

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Trial Court Case No. 2020-CP-36-00506
Appellate case No. 2021-000817

Terence L. Rush,

Appellant,

v.

Michael B. Stribble, Individually
and in his Official capacity as Sergeant
at the Newberry County Sheriff's Office,

Respondent.

APPELLANT'S COUNTER CLAIM TO RESPONDENT'S REPLY
TO APPELLANT'S BRIEF

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SC Court of Appeals

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STATEMENT OF COUNTER CLAIM ISSUES TO RESPONDENT'S REPLY

1. DID THE ^{TOTAL} TRIAL COURT ERR IN APPLYING THE TWO (2) YEAR S.C.T.C.A. STATUTE OF LIMITATIONS OVER THE THREE (3) YEAR FRAUD STATUTE OF LIMITATIONS FROM 2015, INSTEAD OF FROM WHEN THE APPELLANT DISCOVERED THE INJURY OF LOSS OF PROPERTY AT THE END OF 2018 AFTER BEING CONVICTED IN FLORIDA AND/OR FROM THE FACTS OF COREY PENA'S DESCRIPTION BEING A WHITE MALE IN THE MIDDLE OF 2014 WHICH PROVED MICHAEL B. STRIBBLE'S ACTUAL FRAUD OF NOT HAVING PROBABLE CAUSE ?

2. DID THE TRIAL COURT ERR IN NOT ACCEPTING THE FACT THAT THE APPELLANT WAS SEIZED WITHOUT PROBABLE CAUSE OR WARRANT IN HIS BACK YARD BEHIND A 6'7" (SIX FOOT, SEVEN) PRIVACY WOOD FENCE WHERE HE WAS WORKING OUTSIDE OF PUBLIC VIEW WHEN THE DEPUTIES ENTERED THROUGH THAT PRIVACY FENCE AND MICHAEL B. STRIBBLE MADE THE STATEMENT THAT HE HAS A WARRANT FOR COREY PENA AND THAT [THE APPELLANT] LOOKS LIKE HIM WHICH MADE HIM FEEL HE WAS NOT FREE TO LEAVE OR FREE TO DECLINE MICHAEL B. STRIBBLE AND OTHER DEPUTIES REQUESTS AND TERMINATE THE ENCOUNTER WHEN MICHAEL B. STRIBBLE WOULDN'T LET HIM GO IN HIS HOME AND GET HIS PAPERS SUPPORTING HIS IDENTITY, OR EVEN PRESENT THE APPELLANT WITH THE WARRANT THAT HAS THE IDENTITY OF COREY PENA THE DEPUTIES WAS IMPLYING THEY HAD IN ORDER TO TERMINATE THE ENCOUNTER ONCE HE WOULD HAVE SEEN THE DESCRIPTION OF A WHITE MALE AND NOT A BLACK MALE ?

3. DID THE TRIAL COURT ERR IN NOT ACCEPTING THE CONTENTS OF THE PLEADINGS AND EXHIBITS AS TRUE AS THE RULE STATES BEFORE DISMISSING THE COMPLAINT WITHOUT SETTING THE ACTION FOR

TRIAL OR A HEARING WHEN A GENUINE ISSUE OF MATERIAL FACT EXISTED WHERE THE RESPONDENT(S)/APPELLEE(S) COULD NOT PREVAIL AGAINST THAT FACT ON A MATTER OF LAW LIKE STATUTE OF LIMITATIONS DEFENSE.

STATEMENT OF THE CASE

On November 16, 2020, Terence L. Rush brought this action alleging fraud against Michael B. Stribble and four (4) other unidentified John Doe Newberry County Sheriff Deputies in their individual and official capacities. The Appellant, Terence L. Rush stated in his complaint that Michael B. Stribble and the deputies did not have probable cause or a warrant to enter into the wood panel privacy fenced off backyard of the Appellant's house outside of public view and make him produce and/or give any information as to his identity, all the while making him feel as though he was not free to leave or free to decline Michael B. Stribble's requests and terminate the encounter.

Michael B. Stribble never produced this warrant, yet him and another deputy implied that the Appellant looked like Corey Pena (R. p. 17 line 9), making their statement firm that they have seen a picture and know the description of Corey Pena while withholding that information from the Appellant.

The Appellant discovered that after he was convicted in Florida for the failure to appear case, he lost all properties, livestock, and his invention and belongings in S.C. This all was the result of his arrest in S.C. when he wasn't doing anything to justify the government's intrusion into his life. He sought to file his complaint through Forma Pauperis

in 2018 and a way to obtain the warrant for a Corey Pena so that he can determine if they look alike and if it was just the luck of a mistaken identity that led Michael B. Stribble to his 2809 S.C. Hwy 66 home in Whitmire, S.C. 29178. When he found out the description and identity of Corey Pena in 2019, he knew then he was defrauded out of his identity by Michael B. Stribble.

The case was assigned to Judge Donald B. Hocker, Circuit Judge who also ruled against the Appellant in the motion to proceed by Forma Pauperis. Judge Hocker didn't hold a hearing and after his order of parties to submit a Memorandum of Law on the Motion to Dismiss, he dismissed the Appellant's complaint stating that the Appellant should have known he had an action on October 2, 2015 because of the name of Corey Pena.

This Appellant appealed the dismissal. Then the Respondent(s) made a reply to the Appellant's initial brief and this Counter Claim to their reply was submitted.

STANDARD OF REVIEW

A de-novo standard of review is the required review for dismissal of Complaints according to *Ornelas, v. U.S.*, 517 U.S. 690, 696-97 (1996).

ARGUMENTS

I. BECAUSE MICHAEL B. STRIBBLE DID NOT HAVE PROBABLE CAUSE TO BE AT 2809 S.C. HWY 66, WHITMIRE, S.C. 29178 PRIOR TO HIS SHOW OF AUTHORITY, DETENTION, INTERROGATION AND SEARCH OF BLACK MALE APPELLANT'S IDENTITY, HE IS NOT COVERED AND PROTECTED BY THE S.C.T.C.A. WHEN HE COMMITTED FRAUD IN HIS REPRESENTATION OF FACT AS HAVING A WARRANT FOR THE APPELLANT IN THE NAME OF COREY PENA WHO IS A WHITE MALE.

Precept upon precept, line upon line... what prompted Michael B. Stribble to look at the address of 2809 S.C. Hwy 66, Whitmire, S.C. 29178? If it is a warrant, what judge signed off on it after being presented with probable cause? What was his probable cause that he took to a S.C. Magistrate Judge to obtain a warrant? These questions have not been answered. There were no exigent circumstances that led him there, or were there? Was he in fresh pursuit of a fleeing suspect to leave the public view and enter through someone's wood paneled privacy fence? The Appellant has presented every piece of evidence, exhibits and affidavits under oath to show that there was no reason for Michael B. Stribble to be there. His arrest was based on a false name given to him, so what prompted their interaction behind the Appellant's home for him to need the Appellant's name? In other words, [dismissing the complaint] should be granted "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Props.*, 810 F. 2d 1282, 1286 (4th Cir. 1987). However, if after answering the above posed questions of discussion, and everything is in order, then Michael B. Stribble would be covered under S.C. Code Ann. § 15-78-70(a), but if none of these questions supports Michael B. Stribble's intrusion into the

backyard of Appellant's home which is enclosed, as in the description of curtilage in *Lundstrom v. Romero*, 616 F. 3d 1108, 1128-29 (10th Cir. 2010) then that is the same as a warrantless entry and is unlawful.

Looking at the record on appeal and the exhibits (R.p. 45.) you could see that by the physical description and photo of Corey Pena, Michael B. Stribble could not have been at 2809 S.C. Hwy 66, Whitmire, S.C. 29178 asking a black male for identification with that warrant. It would be apparent on its face as a fraud and would cause him to be subjected to S.C. Code Ann. § 15-78-70 (b). This also would mean his intrusion violates the provisions in the U.S. Const. Amend. IV which guarantee that the Appellant is to be protected from unreasonable government intrusion without probable cause. *U.S. v. Yengel*, 711 F. 3d 392, 398-99 (4th Cir 2013) makes warrantless entry in home unlawful, and curtilage such as an enclosed backyard is part of the home. 2019 U.S. Dist. LEXIS 115509 :: *United States v. Santos-Portillo*; May 31, 2019. The Fourth Amendment also considers a home's curtilage - "the area 'immediately surrounding and associated with the home' - to be 'part of home itself for Fourth Amendment purposes.'" *Collins*, 138 S.Ct. at 1670 (quoting *Florida v. Jardines*, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L. Ed. 2d 495 (2013)).

WHEREFORE, based on these citations and authority this counter claim to Respondent's reply provides reason that this Court should reverse the judgment of the circuit court.

II. BECAUSE THE COURTS ARE SUPPOSED TO ACCEPT ALL FACTS IN THE APPELLANT'S COMPLAINT AS TRUE BEFORE DISMISSING THE COMPLAINT, THE COURT ERRED WHEN IT DECIDED AGAINST SOUTH CAROLINA SUPREME COURT PRECEDENT AND FEDERAL LAW REGARDING THE FOURTH AMENDMENT REQUIREMENT FOR HAVING

PROBABLE CAUSE TO INTRUDE ON A PERSON'S REASONABLE EXPECTATION OF PRIVACY WITHOUT THE EXISTENCE OF A WARRANT SUPPORTED BY PROBABLE CAUSE, EXIGENT CIRCUMSTANCE, OR FRESH PURSUIT OF A PERSON WHO HAS COMMITTED AN OFFENSE IN MICHAEL B. STRIBBLE'S PRESENCE, WHICH WAS NOT THE SITUATION AS LAID OUT IN THE APPELLANT'S COMPLAINT.

Please refer to (R.p. 16) and (R.p. 17, lines 4-11.), Fed. R. Civ. P. 56, *New York v. Class*, 475 U.S. 106, 112, 106 S.Ct. 960, 89 L. Ed. 2d 81 (1986). This court should reverse judgment of circuit court.

III. BECAUSE THE NAME COREY PENA BELONGS TO A WHITE MALE AND THE APPELLANT IS A BLACK MALE, CREATING A GENUINE ISSUE OF MATERIAL FACT AS TO WHEN THE APPELLANT DISCOVERED THIS FACT, THE COURT ERRED IN ISSUING ITS SUMMARY JUDGMENT DISMISSING THE APPELLANTS COMPLAINT WHEN IT STATED THAT THE APPELLANT SHOULD HAVE KNOWN THIS ON OCTOBER 2, 2015.

Please refer to (R.p. 154-161), (R.p. 45), S.C. Code Ann. § 15-3-530(5), Fed. R. Civ. P. Rule 12(b)(6) and *Pulliam Inv. Co., v. Cameo Props.*, 810 F. 2d 1282, 1286 (4th Cir. 1987).

WHEREFORE, based on these citations and authority, this counter claim to Respondent's Reply provides reason that this court should reverse judgment of the circuit court.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the circuit court.

September 7, 2022

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned Appellant, Terence L. Rush, certify that a correct copy was handed to Wakulla Correctional Institution Mail Room Officials to mail this Appellant's Counter Claim To Respondent's Reply To Appellant's Brief to:

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