPARTANBURG,
AND SPARTANBURG POLICE
DEPARTMENT

The Defendants, Russell Porter, City of Spartanburg, and Spartanburg Police Department, herein answering the Complaint of the Plaintiff would respectfully show unto the Court and allege as follows:

1. Admit the allegations contained in Paragraphs 1 through 3 of the Plaintiff's Complaint.

2. Admit so much of the allegations contained in Paragraph 4 of the Plaintiff's Complaint as alleges that on Christmas Eve in 2013, the Plaintiff was at the Wal-Mart store located at Dorman Center Drive in Spartanburg, South Carolina. Based upon information and belief, admit the allegations that the Plaintiff is a citizen and resident of Spartanburg County. The remaining allegations contained in said paragraph are hereby denied.

3. Deny the allegations contained in Paragraph 5 of the Plaintiff's Complaint as stated except those alleging that in December of 2013, Porter was an employee of the City of Spartanburg and was working at this Wal-Mart on this particular day.

4. Deny the allegations contained in Paragraph 6 of the Plaintiff's Complaint.

5. Deny the allegations contained in Paragraph 7 of the Plaintiff's Complaint as stated except those alleging that Defendant was Porter was acting under color of law.

6. In responding to the allegations contained in Paragraphs 8 through 10 of the Plaintiff's Complaint these Defendants lack sufficient information to form an opinion or belief as to the Plaintiff's intentions and, therefore, deny the allegations in these paragraphs.

7. Deny the allegations contained in Paragraphs 11 and 12 of the Plaintiff's Complaint.

8. Admit the allegations contained in Paragraph 13 of the Plaintiff's Complaint except that Defendants would show that employees of Wal-Mart did not identify the Plaintiff by name but described her.

9. Deny the allegations contained in Paragraph 14 of the Plaintiff's Complaint.

10. Admit the allegations contained in Paragraph 15 of the Plaintiff's Complaint. In further responding to said allegations, the Defendants would show that Porter did witness Plaintiff with store items in the packaging in her purse in plain view.

11. Deny the allegations contained in Paragraph 16 of the Plaintiff's Complaint as stated. The Defendants would show that as Porter approached the Plaintiff she began heading to the door; that he stopped her and saw in plain view Wal-Mart items in the packaging in her purse which was open. Deny the remaining allegations contained in said paragraph.

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12. Deny the allegations contained in Paragraphs 17 and 18 of the Plaintiff's Complaint.

13. These Defendants are without sufficient information to form an opinion or belief as to the allegations contained in Paragraph 19 of the Plaintiff's Complaint and, therefore, deny same.

14. Deny the allegations contained in Paragraph 20 of the Plaintiff's Complaint. The Defendants would show that upon taking the Plaintiff's arm to lead her to the substation in Wal-Mart, the Plaintiff began kicking and jerking and fell to the ground after which Porter knelt down and handcuffed her.

15. Admit the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

16. Deny the allegations contained in Paragraphs 22 through 25 of the Plaintiff's Complaint. In further responding to the allegations in Paragraph 25 of the Plaintiff's Complaint, the Defendants admit that the purse was searched in the substation after the Plaintiff was arrested and Wal-Mart's items were recovered from her purse.

17. Admit so much of the allegations contained in Paragraph 26 of the Plaintiff's Complaint as alleges that Porter did not have a warrant to search Plaintiff's purse. Deny the allegations contained in said paragraph that contends the Plaintiff was not arrested when her purse was searched. The Wal-Mart items were in plain view in the Plaintiff's open purse in the packaging at the time she was arrested. Her purse was searched and items recovered after she was arrested.

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18. In responding to the allegations contained in Paragraph 27 of the Plaintiff's Complaint, the Defendants admit that Porter did not witness the Plaintiff placing Wal-Mart's items in her purse. The remaining allegations contained in said paragraph are denied. In further responding to said allegations, the Defendants would show that the Plaintiff was trying to exit the store with Wal-Mart's items in her purse when Porter approached her.

19. Deny the allegations contained in Paragraph 28 of the Plaintiff's Complaint as stated. The Defendants would show that Porter arrested the Plaintiff after seeing Wal-Mart's packaged items in her purse as she was attempting to leave the store and that after she was arrested she was kept until a patrol unit from the Spartanburg Police Department arrived.

20. Deny the allegations contained in Paragraph 29 of the Plaintiff's Complaint. In further responding to said allegations, the Defendants admit that the incident report erroneously states that Porter saw the Plaintiff placing items in her purse. It was a simple mistake made in the incident report.

21. Deny the allegations contained in Paragraph 30 of the Plaintiff's Complaint.

22. These Defendants are without sufficient information to form an opinion or belief as to the allegations contained in Paragraph 31 of the Plaintiff's Complaint and, therefore, deny same.

23. Admit the allegations contained in Paragraph 32 of the Plaintiff's Complaint.

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**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION**

24. In responding to the allegations contained in Paragraph 33 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

25. The Defendants would show that the allegations contained in Paragraph 34 of the Plaintiff's Complaint are not factual allegations but conclusions of law and inappropriate in the Complaint and, therefore, do not require a response from these Defendants. To the extent they are deemed to require a response, said allegations are denied.

26. Deny the allegations contained in Paragraph 35 of the Plaintiff's Complaint as stated. In further responding to said paragraph, these Defendants admit that individuals may not be arrested without probable cause.

27. Admit so much of the allegations contained in Paragraph 36 of the Plaintiff's Complaint as alleges that Porter did not witness the Plaintiff placing Wal-Mart merchandise in her purse. Deny the remaining allegations contained in said paragraph.

28. Deny the allegations contained in Paragraphs 37, 38 and 39 of the Plaintiff's Complaint.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION**

29. In responding to the allegations contained in Paragraph 40 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

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30. The Defendants would show that the allegations contained in Paragraph 41 of the Plaintiff's Complaint are not factual allegations but conclusions of law and inappropriate in the Complaint and, therefore, do not require a response from these Defendants. To the extent they are deemed to require a response, said allegations are denied.

31. Deny the allegations contained in Paragraph 42 of the Plaintiff's Complaint. In further responding to said allegations, the Defendants would show that said allegations are not factual allegations but conclusions of law and, therefore, inappropriate in the Complaint.

32. Deny the allegations contained in Paragraph 43, 44 and 45 of the Plaintiff's Complaint.

FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION

33. In responding to the allegations contained in Paragraph 46 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

34. The Defendants would show that the allegations contained in Paragraphs 47 and 48 of the Plaintiff's Complaint are not factual allegations but conclusions of law and inappropriate in the Complaint and, therefore, do not require a response from these Defendants. To the extent they are deemed to require a response, said allegations are denied.

35. Deny the allegations contained in Paragraph 49 of the Plaintiff's Complaint as stated.

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36. Deny the allegations contained in Paragraph 50 of the Plaintiff's Complaint as stated, except those previously admitted.

37. Deny the allegations contained in Paragraphs 51 and 52 of the Plaintiff's Complaint.

**FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION**

38. In responding to the allegations contained in Paragraph 53 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

39. Deny the allegations contained in Paragraph 54, 55 and 56 of the Plaintiff's Complaint.

**FOR A FIRST DEFENSE
TO THE FIFTH CAUSE OF ACTION**

40. In responding to the allegations contained in Paragraph 57 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

41. Deny the allegations contained in Paragraphs 58 and 59 of the Plaintiff's Complaint.

**FOR A FIRST DEFENSE
TO THE SIXTH CAUSE OF ACTION**

42. In responding to the allegations contained in Paragraph 60 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

43. Deny the allegations contained in Paragraph 61 and 62 of the Plaintiff's Complaint.

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**FOR A FIRST DEFENSE
TO THE SEVENTH CAUSE OF ACTION**

44. In responding to the allegations contained in Paragraph 63 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

45. Deny the allegations contained in Paragraph 64 of the Plaintiff's Complaint.

46. Admit the allegations contained in Paragraph 65 of the Plaintiff's Complaint.

47. Deny the allegations contained in Paragraph 66 and 67 of the Plaintiff's Complaint.

**FOR A FIRST DEFENSE
TO THE EIGHTH CAUSE OF ACTION**

48. In responding to the allegations contained in Paragraph 68 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

49. Admit the allegations contained in Paragraph 69 of the Plaintiff's Complaint.

50. Admit the allegations contained in Paragraph 70 of the Plaintiff's Complaint.

51. Deny the allegations contained in Paragraphs 71 through 76 of the Plaintiff's Complaint.

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M. HOFFER

**FOR A FIRST DEFENSE
TO THE NINTH CAUSE OF ACTION**

52. In responding to the allegations contained in Paragraph 77 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

53. The Defendants would show that the allegations in Paragraph 78 and 79 of the Plaintiff's Complaint are not directed to these Defendants and, therefore, require no response. To the extent they are deemed to apply to these Defendants, they are denied.

54. In responding to the allegations contained in Paragraph 80 of the Plaintiff's Complaint, these Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

55. Deny the allegations contained in Paragraphs 81 through 87 and their subparts of the Plaintiff's Complaint.

56. These Defendants deny Plaintiff's prayer for relief and all its subparts.

FOR A SECOND DEFENSE

57. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

58. Defendants would show that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against these Defendants and that the alleged claim for relief so stated in said Complaint fails to state a claim upon which relief can be granted and, therefore, said claim for relief should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

59. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

60. These Defendants deny that the matter asserted by the Plaintiff in the Complaint fall within the purview of 42 USC §1983. The Defendants deny that any Constitutional Right of the Plaintiff has been violated.

FOR A FOURTH DEFENSE

61. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

62. The Defendants would show that at all times alleged in the Complaint, the Defendants acted reasonably and in good faith and did not violate any clearly established right of the Plaintiff and, therefore, are entitled to qualified immunity and dismissal of the Plaintiff's suit.

FOR A FIFTH DEFENSE

63. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

64. The Defendants at all times relevant hereto and during the performance or non-performance of the act alleged in the Complaint, did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives, and the Defendants are, therefore, immune from suit.

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

FOR A SIXTH DEFENSE

65. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

66. With respect to any state causes of action or claims that the Plaintiff may be determined to have included in his Complaint, these Defendants plead the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* including all of the immunities, limitations and defenses granted or preserved by the act.

FOR A SEVENTH DEFENSE

67. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

68. With respect to any state causes of action or claims that the Plaintiff may be determined to have included in his Complaint, any damages sustained by the Plaintiff were as a result of the Plaintiff's own actions in that at the time and the place in question the Plaintiff knew or should have known of the hazards and risks involved in her actions, that the Plaintiff voluntarily assumed the hazards and risks involved in spite of the obviously danger inherent therein, and that by reason of the conduct of the Plaintiff, she voluntarily assumed the risks, hazards and dangers and the damages and injuries which flowed therefrom and is, therefore, barred from any recovery from the Defendants.

FOR AN EIGHTH DEFENSE

69. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

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70. With respect to any state causes of action or claims that the Plaintiff may be determined to have included in his Complaint, the Defendants, Porter, is entitled to personal immunity under the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (1976, as amended).

FOR A NINTH DEFENSE

71. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

72. With respect to any state causes of action or claims that the Plaintiff may be determined to have included in his Complaint, the Defendants would show that punitive damages are not recoverable against these Defendants pursuant to §15-78-120(b) of the South Carolina Code of Laws, (1976 as amended).

FOR A TENTH DEFENSE

73. The Defendants adopt and repeat the allegations contained in the Paragraphs set forth above and incorporate them as part of this defense.

74. The Defendants would show that they acted in compliance with the laws of the United States of America and the State of South Carolina and used no more force than was reasonably necessary against the Plaintiff considering the circumstances then and there existing.

FOR AN ELEVENTH DEFENSE

75. The Defendants adopt and repeat the allegations contained in the Paragraphs set forth above and incorporate them as part of this defense.

76. The Defendant would show that the statute of limitations applicable to Plaintiff's claims has expired and this suit is therefore barred.

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FOR A TWELFTH DEFENSE

77. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

78. These Defendants would show that any statement or communication made by them or acts performed by them at the time and place referred to in the Plaintiff's allegations were true, and, as such, cannot form the basis of an action for defamation.

FOR A THIRTEENTH DEFENSE

79. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

80. These Defendants would show that any statements or communications which may have been made by them at the time or place referred to in the Plaintiff's Complaint were made with a qualified privilege, in good faith and without malice, and were reasonable and proper in scope and extent in light of the facts and circumstances then and there existing and, therefore, cannot form the basis of an action for defamation.

FOR AN FOURTEENTH DEFENSE

81. The Defendants adopt and repeat the allegations contained in the paragraphs set forth above and incorporate them as part of this defense.

82. The Defendants plead the defense of sovereign immunity as a bar to the Plaintiff's lawsuit.

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FOR AN FOURTEENTH DEFENSE

83. This Defendant adopts and repeats the allegations contained in the paragraphs set forth above and incorporates them as part of this defense.

84. This Defendant further alleges and asserts that any state tort claims against him are subject to the immunities, defenses and limitations as to liability, recovery and damages set out in the South Carolina Tort Claims Act, including those contained in §§ 15-78-20(b), 15-78-40, 15-78-50, 15-78-70, 15-78-100(a), 15-78-110, 15-78-120(a)(1) and (2), 15-78-120(b), 15-78-200 and 15-78-60.

FOR A FIFTEENTH DEFENSE

85. This Defendant adopts and repeats the allegations contained in the paragraphs set forth above and incorporates them as part of this defense.

86. This Defendant alleges that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in one or more of the following particulars:

(a) That the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

(b) That, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness.

(c) That the amount of punitive damages awarded is based upon the wealth of the Defendants in violation of their right to equal protection of the laws.

FOR A SIXTEENTH DEFENSE

87. This Defendant adopts and repeats the allegations contained in the paragraphs set forth above and incorporates them as part of this defense.

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James D. Jolly, Jr.

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

Anderson, South Carolina
Dated: 5/13/16

Defendants hereby demands a trial by jury.

James D. Jolly, Jr.
James D. Jolly, Jr.

5/13/16
Date

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M. HOFFER BLANKLEY

PLAINTIFF'S OPPOSITION TO DEFENDANT WALMART
STORES INC.'S MOTION TO DISMISS
(August 24, 2016)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

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

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS MOTION TO
DISMISS**

Plaintiff respectfully submits this Memorandum in Opposition to Defendant
WALMART'S Motion to Dismiss. 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.

The facts as alleged in the Complaint must be taken as true and incorporated herein. In essence however, Plaintiff was accused, arrested and detained, against her will and without warrant, by Defendant WALMART's employees and agent. As a result of this wrongful act, Plaintiff sustained physical injuries and was deprived of her liberty when she was unlawfully and falsely imprisoned. And, despite having no probable cause, Defendant WALMART pursued a case against Plaintiff. Plaintiff was acquitted by the Spartanburg Municipal Court on September 14, 2013.

Discovery has not been exchanged between parties.

On May 13, 2016, Defendant WALMART moved to dismiss Plaintiff's Complaint based on two grounds: First, Defendant WALMART claims that Plaintiff is barred from filing the instant action by statute of limitations. And secondly, Defendant WALMART alleges that 42 U.S.C. §1983 does not apply to private entities such as Defendant WALMART, and thus, Plaintiff's Complaint should be dismissed for failure to state a cause of action.

Standard of Review on a Motion to Dismiss under Rule 12(b)(6)

A motion to dismiss can only be granted if there is no set of facts that would entitle plaintiffs to a verdict on the claims in issue. Applicable standards state that the facts alleged in the complaint are accepted as true. *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974); *Franks v. Ross*, 313 F.3d 184,192 (4th Cir. 2002). In addition, all reasonable inferences must be made in favor of plaintiffs. *Johnson v. Mueller*, 415 F.2d 354 (4th Cir. 1969); *MacKethan v. Peat, Marwick, Mitchell & Co.*, 439 F. Supp. 1090 (E.D. Va. 1977).

Under *Ashcroft v. Iqbal*, to overcome a motion to dismiss, plaintiffs must have alleged facts in a complaint which also “state a claim to relief that is plausible on its face.” *Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Plaintiffs' Complaint easily meets these standards and Defendants raise no legally valid arguments to warrant a dismissal.

ARGUMENTS

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

Defendant 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.

The law is well-settled on this question of statutes of limitation for actions brought under § 1983. While a statute of limitations is not contained within the text of § 1983, the Supreme Court has decided that the state's general statute of limitations for personal injury claims applies, even if the state has different statutes of limitation for intentional torts. *Owens v. Okure*, 488 U.S. 253, 249-50 (1989). To determine the timely filing of a § 1983 claim, courts borrow the statute of limitations from the most analogous state-law cause of action. 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), *Owens v. Okure*, 448 U.S. 235 (1989)).

South Carolina law allows three years for a plaintiff to bring a personal injury action. S.C. Code Ann. § 15-3-530 (5). Therefore, the statute of limitations for § 1983 claims arising in South Carolina is three years, regardless of the underlying allegations of the § 1983 claim.

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.

Just as a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor, 1 C. Corman, *Limitation of Actions* 7.4.1, p. 532 (1991); *Carnes v. Atkins Bros. Co.*, 123 La. 26, 31, 48 So. 572, 574 (1909), so also a §1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477 (1994). The Heck doctrine teaches that if the unlawful arrest claim would necessarily imply the invalidity of a conviction, then the Section 1983 claim does not accrue until the conviction has been set aside and there is no longer any possibility of a judgment in the pending criminal prosecution.

Plaintiff has been acquitted of shoplifting by a jury on September 17, 2014. Following the doctrines abovementioned, Plaintiff has until September 17, 2016 to file her suit against Defendant WALMART. Plaintiff's Complaint based on Fourth and Fourteenth Amendment - malicious prosecution is not time barred.

II. Plaintiff's claims against WALMART is sufficiently stated.

Defendants moved to dismiss Plaintiff's Complaint for Failure to State a Cause of Action. In support of its Motion, Defendant WALMART argued that as a private corporation, 42 U.S.C. §1983 is inapplicable to Defendant WALMART.

Contrary to Defendant WALMART's allegations, a private entity and/or citizen may be held liable for violation of Section 1983. In order to recover under section 1983, a plaintiff must prove that the defendant deprived him of a constitutional right under color of state law (*Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed.2d 142 (1970)). In a section 1983 action against a private party, a plaintiff will be entitled to relief if he can prove that the private party was "a willful participant in joint activity with the State or its agents" which activity deprived the plaintiff of a constitutional right (*Id.* at 152, 90 S.Ct. at 1605-06). For example, a store and its employees may be considered to be acting jointly with police when the police will detain accused shoplifters without making an independent investigation, *Smith v. Brookshire Bros., Inc.*, 519 F.2d 93, 94 (5th Cir.1975) (per curiam), cert. denied, 424 U.S. 915, 96 S.Ct. 1115, 47 L.Ed.2d 320 (1976), or pursuant to a customary plan between the store and the police department, (*Duriso v. K-Mart No. 4195, Division of S.S. Kresge Co.*, 559 F.2d 1274, 1277 (5th Cir.1977) (per curiam) ..

State action is present when private security guards and police officers act in concert to deprive a plaintiff of his civil rights, particularly when a state statute authorizes a shopkeeper to detain suspected shoplifters. *El Fundi*, 625 F.2d at 196. In the case at bar, numerous facts point to the conclusion that Wal-Mart was acting in concert with the local police. First, Defendant WALMART hired Defendant Officer Porter, a police officer, as a security guard on his off days. Defendant Officer Porter admitted during his cross examination in the prior criminal case filed

against Plaintiff that he was hired by Defendant WALMART for the twelfth time on the day the incident happened. Second, it is the practice of Wal-Mart to work with the police department in prosecuting shoplifters. Defendant Officer Porter Elliot and/or WALMART employees had telephoned the police after the unlawful search of Plaintiff's purse and her wrongful arrest, and requested the assistance of an officer for all the detained shoplifters. The police responded, taking Plaintiff into custody

Finally, under SC Code §16-13-140 (2012), a merchant or his employee may detain a suspected shoplifter to effect proper investigation and recovery of unpurchased goods "in a reasonable manner for a reasonable length of time". This state statute, combined with the concerted actions of Defendants Wal-Mart, its employees and the local police department, afford ample evidence of willful, joint activity which supports a claim against Wal-Mart under section 1983.

As for Defendant WALMART's claim that Plaintiff did not present any allegations that Defendant WALMART acted under the color of state or federal law, the Court has ruled in *El Fundi v. Deroche*, 625 F.2d 195, 196 (8th Cir.1980) (per curiam), a Complaint need not be articulately drafted in order to adequately allege that private persons are acting under color of state law. It is sufficient that plaintiff's complaint set out a detailed accounting of the events that led to Plaintiff's complaint set out detailed accounting of what transpired when she was detained for shoplifting. She alleged that she sustained numerous injuries and damages "[a]s a direct and proximate result of willful, wanton, and reckless acts of the Defendants, which constitute violation of Plaintiff's Constitutional rights." Murray's complaint also specifically invoked jurisdiction pursuant to section 1983. These statements more than adequately allege facts sufficient to state a claim against Wal-Mart under section 1983.

Assuming arguendo that Defendant WALMART is not liable under 42 U.S.C. 1983, this does not absolve Defendant WALMART from its liability under the doctrine of respondeat superior. This principle makes an employer or principal legally responsible for the wrongful acts done by an employee or agent, if such acts occur within the scope of the employment or agency.

Under this doctrine, an employer is liable for the negligent acts or omissions of his/her employee which are committed within the scope of his/her employment. To impose liability, there should be some evidence that a master-servant relationship existed between the parties. The test to determine if respondeat superior applies is whether the person sought to be charged as a master had the right or power to control and direct the physical conduct of the other in the performance of the act. If there is no right to control, there is no liability. [Wilson v. United States, 989 F.2d 953, 958 (8th Cir. Mo. 1993)].

In this particular case, Defendant WALMART hired Defendant Officer Porter, as a security guard on several instances. The common law control test is the basic test, using the common law rules, for determining whether a relationship exists between the worker and the person or firm that they work for. Under the common-law test, the employer has the right to tell the employee what to do, how, when, and where to do the job.

The relationship between Defendant WALMART and Defendant Officer Porter satisfies all of these factors: Defendant WALMART, in the times that Defendant Officer Porter was in its employ, assigned Defendant Officer Porter to man a specific area. Defendant WALMART's employees instructed Defendant Officer Porter to approach Plaintiff, whom they suspected of shoplifting. Defendant WALMART allowed Defendant Porter to manhandle Plaintiff since none of its employees prevented Defendant Porter from exercising excessive force against Plaintiff. Finally, Defendant WALMART hired and continued to hire Defendant Porter during

the latter's off days. Thus, Defendant WALMART, at the time of the incident, is by law, an employer of Defendant Officer Porter.

CONCLUSION

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

Respectfully submitted,

s/Donald L. Smith

Donald L. Smith, #06699

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Attorney for Plaintiff

August 24, 2016

ORDER GRANTING DEFENDANT WALMART STORES
INC.'S MOTION TO DISMISS
(November 15, 2016)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

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

Defendants.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**ORDER GRANTING DEFENDANT
WAL-MART'S PARTIAL
MOTION TO DISMISS**

This matter came before the Court on August 25, 2016, upon Defendant Wal-Mart Stores, Inc.'s (hereinafter, "Wal-Mart") Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure as to Plaintiff's causes of action against Wal-Mart for false imprisonment, defamation, and violations of 42 U.S.C. § 1983. Randi Lynn Roberts appeared on behalf of Walmart and Donald L. Smith appeared on behalf of Plaintiff¹. Having duly considered the written submissions and oral arguments presented by the parties, this Court grants Defendant Wal-Mart's Motion for the reasons set forth in this Order.

NATURE OF THE CASE

Plaintiff filed her Complaint instituting the present action on April 8, 2016, alleging a cause of action against Wal-Mart for malicious prosecution. *See* Pl.'s Compl. at ¶¶ 63-67. Additionally, Plaintiff asserts that Wal-Mart is vicariously liable under the doctrine of *respondeat superior* for the alleged acts and omissions of Defendant Porter, against whom Plaintiff alleges causes of action for violations of 42 U.S.C. § 1983, false imprisonment, defamation, and assault and battery. Wal-Mart did not move to dismiss Plaintiff's causes of action against it for assault and battery, through the theory of *respondeat superior*, and malicious prosecution.

¹ Counsel for Defendants Officer Russell Porter and City of Spartanburg, Police Department was also present.

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Doe v. Marion*, 361 S.C. 463, 468, 605 S.E.2d 556, 559 (Ct. App. 2004) (citing *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003)). “A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Id.* at 469, 605 S.E.2d at 559 (citing *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)). Alternatively, a motion to dismiss under Rule 12(b)(6), SCRPC, cannot be sustained “if the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). Upon thorough review of the facts alleged in Plaintiff’s Complaint and the inferences reasonably deducible therefrom, the Court finds that Wal-Mart meets the requisite standard for the dismissal of several causes of action in this matter.

LAW/ANALYSIS

Plaintiff’s claims for false imprisonment and defamation are governed by section § 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. Plaintiff’s Complaint alleges the incident occurred on December 24, 2013. *See* Pl.’s Compl. at ¶ 8. Thus, the applicable two-year statute of limitations expired on December 24, 2015. As Plaintiff did not file her Complaint until April 8, 2016, approximately three and one-half (3.5) months after the controlling deadline passed, her causes of action for false imprisonment and defamation do not state facts sufficient to constitute a cause of action, are untimely, and are hereby dismissed with prejudice pursuant to Rule 12(b)(6), SCRPC.

Additionally, to the extent Plaintiff asserts claims against Wal-Mart under 42 U.S.C. §

1983, those claims also fail as a matter of law. 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court of the United States previously held that local governing bodies, such as a city municipality, are liable under § 1983 for constitutional violations arising from the government's implementation of policy or custom. *Monell v. Dep't of Soc. Serv. of City of N.Y.*, 436 U.S. 658 (1978). However, 42 U.S.C. § 1983 “cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor.” *Monell*, 436 U.S. 658, 691 (1978); *see also Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 416 (1997). In the instant matter, Wal-Mart is not a municipality or other governing body. Wal-Mart is a private corporate entity and, thus, 42 U.S.C. § 1983 cannot be read to give rise to a cause of action against Wal-Mart, whether through the theory of *respondeat superior* or otherwise.

CONCLUSION

Based upon the foregoing, Plaintiff's claims for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 fail as a matter of law. Therefore, this Honorable Court hereby dismisses her claims for false imprisonment and defamation as untimely and barred by the applicable statute of limitations, as well as dismisses any claims against Wal-Mart purportedly arising under 42 U.S.C. § 1983, as said statute does not provide for a cause of action against a private entity. Therefore, the present action will proceed as it pertains to Wal-Mart only upon Plaintiff's causes of action for assault and battery, through the theory of *respondeat superior*, and

malicious prosecution².

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED that Defendant Wal-Mart's Motion is GRANTED as to Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. § 1983.

_____, 2016
Gaffney, South Carolina

The Honorable R. Keith Kelly

² Nothing in this Order shall be interpreted as an admission by Wal-Mart or ruling by this Court as to the ultimate viability of Plaintiff's remaining causes of action.



Spartanburg Common Pleas

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

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2016-11-15 13:45:09 page 5 of 5

PLAINTIFF'S MOTION FOR RECONSIDERATION
(November 21, 2016)

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.

**PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Pursuant to the Rule 59(e) of the South Carolina Rules on Civil Procedure, Plaintiff Langham file this Motion to Reconsider the Order of this Court, dated November 15, 2016. In support of which, Plaintiff presents the following:

INTRODUCTION

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, arrested and detained, against her will and without warrant, by Defendant Wal-Mart's employees and agent. Plaintiff sustained physical injuries and was deprived of her liberty when she was unlawfully and falsely imprisoned. And, despite having no probable cause, Defendant Wal-Mart 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 Wal-Mart 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 Wal-Mart 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 November 15, 2016, this Honorable Court issued its Order, granting Defendant's Partial Motion to Dismiss.

STANDARD OF REVIEW

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) as cited in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: South Carolina). A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review. *Id.*

Plaintiff reiterates that its cause of action against Wal-Mart for violation of 42 U.S.C §1983 is sufficiently stated.

ARGUMENT

To establish a Section 1983 claim, a plaintiff must be able to demonstrate a violation or a right secured by the Constitution and the laws of the United States, and that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S.

42, 48 (1988), and *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999) as cited in *King Grant-Davis v. Shane Fortune, et al.*, 2:15-cv-4211-PMD-MGB.

Contrary to Defendant Wal-Mart's assertions, it is not necessary for an individual to be a state officer to act under color of state law for purposes of § 1983 actions. If a private person is "jointly engaged" with a state official in the alleged violation, that person acts under the color of state law. *Dennis v. Sparks*, 449 U.S. 24, 27-28, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). In *El Fundi*, 625 F.2d at 195, state action is present when private security guards and police officers act in concert to deprive a plaintiff of his civil rights, particularly when a state statute authorizes a shopkeeper to detain suspected shoplifters.

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 Defendant Wal-Mart for the twelfth time on the day the incident happened. Second, it is the practice of 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 wrongful arrest, and requested the assistance of an officer for all the detained shoplifters. The police responded by taking Plaintiff into custody.

Thirdly, in the case of *Cruz v. Donnelly*, the Third Circuit Court of Appeals addressed the specific question of when state action is present in a detention for shoplifting. *Cruz v. Donnelly*, 727 F.2d 79 (3d Cir. 1984). *Cruz* held that "commercial establishments and their employees will only be held liable under §1983 when: (1) the police have a pre-arranged plan with the store, and (2) under the plan, the police will arrest anyone identified as a shoplifter by the store without independently evaluating the presence of probable cause." *Id.*

A reading of the following provisions of S.C. Code Ann., namely, § 23-24-10, §23-24-50 and §23-24-20 (Supp. 1978), shows that a law enforcement officer may perform off-duty, private work, provided that “the work to be performed is within the officer’s jurisdiction and that the officer obtains permission for such work from the agency and governing body by which he is employed.” *Op. S.C. Atty. Gen., 2014 (March 17, 2014)*. It further states that the officers “moonlighting” shall retain full law enforcement authority. *Ibid* This gives a hint of an arrangement between private, commercial establishments like Defendant Wal-Mart employing off-duty officers, who exercise their official functions, and by the law enforcement agency. It must be noted here that Defendant Porter continues to be in the employ of the law enforcement agency.

During the times that Defendant Officer Porter was in its employ, Defendant Wal-Mart had control over him. Defendant Wal-Mart assigned him to man a specific area and gave instructions whom to approach and apprehend for shoplifting. Defendant Wal-Mart allowed Defendant Porter to manhandle Plaintiff since none of its employees prevented Defendant Porter from exercising excessive force against Plaintiff. And finally, Defendant Wal-Mart hired and continued to hire Defendant Porter during the latter’s off days.

The aforementioned state statutes, combined with the concerted actions of Defendants Wal-Mart, its employees and the local police department, afford ample evidence of willful, joint activity which supports a claim against Wal-Mart under section 1983.

CONCLUSION

For the above and foregoing reasons, Plaintiff moves for this Court to reconsider its Order, dated November 15, 2016 granting the Motion to Dismiss of Plaintiff’s cause of action for

violations of 42 U.S.C. §1983, and requests that this issue be litigated.

Respectfully submitted,

s/ Donald L. Smith
Donald L. Smith, #06699
Attorney for Plaintiff
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
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Anderson, South Carolina
Date: November 21, 2016

DEFENDANTS OFFICER RUSSEL PORTER, CITY OF SPARTANBURG,
SPARTANBURG POLICE DEPARTMENT'S MOTION TO DISMISS
AND/OR MOTION FOR SUMMARY JUDGMENT

(December 8, 2016)

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,)
)
 _____)

MOTION TO DISMISS AND/OR
MOTION FOR SUMMARY JUDGMENT
BY DEFENDANTS PORTER,
CITY OF SPARTANBURG, AND
SPARTANBURG POLICE DEPARTMENT

YOU WILL PLEASE TAKE NOTICE that the Defendants Officer Russell Porter, City of Spartanburg, and Spartanburg Police Department, by and through their undersigned counsel, hereby moves this Court, pursuant to Rules 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, for an order dismissing and/or granting Summary Judgment in favor of these Defendants. This motion is based upon the grounds that the pleadings, depositions, Answers to Interrogatories and admissions on file, together with affidavits, if any, show that the Plaintiff's claims are barred by the applicable statute of limitation and/or there is no genuine issue as to any material fact as to the Plaintiff's claims. Therefore, these Defendants are entitled to dismissal and/or judgment as a matter of law. This Motion is further based upon such authority as will be set forth in the Memorandum that will be filed in support of the Motion.

[Signature block on next page.]

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 Police Department

Anderson, South Carolina

Dated:

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
OF DEFENDANTS RUSSEL PORTER, CITY OF SPARTANBURG
AND SPARTANBURG POLICE DEPARTMENT WITH EXHIBITS
(February 24, 2017)

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.

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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 1/18/2017

12

1 -- and tell me what that involves.

2 A. There's four phases. The first phase, it's
3 intense outpatient treatment. You have group three
4 times a week; you have throughout the whole program
5 random drug testing. You call in every day at five
6 o'clock. Then in phase two, you have two groups a week
7 still. You still have a ten o'clock curfew; you still
8 have the random drug test. You have to go to any
9 meetings, six for two weeks. Phase three you have one
10 group, still have a curfew, same, everything is still
11 the same. And then phase four you have like little
12 check-in groups and no curfew, but the drub test and the
13 meetings and obtaining, you know, health insurance,
14 clean drug tests. So it's kind of a lot. It's a lot.

15 Q. And so you're currently going through that
16 program right now?

17 A. Yes, ma'am.

18 Q. Which phase are you in?

19 A. In two weeks I'll be in phase four.

20 Q. And if you successfully complete that program,
21 what happens to the charges?

22 A. My record will be clean.

23 Q. Okay. And did you have a substance-abuse
24 problem?

25 A. Yes, ma'am.

1 Q. Okay. What -- tell me about that.

2 A. It was something that I struggled with for a
3 while. And I -- I tried fixing it and I tried rehab,
4 but eventually, you know, spiraled out of control; and I
5 ended up getting those charges and was, you know, either
6 prison or drug court. So in the beginning, I did it to
7 stay out of prison, but it's been the best thing to
8 happen to me.

9 Q. I'm glad you did that.

10 A. Thank you.

11 Q. What was the -- what was the substance that
12 you used or substances?

13 A. In the beginning, it was pain medicine, and
14 then it -- at the very end it turned to meth and heroin
15 and whatever.

16 Q. And how long were you using?

17 A. I started using when I was fifteen, and then
18 pled in drug court when I was twenty-two and now I'm
19 twenty-four.

20 Q. On the day of the incident at Wal-Mart, were
21 you on any substances at that time?

22 A. Probably.

23 Q. Okay. Do you remember what happened? Do you
24 remember the incident at Wal-Mart?

25 A. Yes, ma'am.

1 Q. Okay. How well would you say you remember it?

2 A. Pretty well.

3 Q. Okay. And you said you probably were on
4 something. Do you have any idea what that -- what it
5 might have been?

6 A. No, ma'am. If anything, pain medicine.

7 Q. Okay. Other than the incident at Wal-Mart,
8 have you ever been arrested for shoplifting at any other
9 time?

10 A. No, ma'am.

11 Q. You referenced two assault and battery
12 charges.

13 A. Yes, ma'am.

14 Q. Were those -- did those happen at the same
15 time? I mean, did those arise out of the same incident?

16 A. Yes.

17 Q. Okay. And who else did -- was involved in
18 that?

19 A. My mother and my grandmother.

20 Q. Okay. Can you kind of tell me what happened
21 with those?

22 A. I was under the influence; and they were
23 trying to detain me; and I kind of put up a fight.
24 There was no punching or anything like that; but, you
25 know, in the situation, it was kind of like, okay, well,



Caitlyn Langham

Copy

ELECTRONICALLY FILED - 2017 Feb 24 11:01 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280

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



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

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

Defendants.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**ORDER GRANTING DEFENDANT
WAL-MART'S PARTIAL
MOTION TO DISMISS**

This matter came before the Court on August 25, 2016, upon Defendant Wal-Mart Stores, Inc.'s (hereinafter, "Wal-Mart") Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure as to Plaintiff's causes of action against Wal-Mart for false imprisonment, defamation, and violations of 42 U.S.C. § 1983. Randi Lynn Roberts appeared on behalf of Walmart and Donald L. Smith appeared on behalf of Plaintiff¹. Having duly considered the written submissions and oral arguments presented by the parties, this Court grants Defendant Wal-Mart's Motion for the reasons set forth in this Order.

NATURE OF THE CASE

Plaintiff filed her Complaint instituting the present action on April 8, 2016, alleging a cause of action against Wal-Mart for malicious prosecution. *See* Pl.'s Compl. at ¶¶ 63-67. Additionally, Plaintiff asserts that Wal-Mart is vicariously liable under the doctrine of *respondeat superior* for the alleged acts and omissions of Defendant Porter, against whom Plaintiff alleges causes of action for violations of 42 U.S.C. § 1983, false imprisonment, defamation, and assault and battery. Wal-Mart did not move to dismiss Plaintiff's causes of action against it for assault and battery, through the theory of *respondeat superior*, and malicious prosecution.

¹ Counsel for Defendants Officer Russell Porter and City of Spartanburg, Police Department was also present.

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Doe v. Marion*, 361 S.C. 463, 468, 605 S.E.2d 556, 559 (Ct. App. 2004) (citing *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003)). “A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Id.* at 469, 605 S.E.2d at 559 (citing *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)). Alternatively, a motion to dismiss under Rule 12(b)(6), SCRPC, cannot be sustained “if the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). Upon thorough review of the facts alleged in Plaintiff’s Complaint and the inferences reasonably deducible therefrom, the Court finds that Wal-Mart meets the requisite standard for the dismissal of several causes of action in this matter.

LAW/ANALYSIS

Plaintiff’s claims for false imprisonment and defamation are governed by section § 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. Plaintiff’s Complaint alleges the incident occurred on December 24, 2013. *See* Pl.’s Compl. at ¶ 8. Thus, the applicable two-year statute of limitations expired on December 24, 2015. As Plaintiff did not file her Complaint until April 8, 2016, approximately three and one-half (3.5) months after the controlling deadline passed, her causes of action for false imprisonment and defamation do not state facts sufficient to constitute a cause of action, are untimely, and are hereby dismissed with prejudice pursuant to Rule 12(b)(6), SCRPC.

Additionally, to the extent Plaintiff asserts claims against Wal-Mart under 42 U.S.C. §

1983, those claims also fail as a matter of law. 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court of the United States previously held that local governing bodies, such as a city municipality, are liable under § 1983 for constitutional violations arising from the government's implementation of policy or custom. *Monell v. Dep't of Soc. Serv. of City of N.Y.*, 436 U.S. 658 (1978). However, 42 U.S.C. § 1983 “cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor.” *Monell*, 436 U.S. 658, 691 (1978); *see also Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 416 (1997). In the instant matter, Wal-Mart is not a municipality or other governing body. Wal-Mart is a private corporate entity and, thus, 42 U.S.C. § 1983 cannot be read to give rise to a cause of action against Wal-Mart, whether through the theory of *respondeat superior* or otherwise.

CONCLUSION

Based upon the foregoing, Plaintiff's claims for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 fail as a matter of law. Therefore, this Honorable Court hereby dismisses her claims for false imprisonment and defamation as untimely and barred by the applicable statute of limitations, as well as dismisses any claims against Wal-Mart purportedly arising under 42 U.S.C. § 1983, as said statute does not provide for a cause of action against a private entity. Therefore, the present action will proceed as it pertains to Wal-Mart only upon Plaintiff's causes of action for assault and battery, through the theory of *respondeat superior*, and

malicious prosecution².

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED that Defendant Wal-Mart's Motion is GRANTED as to Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. § 1983.

_____, 2016
Gaffney, South Carolina

The Honorable R. Keith Kelly

² Nothing in this Order shall be interpreted as an admission by Wal-Mart or ruling by this Court as to the ultimate viability of Plaintiff's remaining causes of action.



Spartanburg Common Pleas

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

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2016-11-15 13:45:09 page 5 of 5

ELECTRONICALLY FILED - 2017 Feb 24 11:01 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280
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Copy

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

ELECTRONICALLY FILED - 2017 Feb 24 11:01 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280

1 moment to your jury deliberation room. Follow Ms.
2 Miller. (Inaudible). We'll have you back in just a
3 moment. You're more than welcome to (inaudible).
4 Ms. Miller, (inaudible) not to begin deliberating,
5 not to even talk about the case. Mr. Smith,
6 (inaudible)?

7 MR. SMITH:

8 May it please the Court. I would ask that
9 (inaudible) dismissed based on he stated himself he
10 had no personal information. He didn't have any --
11 he didn't know anybody, the witnesses he didn't talk
12 to them. He just went up to a woman and started
13 looking through her purse. I mean there's no --
14 there's nothing there, no probable cause.

15 THE COURT:

16 Mr. (inaudible).

17 THE STATE:

18 Your Honor, with regards to the exact words that
19 were said by Officer Porter, he said that he'd had
20 information (inaudible) concealed merchandise. He
21 approached her. She began to flee from him. Flight
22 in itself can be evidence of a crime (inaudible).
23 He looked in her purse, saw the merchandise, and
24 asked her why. She refused to comply. I think
25 there is probable cause and enough evidence to send

1 this to the jury.

2 THE COURT:

3 Go ahead.

4 MR. SMITH:

5 There is no specificity about who this person was or

6 ~~how big, what she was wearing. There's nothing like~~

7 that. I mean, nothing.

8 THE COURT:

9 I'm going to deny the motion for a direct verdict at

10 this time. I believe there's sufficient evidence to

11 move forward to allow the matter to be taken in

12 front of the jury. So I'm going to deny the motion.

13 Mr. Smith, (inaudible) witnesses?

14 MR. SMITH:

15 I need to (inaudible) client.

16 THE COURT:

17 Sure, sure. We'll go off the record for just about

18 five minutes, Mr. Smith?

19 MR. SMITH:

20 Yes, Your Honor.

21 THE COURT:

22 Okay. Thank you. Thank you ladies and gentlemen

23 for your patience. Mr. Smith, you may call your

24 first witness.

25 MR. SMITH:

PLAINTIFF'S OPPOSITION TO DEFENDANTS RUSSEL PORTER, CITY
OF SPARTANBURG AND SPARTANBURG POLICE DEPARTMENT'S
MOTION FOR SUMMARY JUDGMENT
(February 28, 2017)

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.

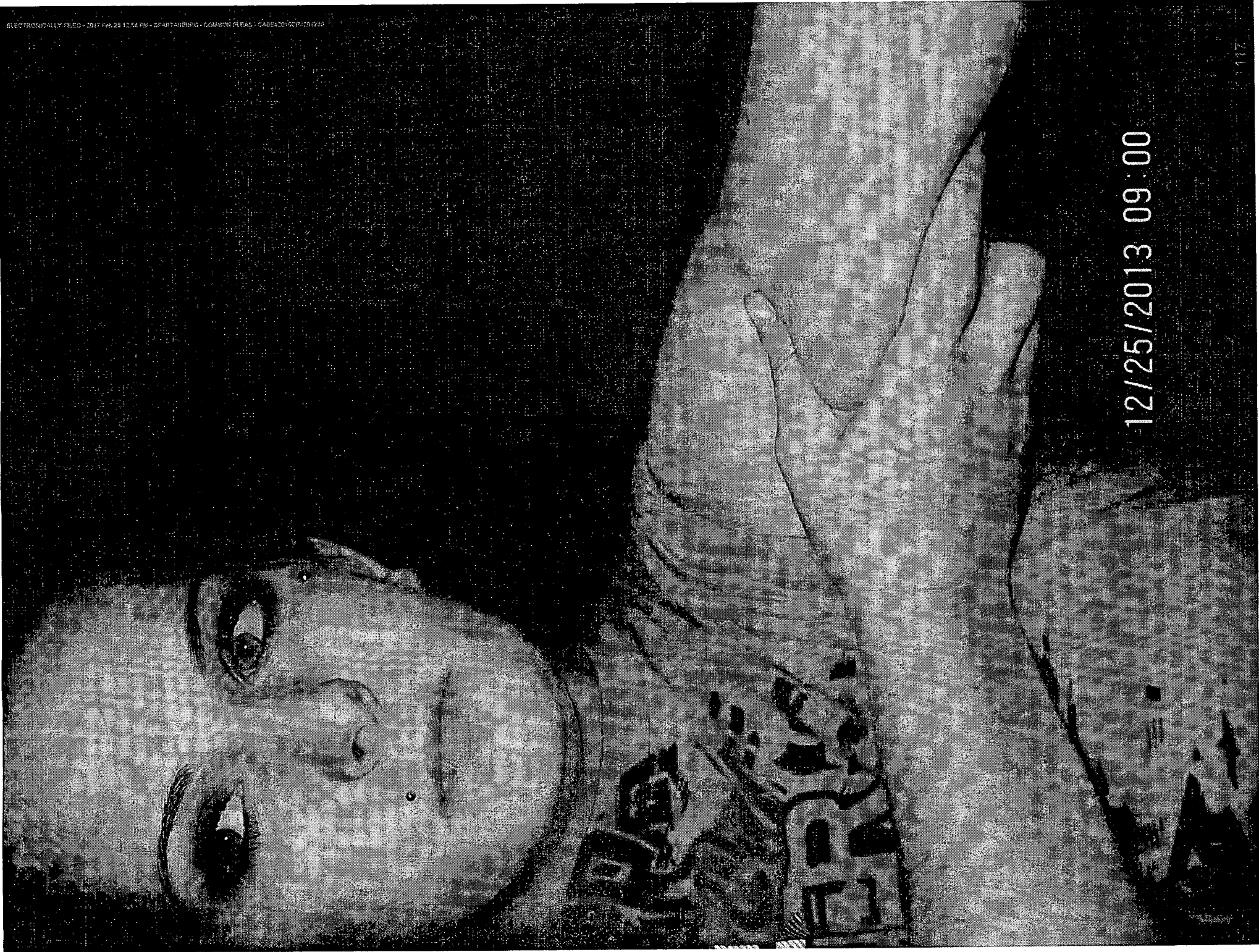
CONCLUSION

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

February 28, 2017

Respectfully submitted,

s/Donald L. Smith
Donald L. Smith, #06699
122 N. Main Street
Anderson SC 29621
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Attorney for Plaintiff



12/25/2013 09:00

12/25/2013 08:59

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.

LOGAN, JOLLY & SMITH, L.L.P.
BY: JAMES D. JOLLY, JR., ESQUIRE
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jolly@loganjollysmith.com

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

11

- 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.

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
(March 22, 2017)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

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

Defendants.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

This matter came before the Court on February 28, 2017, upon Plaintiff Caitlyn Langham's (hereinafter, "Plaintiff") Motion for Reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Plaintiff requests the Court reconsider its dismissal of Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 against Defendant Wal-Mart Stores, Inc. (hereinafter "Walmart"), as memorialized in the Order dated November 15, 2016. Donald L. Smith appeared on behalf of Plaintiff and Randi Lynn Roberts appeared on behalf of Walmart.¹ For the reasons set forth herein, the Court finds that Plaintiff did not present any facts or issues that the Court failed to consider or rule upon in dismissing the aforementioned causes of action against Walmart. Therefore, the Court denies Plaintiff's Motion for Reconsideration.

NATURE OF THE CASE

Plaintiff filed her Complaint instituting the present action on April 8, 2016, alleging a cause of action against Walmart for malicious prosecution. *See* Pl.'s Compl. at ¶¶ 63-67. Additionally, Plaintiff asserts that Walmart is vicariously liable under the doctrine of *respondeat superior* for the alleged acts and omissions of Defendant Porter, against whom Plaintiff alleges

¹ Counsel for Defendants Officer Russell Porter and City of Spartanburg, Police Department was also present.

causes of action for violations of 42 U.S.C. § 1983, false imprisonment, defamation, and assault and battery. Walmart filed a Motion to Dismiss pursuant to Rule 12(b)(6), of the South Carolina Rules of Civil Procedures, requesting dismissal of Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. §1983. Walmart did not move to dismiss Plaintiff's causes of action against it for assault and battery, through the theory of *respondeat superior*, and malicious prosecution. After full consideration of all the evidence and arguments presented by the parties on Walmart's Motion to Dismiss, this Court dismissed Plaintiff's causes of action as alleged against Walmart for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 in its Order filed November 15, 2016. Subsequently, Plaintiff filed the subject Motion for Reconsideration.

LAW/ANALYSIS

A Rule 59(e) motion is a vehicle to request the alteration or amendment of judgment as well as a vehicle to seek reconsideration of issues presented at the initial hearing or trial. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); *see, e.g., Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (finding the "purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"). "A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780 (emphasis in original). "A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* (emphasis in original).

The Court hereby incorporates by reference its ruling as set forth in the Order dated November 16, 2016, including all citations therein to the relevant case and statutory law. Based

on the evidence appropriately in the record and the parties' arguments, the Court finds that Plaintiff does not present any evidence, issues, or facts that warrant the Court's altering, amending, or reconsidering its dismissal of Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. § 1983. Thus, this Court denies Plaintiff's Motion for Reconsideration.

CONCLUSION

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Reconsideration is DENIED.

_____, 2017
Gaffney, South Carolina

The Honorable R. Keith Kelly



Spartanburg Common Pleas

Case Caption: Caitlyn Langham VS Russell Porter , defendant, et al

Case Number: 2016CP4201280

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-03-22 13:15:32 page 4 of 4

ELECTRONICALLY FILED - 2017 Mar 22 3:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280

ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANTS
RUSSEL PORTER, CITY OF SPARTANBURG AND
SPARTANBURG POLICE DEPARTMENT
(March 23, 2017)

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

ELECTRONICALLY FILED - 2017 Mar 23 11:04 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280

DEFENDANT WALMART STORES INC.'S
MOTION FOR SUMMARY JUDGMENT
(May 15, 2017)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

Wal-Mart Stores, Inc.,

Defendant.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

PLEASE TAKE NOTICE that Defendant Wal-Mart Stores, Inc. (hereinafter, "Walmart") hereby moves this Court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order dismissing Plaintiff Caitlyn Langham's causes of action against Walmart for assault and battery, asserted under the theory of *respondeat superior*, and malicious prosecution. Because no genuine issue of material fact exists as to these causes of action, Walmart is entitled to judgment as a matter of law.

In support of its Motion, Defendant shows that Plaintiff has not and cannot establish that Walmart is liable for Plaintiff's alleged damages. There is no evidence that (1) Walmart acted with actual or implied malice in instituting a criminal charge against her and (2) Walmart lacked probable cause. Specifically, the trial court previously ruled that probable cause existed as a matter of law to arrest, detain, and try Plaintiff. *See* Exhibit A, Order dated March 22, 2017. As Plaintiff cannot establish that a genuine issue of material fact exists as to her claims of assault and battery and malicious prosecution, Walmart is entitled to judgment as a matter of law.

This Motion is supported by the applicable law, any Memorandum in Support of this Motion, including exhibits, that may be served, and counsel's arguments at any hearing set on said Motion.

Given the nature of this Motion, consultation with Plaintiff's counsel is not required pursuant to the South Carolina Rules of Civil Procedure.

WHEREFORE, Walmart hereby requests that the Court grant it the following relief:

- 1) Enter an Order granting summary judgment in favor of Walmart on Plaintiff's causes of action for assault and battery, asserted under the theory of *respondeat superior*, and malicious prosecution; and/or
- 2) Set a hearing on Walmart's Motion so that Walmart may set forth more fully its arguments for the Court; and/or
- 3) Such other and further relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED,

s/ Lee Ellen Bagley

Lee Ellen Bagley, SC Bar No. 77672

Randi Lynn Roberts, SC Bar No. 78888

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Attorneys for Wal-Mart Stores, Inc.

May 15, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

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

Defendants.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

This matter came before the Court on February 28, 2017, upon Plaintiff Caitlyn Langham's (hereinafter, "Plaintiff") Motion for Reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Plaintiff requests the Court reconsider its dismissal of Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 against Defendant Wal-Mart Stores, Inc. (hereinafter "Walmart"), as memorialized in the Order dated November 15, 2016. Donald L. Smith appeared on behalf of Plaintiff and Randi Lynn Roberts appeared on behalf of Walmart.¹ For the reasons set forth herein, the Court finds that Plaintiff did not present any facts or issues that the Court failed to consider or rule upon in dismissing the aforementioned causes of action against Walmart. Therefore, the Court denies Plaintiff's Motion for Reconsideration.

NATURE OF THE CASE

Plaintiff filed her Complaint instituting the present action on April 8, 2016, alleging a cause of action against Walmart for malicious prosecution. *See* Pl.'s Compl. at ¶¶ 63-67. Additionally, Plaintiff asserts that Walmart is vicariously liable under the doctrine of *respondeat superior* for the alleged acts and omissions of Defendant Porter, against whom Plaintiff alleges

¹ Counsel for Defendants Officer Russell Porter and City of Spartanburg, Police Department was also present.

causes of action for violations of 42 U.S.C. § 1983, false imprisonment, defamation, and assault and battery. Walmart filed a Motion to Dismiss pursuant to Rule 12(b)(6), of the South Carolina Rules of Civil Procedures, requesting dismissal of Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. §1983. Walmart did not move to dismiss Plaintiff's causes of action against it for assault and battery, through the theory of *respondeat superior*, and malicious prosecution. After full consideration of all the evidence and arguments presented by the parties on Walmart's Motion to Dismiss, this Court dismissed Plaintiff's causes of action as alleged against Walmart for false imprisonment, defamation, and violations of 42 U.S.C. § 1983 in its Order filed November 15, 2016. Subsequently, Plaintiff filed the subject Motion for Reconsideration.

LAW/ANALYSIS

A Rule 59(e) motion is a vehicle to request the alteration or amendment of judgment as well as a vehicle to seek reconsideration of issues presented at the initial hearing or trial. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); *see, e.g., Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (finding the "purpose of Rule 59(e), SCRCF, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"). "A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780 (emphasis in original). "A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* (emphasis in original).

The Court hereby incorporates by reference its ruling as set forth in the Order dated November 16, 2016, including all citations therein to the relevant case and statutory law. Based

on the evidence appropriately in the record and the parties' arguments, the Court finds that Plaintiff does not present any evidence, issues, or facts that warrant the Court's altering, amending, or reconsidering its dismissal of Plaintiff's causes of action for false imprisonment, defamation, and violations of 42 U.S.C. § 1983. Thus, this Court denies Plaintiff's Motion for Reconsideration.

CONCLUSION

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Reconsideration is DENIED.

_____, 2017
Gaffney, South Carolina

The Honorable R. Keith Kelly



Spartanburg Common Pleas

Case Caption: Caitlyn Langham VS Russell Porter , defendant, et al

Case Number: 2016CP4201280

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-03-22 13:15:32 page 4 of 4

ELECTRONICALLY FILED - 2017 Mar 22 3:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280
ELECTRONICALLY FILED - 2017 May 15 2:22 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280

RESPONSE IN OPPOSITION TO
DEFENDANT WALMART STORES INC.'S
MOTION FOR SUMMARY JUDGMENT
(July 14, 2017)

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.

**RESPONSE OPPOSITION TO
DEFENDANT WALMART'S
MOTION FOR SUMMARY
JUDGMENT**

Plaintiff respectfully submits this Memorandum in Opposition to Defendant WALMART'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 together with Defendant WALMART's employees, by reason of, and in performance of their duties as agent of Defendant WALMART. 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

Langham v. Officer Porter, City of Spartanburg, Spartanburg Police Department and Walmart Stores, Inc.
C.A. No: 2016-CP-42-1280
Opposition to Defendants Motion for Summary Judgment

and falsely imprisoned. And, despite having no probable cause, Defendant WALMART pursued a case against Plaintiff. She was acquitted by the Spartanburg Municipal Court.

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 November 15, 2016, the Honorable Court issued its Order, granting Defendant WALMART's Partial Motion to Dismiss.

On May 15, 2017, Defendant WALMART moved for summary judgment on the causes of action for assault and battery. Thus, this Opposition.

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), SCRCP. 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.

ARGUMENT

I. **THERE IS A GENUINE ISSUE THAT WOULD PREVENT THE GRANTING OF SUMMARY JUDGMENT AGAINST PLAINTIFF.**

Defendant WALMART asserts that Plaintiff's Complaint against them for assault and battery should be dismissed for lack of genuine issue of material facts.

Plaintiff avers that there is genuine issue of material facts when Defendant WALMART alleged the following in its Answer, dated May 13, 2016, to wit: (1) That Defendant

WALMART at all times “acted reasonably and in good faith in the exercise of their legal rights and at no time breached any duty” , thereby raising the doctrine of Merchant’s Defense.

In her Opposition to the Motion for Summary Judgment, Plaintiff contests that there is nothing “reasonable” in Defendant Porter and Defendant WALMART’s act of preventing, delaying, arresting and detaining Plaintiff.

Defendant Officer Porter testified in the prior criminal action that he accosted Plaintiff while she was in a queue 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 personally witness the Plaintiff intentionally walk past the cash register, nor attempt to leave the premises.

Under the Merchant’s Defense doctrine, while Defendant Walmart had the right to stop and delay their customers, such should be done in a reasonable manner and within a reasonable time. Reasonable manner and within reasonable time is to be determined by company policies on shoplifting. In her deposition, Ronnie Miller, an employee of Defendant WALMART, discussed Defendant WALMART’s policy in relation to shoplifting. (Exhibit 1). Defendant Porter and Defendant WALMART’s employees, with gross negligence, did not follow the said policy when he accosted and manhandled Plaintiff, 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).

II. MOTION FOR SUMMARY JUDGMENT IS INAPPROPRIATE BECAUSE DEFENDANT WALMART, INC. DISPOSED OF VIDEO OF WHAT TRANSPIRED ON THAT DAY AND TIME OF THE ALLEGED SHOPLIFTING INCIDENT.

Plaintiff asserts that Defendant WALMART, Inc has the duty to preserve the surveillance videos used on the day of the alleged shoplifting incident, especially since Defendant WALMART knew or should have known that this evidence is relevant to a litigation which it reasonably anticipates. *Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001).

Defendant WALMART knew or could have known that it will be prosecuting, as it indeed prosecuted, Plaintiff on shoplifting charges. It therefore has the duty to preserve the surveillance video used on the day of the incident. In fact, it did not even present the video to the police, which would have been a standard operating procedure. That Plaintiff was eventually acquitted, did not take away the obligation of Defendant WALMART to preserve and produce the video.

Plaintiff has on several occasions requested for a copy of the surveillance video from Defendant WALMART, Inc. The latter failed to accede to said request, nor provide a reasonable explanation for its non-production.

Plaintiff avers that the surveillance video will bolster Plaintiff's allegations that she was subjected to an unreasonable arrest and detention by Defendant Porter and Defendant WALMART's employees. The video will also show that Defendants Porter and WALMART employees forcefully grabbed Plaintiff and slammed her on the floor, causing physical injuries on her person.

Plaintiff is therefore entitled to an inference that the video surveillance would have been adverse to the position of Defendant WALMART, Inc.

Accordingly, the determination of whether the arrest, detention and subsequent assault of the Plaintiff was done in good faith and in a reasonable manner, as well as the spoliation of relevant evidence should be submitted to the jury.

CONCLUSION

For the above and foregoing reasons, Plaintiff submits that Defendant WALMART, Inc.'s Motion for Summary Judgment should be denied.

June 19, 2017

Respectfully submitted,

s/Donald L. Smith
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ORDER GRANTING SUMMARY JUDGMENT TO
DEFENDANT WALMART STORES INC.
(July 14, 2017)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

Wal-Mart Stores, Inc.,

Defendant.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**ORDER GRANTING DEFENDANT
WALMART'S MOTION FOR
SUMMARY JUDGMENT**

This matter came before the Court on June 21, 2017, upon Defendant Wal-Mart Stores, Inc.'s (hereinafter, "Walmart") Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to Plaintiff's remaining causes of action for assault and battery, asserted under the theory of *respondeat superior*, and malicious prosecution. Randi Lynn Roberts appeared on behalf of Walmart and Donald L. Smith appeared on behalf of Plaintiff. Having duly considered the written submissions and oral arguments presented by the parties, this Court grants Defendant Walmart's Motion for the reasons set forth in this Order.

NATURE OF THE CASE

Plaintiff filed her Complaint instituting the present action on April 8, 2016, in which she named Walmart, Officer Russell Porter, and City of Spartanburg, Police Department as Defendants (collectively, "Defendants"), and alleged a cause of action for malicious prosecution against all Defendants. Additionally, Plaintiff asserted that Walmart and City of Spartanburg, Police Department were vicariously liable under the doctrine of *respondeat superior* for the alleged acts and omissions of Defendant Porter, against whom Plaintiff alleged causes of action for violations of 42 U.S.C. § 1983, false imprisonment, defamation, and assault and battery. On November 15, 2016, upon motion of Walmart and following a hearing with the parties, the Court

dismissed Plaintiff's claims of false imprisonment and defamation as to Walmart, ruling that Plaintiff failed to file the aforementioned claims within the applicable statute of limitation. Additionally, the Court ruled that as Walmart is a private corporate entity, Plaintiff's claims under 42 U.S.C. § 1983 must be dismissed to the extent Plaintiff asserted those against Walmart. Thereafter, the Court denied Plaintiff's Motion for Reconsideration of its ruling as to Walmart, and Plaintiff proceeded upon the only remaining claims of assault and battery, through the theory of *respondeat superior*, and malicious prosecution.

On March 23, 2017, upon motion of Defendants Porter and City of Spartanburg, Police Department and following a hearing with the parties, the Court granted summary judgment in their favor as to all of Plaintiff's causes of action, ruling that her claims for false imprisonment, defamation, and assault and battery were barred by the applicable statutes of limitation and that her causes of action for unreasonable search and seizure under the Fourth Amendment, false imprisonment, and malicious prosecution were barred by the existence of probable cause as a matter of law. Accordingly, Defendants Porter and City of Spartanburg, Police Department were dismissed from the present action.

Walmart then filed the instant Motion for Summary Judgment as to Plaintiff's remaining causes of action against it: assault and battery, through the theory of *respondeat superior*, and malicious prosecution.

STANDARD OF REVIEW

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder.” *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Notwithstanding, because it is a drastic remedy, “summary judgment should be

cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Helena Chemical Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004). “Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003).

In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) (emphasis added). Importantly, in cases applying the preponderance of the evidence burden of proof, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “[S]ummary judgment is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute.” *CEL Prods., LLC v. Rozelle*, 357 S.C. 125, 129, 591 S.E.2d 643, 645 (Ct. App. 2004). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). In the present case, even accepting Plaintiff’s allegations as true, she fails to establish any genuine issue of material fact as to the requisite elements of her claims for assault and battery, through the theory of *respondeat superior*, and malicious prosecution. Therefore, Plaintiff’s remaining claims must fail and Walmart is entitled to summary judgment.

LAW/ANALYSIS

Plaintiff cannot maintain a claim of assault and battery, through the theory of *respondeat superior*, as the Court ruled in its Order dated March 23, 2017, that probable cause existed as a

matter of law for Defendant Porter to detain, arrest, and try Plaintiff. As a lawful arrest based upon probable cause cannot serve as the basis for a civil claim of assault and battery, the Court finds that Plaintiff cannot present any genuine issue of material fact as to this claim and summary judgment is warranted. *See Roberts v. City of Forest Acres*, 902 F. Supp. 662, 671 (D.S.C. 1995) (finding that a person uses reasonable force in effectuating a lawful arrest is not liable for assault or battery).

To maintain an action for malicious prosecution, “a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006) (quoting *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965)). “An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause.” *Id.* (citing *Parrott*, 246 S.C. at 322, 143 S.E.2d at 609). As Plaintiff fails to present any genuine issue of material fact as to the requisite element of lack of probable cause, Plaintiff’s claim fails as a matter of law and Walmart is entitled to summary judgment.

CONCLUSION

Having duly considered the arguments and materials presented by the parties, the Court dismisses Plaintiff’s remaining claims for assault and battery, through the theory of *respondeat superior*, and malicious prosecution as Plaintiff fails to establish that any genuine issue of material fact exists as to these claims.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED that Walmart's Motion is GRANTED and Plaintiff's Complaint is DISMISSED.

_____, 2017
Spartanburg, South Carolina

The Honorable R. Keith Kelly



Spartanburg Common Pleas

Case Caption: Caitlyn Langham VS Russell Porter , defendant, et al

Case Number: 2016CP4201280

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-07-14 11:34:56 page 6 of 6

PLAINTIFF'S MOTION FOR RECONSIDERATION
(July 19, 2017)

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.

**PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Pursuant to the Rule 59(e) of the South Carolina Rules on Civil Procedure, Plaintiff Langham file this Motion to Reconsider the Order of this Court, dated July 14, 2017. 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 together with Defendant WALMART's employees, by reason of, and in performance of their duties as agent of Defendant WALMART. 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 grossly negligent conduct, Plaintiff was publicly humiliated and deprived of her liberty when she was unlawfully and falsely imprisoned. And, despite having no probable cause, Defendant WALMART pursued a case against Plaintiff. She was acquitted by the Spartanburg Municipal Court.

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 November 15, 2016, the Honorable Court issued its Order, granting Defendant WALMART's Partial Motion to Dismiss on the causes of action for defamation and false imprisonment.

On May 15, 2017, Defendant WALMART moved for summary judgment on the causes of action for assault and battery. The court granted summary judgment, thus this motion for reconsideration.

STANDARD OF REVIEW

When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56 (c), SCRPC. *David v. McLeod Regional Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate when “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.” Rule 56 (c), SCRPC. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *David*, 367 S.C.at 247, 626 S.E.2d at 3.

A motion under Rule 59(e) has long been viewed as a “motion for reconsideration” despite the absence of those words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) as cited in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: South Carolina). A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review. *Id.*

ARGUMENT

THERE IS A GENUINE ISSUE OF MATERIAL FACTS THAT WILL PRECLUDE THE GRANTING OF SUMMARY JUDGMENT

A. The issue of probable cause is typically a question of fact for the jury to decide.

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.

Defendant WALMART has an existing policy in addressing shoplifting incidents. Ronnee Miller, an Assistant Manager at Defendant WALMART on the day of the alleged incident, discussed the company policy on shoplifting. In her deposition, Ronnee explained the procedure that employees must observe in shoplifting incidents, namely: (1) selection, (2) concealment, (3) continued possession, and (4) last point of entry.

“ Q: Can you tell me what the procedure for WALMART is when you have an alleged shoplifting?”

A: As an AP associate, you have to have the--the four elements. Once you get all four elements and they pass the last point of sale, which is them going out the door, you then approach and take them into the office. From there you collect the items, obtain the receipt. And then from there, if police need to be contacted, we

you get them involved. If not, we take our information, key it in the system and go from there.

- Q: All right. Well, I'm not going to lie to you bit. I didn't get a single thing of that, so if we could go slowly for me.*
- A: Okay.*
- Q: The four elements, what are the four elements?*
- A: You have to get selection.*
- Q: Selection meaning?*
- A: Them picking up the items.*
- Q: Yes, ma'am.*
- A: Concealing it.*
- Q: And that means that they've concealed it is some way?*
- A: Uh-huh.*
- Q: And what does "concealed" mean to you?*
- A: To me would be placing it in your pocket, placing it in your purse, putting the item on. If it's a hat, taking the tag off and placing the item on head, on your head. That would be concealing it.*
- Q: And the third?*
- A: Continued possession.*
- Q: And that would mean what specifically?*
- A: As you're watching them, they -- like if they're shopping now, after they already got the item, do they still have it on them; that you're just verifying that they didn't take it out of their purse or put the item down.*
- Q: So it's maintaining it in the area that it's been concealed in?*
- A: Uh-huh.*
- Q: Is that "yes"?*
- A: Yes, sir.*
- Q: Thank you. And the fourth element?*
- A: Last point of sale*
- Q: All right. And that means what?*
- A: Walking out the front door, passing all registers.*
- Q: So once that occurs --*
- A: Uh-huh.*
- Q: -- is that when you approach the individual?*
- A: Yes, sir.*
- Q: And passing all registers, meaning, the last opportunity to pay for it?*
- A: Yes, sir.*
- Q: Do you let them get out of the building, or is it just past the register?*
- A: Past the register.*
- Q: Take me from that, that point, please.*
- A: From that point, we then do the approach, identify ourselves. I'll ask them to come into the -- the substation."*

(Ronnee Miller Dep. , 11-13, January 18, 2017).

Ronnee Miller asserted that she cannot recall having seen the Plaintiff 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.*).

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.

The one person who allegedly witnessed the incident, Kelyn Eber, was conveniently missing or is no longer employed in WALMART. Defendant WALMART had a chance to present an evidence of the shoplifting incident by submitting the surveillance videos on the day of the incident, but it has consistently denied the existence of the video.

“The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” *McNair v. Rainsford*, 330 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998) (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 392 S.E.2d 460 (1990)). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Lanham v. Blue Cross & Blue Shield of South Carolina, Inc.*, 349 S.C. 356, 361-62, 563 S.E.2d 331, 333 (2002) (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)); *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

Jurisprudence has long established that 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. *Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing and Regulation, et al.*, 337 S.C. 476, 523 S.E.2d 795 (1999). Had this case reached the jury, a different conclusion may have been reached as to the existence of probable cause for Plaintiff's unlawful arrest, assault and battery and subsequent illegal detention.

B. The reasonableness of force employed by Defendant Porter is an issue of material fact.

Defendant WALMART reiterates that it has "acted reasonably and in good faith in in the exercise of their legal rights and at no time breached any duty. In essence, Defendant WALMART raised the doctrine of Merchant's Defense under S.C. Code Ann. § 16-13-140. Under the Merchant's Defense, while Defendant WALMART had the right to stop and delay their customers, such should be done in a reasonable manner and within a reasonable time. Reasonable manner and within reasonable time should be determined by company policies on shoplifting. Defendant Porter was 6 feet. Plaintiff was smaller and lighter. Defendant Porter slammed Plaintiff on the floor, unlawfully and illegally searched her purse, and forcibly led her to the substation, all these times, applying such force that resulted in bruises and injuries on Plaintiff.

It is Plaintiff's contention that there is nothing reasonable in the manner by which Defendant Officer Porter, forcefully seized Plaintiff, slammed her on the floor, and illegally searched her purse. The issue of the reasonableness of force employed by Defendant Porter goes into the interpretation of the law, specifically S.C. Code Ann. § 16-13-140. This issue should have been heard and decided by the jury.

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.*, 337 S.C. 476, 523 S.E.2d 795

C. POTENTIAL SPOILIATION OF EVIDENCE IS SUFFICIENT TO DEFEAT SUMMARY JUDGMENT

While South Carolina courts do not recognize an independent cause of action of negligent spoliation, it can be and is allowed to be used as a defense in criminal cases or to defeat a judgment on verdict. (*Stokes v. Spartanburg Regional Medical Center*, 629 S.E.2d 675 (S.C. Ct. App. 2006).

South Carolina apparently recognizes a type of Adverse Inference Rule as it relates to loss or destruction of evidence. In *Wisconsin Motor Corp. v. Green*, 79 S.E.2d 718, 720-21 (S.C. 1954), the court held that it appears as though such inference may be given when a party does not provide an explanation for its failure to produce appropriate documents. *Id.*

In both *Kershaw County Board of Education v. United States Gypsum Co.*, 396 S.E.2d 369, 372 (S.C. 1990) and *Stokes v. Spartanburg Regional Medical Center*, where destruction of evidence or spoliation was alleged, the courts ruled that it was for the jury to decide whether a negative inference is justified.

Plaintiff insists that Defendant WALMART committed spoliation. The elements of spoliation are as follows:

- "(1) a pending or potential civil action;
- (2) knowledge of the spoliator of the pending or potential civil action;
- (3) willful destruction of evidence;
- (4) the spoliated evidence was vital to a party's ability to prevail in the pending or potential civil action;
- (5) the intent of the spoliator to defeat a party's ability to prevail in the pending or potential civil action;
- (6) the party's inability to prevail in the civil action; and
- (7) damages."

Hannah v. Heeter, 213 W.Va 704, 584 S.E.2d 560 (2003) as cited in *Austin v. Beaufort County Sheriff's Office*, 659 SE 2d 122.

Plaintiff asserts that Defendant WALMART, Inc has the duty to preserve the surveillance videos used on the day of the alleged shoplifting incident, especially since Defendant WALMART knew or should have known that this evidence is relevant to a litigation which it reasonably anticipates. *Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001).

Defendant WALMART knew or could have known of a potential civil action as an offshoot of it filing shoplifting case against Plaintiff. Even during the previous criminal case involving the parties, Plaintiff has already requested for the surveillance videos from Defendant WALMART. Defendant consistently refused to accede to said request, nor provide a reasonable explanation for its non-production. In fact, it did not even present the video to the police, which is the standard operating procedure. That Plaintiff was eventually acquitted, did not take away the obligation of Defendant WALMART to preserve and produce the video.

Plaintiff avers that the surveillance video will bolster Plaintiff's allegations that she was subjected to an unreasonable arrest and detention by Defendant Porter and Defendant WALMART's employees. The video will also show that Defendants Porter forcefully grabbed Plaintiff and slammed her on the floor, causing physical injuries on her person.

By reason of Defendant WALMART's continued refusal to submit the surveillance video, an inference may be drawn by the jury that the evidence which was lost or destroyed by Defendant WALMART would have been unfavorable to it. *Kershaw County Board of Educ, Id.*

The unreasonable refusal to produce the surveillance video prejudices Plaintiff in that she is prevented from forming her theory of the case, or proving the unreasonable and unlawful assault and battery against Plaintiff.

Plaintiff undeniably sustained damages due to the destruction of the surveillance videos. Furthermore, because of the missing videos, Plaintiff's case was summarily dismissed.

Plaintiff is therefore entitled to an inference that the video surveillance would have been adverse to the position of Defendant WALMART, Inc.

Accordingly, the determination of whether the arrest, detention and subsequent assault of the Plaintiff was done in good faith and in a reasonable manner, as well as the spoliation of relevant evidence should be submitted to the jury.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that this Honorable Court reconsider its Order, reverse its ruling, order trial of the case and enter judgment in favor of Plaintiff on all claims.

Anderson, South Carolina
July 19, 2017

Respectfully submitted,

s/Donald L. Smith
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Anderson SC 29621
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attorneydonaldsmith@gmail.com
Attorney for Plaintiff

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,

CERTIFICATE OF SERVICE

Plaintiff,

v.

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

Defendants.

THE UNDERSIGNED person deposes and says that he served Plaintiff's Motion for Reconsideration of the Order, dated July 14, 2016, by and through counsel of record, James Jolley, Esquire, Lee Ellen Bagley, Esquire, Randi Lynn Roberts, Esquire and Kelli Spinks, Esquire, by means of electronic mail in this action addressed to the parties at the email addresses shown below:

July 19, 2017

s/Donald L. Smith
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ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
(October 3, 2017)

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4201280

Caitlyn Langham		Walmart Stores Inc	
-----------------	--	--------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit)
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

For Clerk of Court Office Use Only

ELECTRONICALLY FILED - 2017 Oct 03 2:49 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280

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Randi Lynn Roberts 3700 Forest Drive, Suite 400 Columbia,
SC 29204

James D. Jolly Jr. PO Box 259 Anderson, SC 29622
Lee Ellen Bagley 3700 Forest Dr., Suite 400 Columbia, SC
29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The Motion to Reconsider is dismissed pursuant to Plaintiff's appeal. Under

SCACR 205, the Circuit Court loses jurisdiction upon the filing of the appeal, so the Plaintiff's Motion is deemed withdrawn.

SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2017 Oct 03 2:49 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280



Spartanburg Common Pleas

Case Caption: Caitlyn Langham VS Russell Porter , defendant, et al

Case Number: 2016CP4201280

Type: Order/Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-10-03 11:36:23 page 3 of 3

NOTICE OF APPEAL
(April 18, 2017)

83159

FORM 1
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED

R. Keith Kelly, Judge

APR 21 2017

SC Court of Appeals

Case No.: 2016-CP-42-1280

Caitlyn Langham,
v.

Appellant,

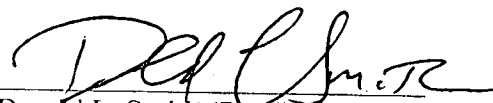
Officer Russell Porter,
City of Spartanburg,
Spartanburg Police Department,
and WALMART, Inc.,

Respondents.

NOTICE OF APPEAL

Appellant Caitlyn Langham appeals the Orders of Honorable R. Keith Kelly's, dated March 22, 2017 and March 23, 2017.

April 18, 2017.

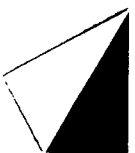


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FORM 7
PROOF OF SERVICE
NOTICE OF APPEAL
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Judge

Case No.: 2016-CP-42-1280

RECEIVED

APR 21 2017

SC Court of Appeals

Caitlyn Langham

Appellant,

vs.

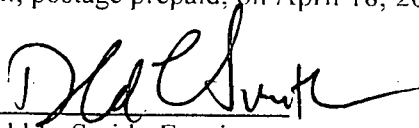
Officer Russell Porter,
City of Spartanburg,
Spartanburg Police Department,
And WALMART, Inc.,

Respondents.

PROOF OF SERVICE
NOTICE OF APPEAL

I certify that I have served a Notice of Appeal 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, The Honorable Hope Blackley, Spartanburg Clerk of Court, at 180 Magnolia., Spartanburg, S.C. 29306, Lee Ellen Bagley, Esquire, at 3700 Forest Drive, Suite 400, Columbia, SC 29204, and James D. Jolly Jr., Esquire at 1805 North Blvd., Anderson, SC 29622, by depositing a copy of it in the United States Mail, postage prepaid, on April 18, 2017.

April 18, 2017


Donald L. Smith, Esquire
Attorney for Appellant
122 N. Main Street
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FORM 8
LETTER TO THE APPEALS COURT CLERK
NOTICE OF APPEAL

April 18, 2017

RECEIVED

APR 21 2017

SC Court of Appeals


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

**RE: Caitlyn Langham v. Officer Russell Porter, City of Spartanburg,
Spartanburg Police Department and WALMART, Inc.
C.A. No.: 2016-CP-42-1280**

Dear Honorable Kitchings:

Please find enclosed a copy of the Notice of Appeal which I am filing in the above-referenced matter, as well as Certificate of Service for the same.

Sincerely,

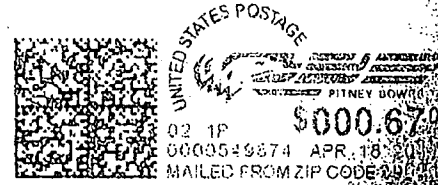


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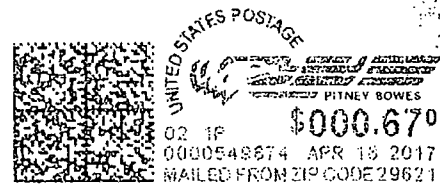
The Honorable Hope Blackley
Lee Ellen Bagley, Esquire
James D. Jolly, Jr., Esquire

Attorney Office of Donald Smith
122 N Main St
Anderson, SC 29621



James D. Jolly, Jr. Esquire
LOGAN, JOLLY & SMITH
1805 North Boulevard
Anderson, South Carolina 29622

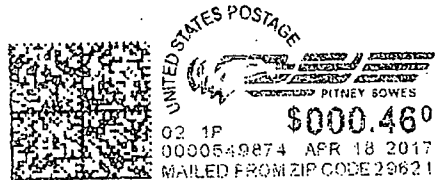
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Lee Ellen Bagley, Esquire
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
Columbia, SC 29204

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APR 21 2017
SC Court of Appeals

Attorney Office of Donald Smith
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Anderson, SC 29621



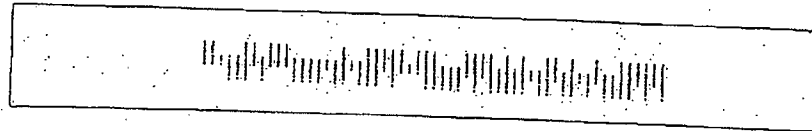
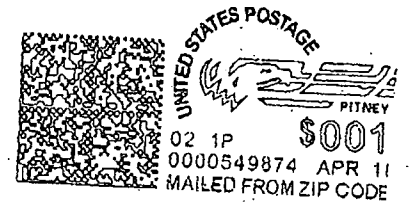
The Honorable Hope Blackley
Clerk of Court, Spartanburg County
180 Magnolia St.,
Spartanburg, S.C. 29306

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APR 21 2017

SC Court of Appeals

Hon. Jenny Abbott Kitchens
Clerk of Court, South Carolina
Court of Appeals
PO Box 11629, Columbia, SC 29211

ORDER CONSOLIDATING APPEAL
(November 27, 2017)

The South Carolina Court of Appeals

Caitlyn Langham, Appellant,

v.

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

Appellate Case No. 2017-001009

ORDER

Appellant's motion to consolidate this appeal with appellate case 2017-002160 is granted. The consolidated appeal shall proceed under the caption set forth in this order. The initial briefs and designations of matter previously filed in this appeal are stricken. Within thirty days of this order, Appellant shall serve and file her initial brief and designation of matter for the consolidated appeal.


FOR THE COURT

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire
James D. Jolly, Jr., Esquire
Lee Ellen Bagley, Esquire
Randi Lynn Roberts, Esquire
Stacey Todd Coffee, Esquire

FILED

Nov. 29, 2017

EXCERPTS OF CRIMINAL TRIAL TRANSCRIPT
(September 17, 2014)



Caitlyn Langham

Copy

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

1 moment to your jury deliberation room. Follow Ms.
2 Miller. (Inaudible). We'll have you back in just a
3 moment. You're more than welcome to (inaudible).
4 Ms. Miller, (inaudible) not to begin deliberating,
5 not to even talk about the case. Mr. Smith,
6 (inaudible)?

7 MR. SMITH:

8 May it please the Court. I would ask that
9 (inaudible) dismissed based on he stated himself he
10 had no personal information. He didn't have any --
11 he didn't know anybody, the witnesses he didn't talk
12 to them. He just went up to a woman and started
13 looking through her purse. I mean there's no --
14 there's nothing there, no probable cause.

15 THE COURT:

16 Mr. (inaudible).

17 THE STATE:

18 Your Honor, with regards to the exact words that
19 were said by Officer Porter, he said that he'd had
20 information (inaudible) concealed merchandise. He
21 approached her. She began to flee from him. Flight
22 in itself can be evidence of a crime (inaudible).
23 He looked in her purse, saw the merchandise, and
24 asked her why. She refused to comply. I think
25 there is probable cause and enough evidence to send

1 this to the jury.

2 THE COURT:

3 Go ahead.

4 MR. SMITH:

5 There is no specificity about who this person was or

6 ~~how big, what she was wearing.~~ There's nothing like

7 that. I mean, nothing.

8 THE COURT:

9 I'm going to deny the motion for a direct verdict at

10 this time. I believe there's sufficient evidence to

11 move forward to allow the matter to be taken in

12 front of the jury. So I'm going to deny the motion.

13 Mr. Smith, (inaudible) witnesses?

14 MR. SMITH:

15 I need to (inaudible) client.

16 THE COURT:

17 Sure, sure. We'll go off the record for just about

18 five minutes, Mr. Smith?

19 MR. SMITH:

20 Yes, Your Honor.

21 THE COURT:

22 Okay. Thank you. Thank you ladies and gentlemen

23 for your patience. Mr. Smith, you may call your

24 first witness.

25 MR. SMITH:

EXCERPTS OF CAITLYN LANGHAM
DEPOSITION
(January 18, 2017)

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: CAITLYN LANGHAM

DATE: Wednesday, January 18, 2017

TIME: 11:13 a.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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CHARLESTON COLUMBIA HILTON HEAD GREENVILLE MYRTLE BE.

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Caitlyn Langham 1/18/2017

12

ELECTRONICALLY FILED - 2017 Feb 24 11:01 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201280

1 -- and tell me what that involves.
2 A. There's four phases. The first phase, it's
3 intense outpatient treatment. You have group three
4 times a week; you have throughout the whole program
5 random drug testing. You call in every day at five
6 o'clock. Then in phase two, you have two groups a week
7 still. You still have a ten o'clock curfew; you still
8 have the random drug test. You have to go to any
9 meetings, six for two weeks. Phase three you have one
10 group, still have a curfew, same, everything is still
11 the same. And then phase four you have like little
12 check-in groups and no curfew, but the drub test and the
13 meetings and obtaining, you know, health insurance,
14 clean drug tests. So it's kind of a lot. It's a lot.
15 Q. And so you're currently going through that
16 program right now?
17 A. Yes, ma'am.
18 Q. Which phase are you in?
19 A. In two weeks I'll be in phase four.
20 Q. And if you successfully complete that program,
21 what happens to the charges?
22 A. My record will be clean.
23 Q. Okay. And did you have a substance-abuse
24 problem?
25 A. Yes, ma'am.

1 Q. Okay. What -- tell me about that.

2 A. It was something that I struggled with for a
3 while. And I -- I tried fixing it and I tried rehab,
4 but eventually, you know, spiraled out of control; and I
5 ended up getting those charges and was, you know, either
6 prison or drug court. So in the beginning, I did it to
7 stay out of prison, but it's been the best thing to
8 happen to me.

9 Q. I'm glad you did that.

10 A. Thank you.

11 Q. What was the -- what was the substance that
12 you used or substances?

13 A. In the beginning, it was pain medicine, and
14 then it -- at the very end it turned to meth and heroin
15 and whatever.

16 Q. And how long were you using?

17 A. I started using when I was fifteen, and then
18 pled in drug court when I was twenty-two and now I'm
19 twenty-four.

20 Q. On the day of the incident at Wal-Mart, were
21 you on any substances at that time?

22 A. Probably.

23 Q. Okay. Do you remember what happened? Do you
24 remember the incident at Wal-Mart?

25 A. Yes, ma'am.

1 Q. Okay. How well would you say you remember it?

2 A. Pretty well.

3 Q. Okay. And you said you probably were on
4 something. Do you have any idea what that -- what it
5 might have been?

6 A. No, ma'am. If anything, pain medicine.

7 Q. Okay. Other than the incident at Wal-Mart,
8 have you ever been arrested for shoplifting at any other
9 time?

10 A. No, ma'am.

11 Q. You referenced two assault and battery
12 charges.

13 A. Yes, ma'am.

14 Q. Were those -- did those happen at the same
15 time? I mean, did those arise out of the same incident?

16 A. Yes.

17 Q. Okay. And who else did -- was involved in
18 that?

19 A. My mother and my grandmother.

20 Q. Okay. Can you kind of tell me what happened
21 with those?

22 A. I was under the influence; and they were
23 trying to detain me, and I kind of put up a fight.
24 There was no punching or anything like that; but, you
25 know, in the situation, it was kind of like, okay, well,

EXCERPTS OF RONEE MILLER
DEPOSITION
(January 18, 2017)

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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APPEARANCES:
ATTORNEYS FOR THE PLAINTIFF
ATTORNEY OFFICE OF DONALD SMITH
BY: DONALD L. SMITH, ESQUIRE

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Anderson, South Carolina 29621
(864)642-9284
attorneydonaldsmith@gmail.com

ATTORNEYS FOR THE DEFENDANTS
GAFFNEY, LEWIS & EDWARDS, L.L.C.
BY: LEE ELLEN BAGLEY, ESQUIRE
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
(803)790-8838
lebagley@glelawfirm.com

On behalf of Wal-Mart, Inc.

LOGAN, JOLLY & SMITH, L.L.P.
BY: JAMES D. JOLLY, JR., ESQUIRE
1805 North Boulevard
Anderson, South Carolina 29622
(864)226-1910
jolly@loganjollysmith.com

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

11

- 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.

TRANSCRIPT OF MOTION FOR SUMMARY JUDGMENT
(February 28, 2017)

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

WITNESS

I N D E X

PAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

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 understanding that plaintiff is only asking for
2 reconsideration of the claims pursuant to 1983.

3 Your Honor, first, we would submit that
4 plaintiff cannot bring his claims against a private
5 entity through respondeat superior as we stated on
6 our initial brief for summary judgment, and that is
7 pursuant to Monell Supreme Court case.

8 Your Honor, furthermore, if we were even to get
9 past that argument, which we consider not fact
10 based, plaintiff only brings that -- those claims
11 through respondeat superior pursuant to his
12 complaint. And we allege that you cannot hold a
13 private entity liable through that theory.

14 But, furthermore, Officer Porter was employed
15 by Wal-Mart on the day of the incident for crowd
16 control. It was the holidays, Your Honor. We
17 aren't claiming any qualified immunity as Wal-Mart.
18 We are not a State outfit, thus, we understand
19 you're not allowed to claim qualified immunity on
20 that portion.

21 So, Your Honor, we would ask that you would
22 uphold your initial ruling on this matter. And any
23 further argument, we would simply rely upon our
24 initial memo to the Court on our motion for summary
25 judgment.

1 THE COURT: All right. Thank you. Anything
2 further on that?

3 MR. SMITH: Your Honor, in the -- Wal-Mart,
4 under the color of law, they were part of the -- the
5 officer's actions as well.

6 THE COURT: Okay. All right. That's under
7 advisement.

8 Okay. And then the second motion is?

9 MR. JOLLY: Yes, sir. Jim Jolly for Officer
10 Porter and the City and its Police Department.

11 The second motion is my motion for summary
12 judgment in this case. I was not part of the first
13 motion. Your Honor, I -- I will dispense with
14 discussing the background case because ---

15 THE COURT: The first one?

16 MR. JOLLY: Yes, sir.

17 THE COURT: And I read -- I've read --
18 everybody in the courtroom, I've read the entire
19 afternoon pleadings while I was eating my lunch at
20 my desk.

21 MR. JOLLY: Well, sorry about that, Judge.

22 THE COURT: No. No. I bring my lunch so that
23 I don't go out to eat, so I just sat there and read
24 through all the affidavits and services. In fact, I
25 read one that is not even on the docket this

1 afternoon. They already settled it. They were
2 outside the statute of limitations by four days.

3 MR. JOLLY: Well, Judge, I'll be very brief
4 then, and I'll address any questions you have.

5 As you know, the plaintiff alleged several
6 state causes of action against my client and he
7 alleged a 1983 action.

8 It is our position that all of the state causes
9 of action, except malicious prosecution, are barred
10 by the applicable statute of limitations, which is
11 found in the South Carolina Tort Claims Act and
12 which is two years. And because this case was filed
13 more than two years from the date of the arrest,
14 those claims are barred.

15 Assuming that's correct, and I -- I would
16 submit it is, then he's left with malicious
17 prosecution. And we concede that the statute did
18 not run as malicious prosecution because it's my
19 understanding of the law that that statute begins on
20 the date of acquittal, and he sued us within two
21 years of the date of acquittal.

22 And the 1983 action is a three-year statute for
23 all the reasons that I'm sure the Court's aware of
24 and it's akin to a personal injury action and that
25 type thing. So our statute argument is only

1 against -- is only as to the state claims other than
2 malicious prosecution.

3 With respect to malicious prosecution and the
4 1983 claim, it is our position that those claims
5 should be dismissed because there was probable cause
6 to make the arrest.

7 And I would -- I anticipate that the
8 plaintiff's lawyer, and maybe this is wrong, but
9 will say that there are factual questions. We don't
10 think they are in this case. There -- there was a
11 criminal trial, and I submitted exhibits to the
12 Court and those were attached to my memo.

13 If it's a question of he said/she said and what
14 he saw or she saw, I would concede that I'm not
15 entitled to summary judgment on those two causes of
16 action, but we don't believe that's the case for a
17 number of reasons, part of which is -- and I wasn't
18 sure what Mr. Smith said about the officer not
19 seeing.

20 His testimony in the criminal trial was that he
21 saw plaintiff attempting to leave the store, that an
22 eyewitness for Wal-Mart had told him that they had
23 seen her place items in her pocketbook.

24 And when -- when she and he came together
25 toward the front of the store, her pocketbook was

1 open and he could see Wal-Mart merchandise down in
2 her pocketbook. So -- so we submit that -- that
3 that in and of itself is enough for probable cause
4 to make an arrest.

5 But beyond all that, when this case was
6 tried -- when the criminal case was tried, the --
7 the plaintiff, then the criminal defendant, made a
8 motion to -- for directed verdict saying there was
9 insufficient evidence to submit this case to a jury.

10 And the judge who had heard all the evidence,
11 heard the witnesses, you know, seen everything,
12 listened to everyone, said that there was sufficient
13 evidence to submit that case to a jury.

14 So it's our position that if there -- if
15 there's enough evidence for a trial judge to say
16 it's sufficient to submit to a jury, then that
17 exceeds the standard for a law enforcement officer
18 to have probable cause to make an arrest.

19 And so for those reasons, we believe that you
20 should rule that probable cause existed as a matter
21 of law. And that would -- that would defeat the --
22 the cause of action for malicious prosecution and
23 the 1983 claim.

24 Now, finally -- well, two final arguments. The
25 first is, on behalf of the City and the Police

1 Department as to the 1983 claim, there is no
2 liability for respondeat superior under 1983 for a
3 municipality.

4 The plaintiff has to show that the officer was
5 acting pursuant to policy, or, for example, if you
6 have officers doing things that are not pursuant to
7 policy, but the Department turns a blind eye or
8 allows it to happen, there's absolutely zero
9 evidence in the record before the Court of any such
10 evidence in this case. And so we would argue on
11 that basis, the City and the Department are entitled
12 to summary judgment.

13 And then, finally, we are entitled to qualified
14 immunity on behalf of -- of the officer. And as I'm
15 sure the Court's aware, I cited a number of cases,
16 but qualified immunity is not a defense. It's an
17 immunity and there's a lot of cases that say that it
18 is designed to protect police officers from this
19 very process we're in today to where every time they
20 make an arrest, a person can just make a statement
21 that differs from them and they have to be drug
22 through lit -- civil litigation on every arrest.

23 And the Court has made it abundantly clear that
24 that is not intent -- that's not the intent of the
25 Civil Rights Statute and the cases interpreting it.

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,

1 had a bruised arm and -- and her jaw. I'm going to
2 be moving for spoliation because of the -- the video
3 being lost. Clearly, everyone that was a part of
4 this knew that the video would be necessary --
5 necessary for prosecution.

6 And based on the fact that it was a failed
7 prosecution and Ms. Langham hadn't taken anything,
8 this action would be pending.

9 The -- the key is they had the opportunity to
10 have video of her putting things in her purse,
11 taking things out, doing whatever she was doing, and
12 there's not one single shred of video, no pictures,
13 nothing.

14 So that raises every question, and we would
15 add -- we would say that because of that, you don't
16 get to see how he manhandled her and threw her to
17 the ground. And that's why we didn't get any video.

18 They would've seen the vid -- they would want
19 to cinch every case that they have for theft, and
20 they have the video and 50 cameras to do that, but
21 yet we don't have a single one that they saved for
22 purposes of the prosecution which would be more
23 important than this, but now here we are and we
24 don't have it for this case either.

25 THE COURT: Anything further, Mr. Smith?

1 MR. SMITH: No, sir.

2 THE COURT: Okay. Well, what about the
3 two-year statute of limitations?

4 MR. SMITH: Your Honor, it's our contention
5 that the -- that the 1983 action goes to the --
6 the -- the Tort Actions in the state and three years
7 is the statute of limitations in that.

8 And we already recognized and addressed the
9 defamation and the, I believe, false imprisonment.
10 And that was two years, and we -- we conceded that
11 at the last hearing.

12 However, the assault is a three-year statute,
13 much as gross negligence and so forth. So we --
14 that falls back on the state statute.

15 THE COURT: Okay. Anything from anybody else?

16 MR. JOLLY: The only response to that, Judge,
17 is, there is no differentiation in the Tort Claims
18 Act between assault and battery and the other state
19 claims. It's a two-year statute all throughout.
20 Thank you.

21 THE COURT: All right. Thank you. All right.
22 As everybody knows, when it's under advisement, if
23 we watch our AIS e-mail addresses.

24 (The proceedings concluded at 2:21 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Spartanburg County, South Carolina, on the 28th day of February, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 20, 2017

/s/Lisa Scott



Lisa Scott
Circuit Court Reporter

**CERTIFICATION OF COUNSEL
FOR APPELLANT'S RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Judge

Appellate Case No.: 2017-001009

Caitlyn Langham,

Appellant,

vs.

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

Respondents.

CERTIFICATION OF COUNSEL

I HEREBY CERTIFY that this Record on Appeal contains all materials proposed to be included by the parties, and not any other material.

May 4, 2018


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