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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Commons Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2019-CP-40-01299
Appellate Case No. 2022-000447

Christopher Shimeld,

Appellant,

v.

Richland County Sheriff's Office,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Late on February 28, 2018, someone burglarized the Discount Tobacco store at 10890 Two Notch Road in Columbia, South Carolina. (Plaintiff's EX 1 – MSJ response). Investigator Vicki Rains of the Richland County Sheriff's Department was assigned to investigate the case. (Dep. of Rains, p.8, ll. 14-22). The owner of the business immediately identified a suspect, Hank Osborne. (Dep. of Rains, p.11, ll.5-11). Osborne had worked on the alarm in the office, knew where it was located, and could access the business's security cameras from his phone. (Dep. of Rains, p.12, ll.8-10). Osborne was eventually listed on the investigator's file as a suspect in the case. (Dep. of Rains, p.12, ll.2-7).

During the crime scene investigation, a fingerprint was located on the alarm box in the business office. (Dep. of Rains, p.13, ll.13-18). On March 9, 2018, the Richland County Sheriff's Office crime scene lab matched the fingerprint to Appellant Christopher Shimeld. (Dep. of Rains, p.13, ll.5-10). As part of that matching process, Rains obtained and reviewed a ten-print card for Appellant. (Plaintiff's EX 2 – MSJ response).

The ten-print card, which constituted the only evidence supporting probable cause, had two critical pieces of information on it. First, it reflected Appellant's employer at the time the prints were taken was Summit Alarms. Second, the prints were not taken because of any criminal activity. The same card shows the prints were taken so Appellant could obtain a South Carolina Concealed Weapons Permit (CWP). (Plaintiff's EX 2 – MSJ response).

Appellant's eligibility for a CWP reflects he did not have a felony or violent criminal history. S.C. Code Ann. § 23-31-215(B). The ten-print card reflects Appellant was employed by an alarm company. Because there was no other evidence besides the print that pointed to Appellant, his past employment for an alarm company created a reasonable inference his prints would be found on an alarm system.

The fingerprint served as the sole basis for probable cause when Rains sought an

arrest warrant for Appellant.[1] Rains called the current alarm company and asked if Appellant had ever worked there, as an employee or a contractor. (Dep. of Rains, p.22, ll.8-23). She never made any attempt to determine Summit Alarms' involvement in the alarm installation or look further into Appellant's employment in the alarm industry.

Rains never attempted to locate Appellant. The Respondent has a policy on preliminary and follow up investigations into crimes which in part requires an investigator to attempt to locate and interview a suspect. (Plaintiff's EX 4 – MSJ response). Investigator Rains did not attempt to locate Shimeld by running a contact information report, despite testifying that running that report was a common occurrence during a law enforcement investigation. (Dep. of Rains, p.34, l.20 – p.35, l.15)

Appellant Shimeld had numerous records supporting the fact he did not commit this crime. He had toll records showing he crossed the Mid-Bay Bridge in Florida around 5:20 p.m. the evening of the burglary and again around 8:45 a.m. the following morning. (Plaintiff's EX 5 – MSJ response). Appellant had store receipts showing he was in Florida the afternoon before the burglary. (Plaintiff's EX 6 – MSJ response).

Records from Appellant's home security system showed him arming his alarm and staying at the house around 11:30 p.m. the night of the burglary and then disarming the alarm to leave the following morning around 7:00 a.m. (Plaintiff's EX 7 – MSJ response). He also has phone and bank records supporting his presence in Florida at the time of the burglary. (Plaintiff's EX 7 & 8 – MSJ response).

Most importantly, Appellant produced documentation that he had worked on the alarm at Discount Tobacco several years before the burglary. (Plaintiff's EX 10 – MSJ response). This easily explained his fingerprint on a part of the alarm that would have rarely been touched by anyone else.

Appellant was able to obtain this information and get it to the Respondent

[1] There was a photo lineup from which a clerk at the burglarized store purportedly identified Appellant Shimeld. Rains testified that she did not rely on this lineup in establishing probable cause for her arrest warrant. (Dep. of Rains, p.23, ll.2-11). There is also no mention of a photo lineup in the arrest warrant.

Richland County Sheriff's Office shortly after his arrest in Florida. He would have immediately provided it if he were contacted by Rains. Investigator Rains conceded she would not have sought an arrest warrant if she had this information. (Dep. of Rains, p.32, ll.1-11).

Rains sought an arrest warrant for Appellant based solely on the fingerprint match at the crime scene. Appellant Shimeld was arrested in Florida and held in jail because the warrant had been entered into the system.[2] (Dep. of Rains, p.30, ll.5-10). After reviewing the paperwork provided by Appellant proving he was in Florida, Rains dismissed the warrant against him. (Dep. of Rains, p.29, l.16 – p.30, l.4).

On March 5, 2019, Appellant filed a lawsuit against the Richland County Sheriff's Department alleging three causes of action: (1) negligent training, supervision, and/or retention, (2) malicious prosecution, and (3) false imprisonment. (Complaint). The Respondent answered the complaint on May 20, 2019, asserting 10 defenses to the claims. (Answer).

On May 6, 2021, the Respondent moved for summary judgment. The motion raised 13 grounds but did not include detailed argument in support of those grounds. (MSJ). The Appellant filed a memo addressing each of the grounds and setting out legal arguments as to why each ground should fail. (MSJ response). The circuit held a WebEx hearing on September 27, 2021. (MSJ hearing). Because of the arrest warrant, Appellant abandoned his argument for false imprisonment.

Additional specific facts, if necessary to an argument, are described in the relevant argument sections below.

[2] While the testimony did not specify what "the system" was, arrest warrants are entered into the NCIC system and are available to law enforcement officers in other states. Counsel for the Respondent mentioned this system during the summary judgment hearing. (MSJ hearing, p.13, ll.15-22).

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN GRANTING ABSOLUTE IMMUNITY TO THE RICHLAND COUNTY SHERIFF'S OFFICE.

The circuit court's grant of absolute immunity was premised on an interpretation of S.C. Code Ann. § 15-78-60(23). The application of a statute is a question of law for the Court of Appeals and may be decided with no particular deference to the trial court. *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 411 (2000).

The circuit court ruled malicious prosecution cases are not allowed against state entities. This is at odds with numerous opinions from South Carolina courts discussing malicious prosecution without ever mentioning the cause of action was improper.

In *McBride v. Sch. Dist. of Greenville County*, the South Carolina Court of Appeals reversed the barring of a malicious prosecution action on a different section of the South Carolina Tort Claims Act. 389 S.C. 546, 565-66 (Ct. App. 2010). Numerous other cases in South Carolina have addressed malicious prosecution actions against state entities with no mention of the cause of action being barred by the South Carolina Tort Claims Act. *See e.g., Law v. South Carolina Department of Corrections*, 368 S.C. 424 (2006) (addressing merits of malicious prosecution elements); *Jordan v. Deese*, 317 S.C. 260 (1995) (addressing merits of element for malicious prosecution); *Brown v. Leonard*, 2008 WL 9832870, Unpublished Opinion (Ct. App. 2008) (addressing actual malice exception to the SCTCA and merits of claim).

Recently, the South Carolina Court of Appeals expressly stated the remedy for an arrest on a facially valid warrant that ends up lacking probable cause is, among other things, an action for malicious prosecution. *Carter v. Bryant,* 429 S.C. 298, 309 (Ct. App. 2020). This language was not dicta; it was an emphasis by the Court on a legal remedy that applies to the very situation here. Appellant was arrested on a "facially valid" arrest warrant that he argues lacked probable cause. *Carter* authorizes a malicious prosecution action.[3]

[3] The same argument for absolute immunity was made in *Carter* and not reached by the

The canons of statutory construction also weigh against taking the unprecedented step of granting absolute immunity to law enforcement officers. The circuit court noted that S.C. Code Ann. § 15-78-60(23) provides absolute immunity for the "institution or prosecution of any judicial or administrative proceeding." (MSJ Order p.8). One of the common law elements of malicious prosecution is "the institution or continuation of original judicial proceedings." *Law v. S.C. Dep't of Corr.,* 368 S.C. 424, 436 (2006). Because the language was "virtually identical" the circuit court held the exception to the waiver of immunity in subsection (23) was a grant of absolute immunity for malicious prosecution actions.

"However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Kiriakides v. UA Communications,* 312 S.C. 271, 275 (1994). Courts should interpret statutes to "escape the absurdity." *Id*. In other words, even plain language should be tempered with practicality.

In this case, the circuit court interpreted the S.C. Code Ann. § 15-78-60(23) as a grant of absolute immunity to law enforcement for all arrests. The absurdity of an interpretation cannot be speculative; it must be clear the application of an interpretation would result in something the legislature could not have intended. *Harris v. Anderson County Sheriff's Office,* 381 S.C. 357, 363 n.1 (2009).

If the circuit court's interpretation is correct, law enforcement has no liability for any arrest. If that was the intended effect of this law, it would have been stated that way. Rather, this is a state codification of the absolute immunity afforded to prosecutors in *Imbler v. Pachtman*, 424 U.S. 409 (1976). In *Imbler*, the Supreme Court of the United States held a state prosecuting attorney acting within the scope of his or her duties in initiating and pursuing a criminal prosecution cannot be sued. *Id*. at 410.

Court. However, the fact that the Court made the referenced statement in the face of an assertion of absolute immunity suggests the immunity should be rejected.

Prosecutorial immunity is well-settled in the United States and founded on the idea that a prosecutor's use of independent judgment is akin to that of a judge. *Id*. at 421-24. Like a judge, the prosecutor should be free to make decisions without fear of liability. That immunity, however, only applies to the activities a lawyer takes in bringing or litigating cases as an advocate on behalf of the state.

The Court of Appeals has engaged in extensive analysis of *Imbler* and its progeny, as well as the South Carolina Tort Claims Act's effect on traditional theories of immunity. In *Williams v. Condon*, this Court noted *Imbler* protected prosecutors when they functioned as advocates but called into doubt whether the same immunity applied when prosecutors were functioning as investigators or administrators. 347 S.C. 227, 243-44 (Ct. App. 2001). Specifically, this Court noted *Imbler* did not find "advising police in the investigative phase of a criminal case" was so associated with the judicial phase of the criminal process that absolute immunity applied. *Id*. at 244.

Granting law enforcement absolute immunity for arrests that lack probable cause would grant them greater immunity that prosecutors have received from the appellate courts of both the United States and South Carolina. Addressing the Tort Claims Act, this Court found it granted immunity to prosecutors as long as they were acting as advocates as defined by *Imbler*. *Id*. at 250. According to *Williams*, prosecutors were clearly not granted absolute immunity in all situations. The circuit court's interpretation of the Tort Claims Act, in light of *Williams*, would extend greater immunity to law enforcement officers than it does to the State's prosecutors. This patently absurd result would run contrary to precedent from both South Carolina appellate courts and the Supreme Court of the United States.[4]

[4] The circuit court cited numerous opinions from South Carolina federal district courts in its order. None of these opinions meaningfully engages with *Imbler* or *Williams*. None of these opinions are precedential, because district court opinions are not binding precedent in another judicial district, the same judicial district, or even on the same judge in a different case. *Camreta v. Greene,* 563 U.S. 692, 709 n.7 (2011); *Booker v. S.C. Dep't of Corr.,* 855 F.3d 533, 538 n.1 (4th Cir. 2017). A district court opinion is not even persuasive to South Carolina courts unless its reasoning is logical and its conclusion persuasive. *Lyons v. Fid. Nat'l Title Ins. Co.,* 415 S.C. 115, 131-32 (Ct. App. 2015).

II. THE CIRCUIT ERRED IN FINDING PROBABLE CAUSE EXISTED AS A MATTER OF LAW.

This Court reviews a grant of summary judgment under the same standard that governed the circuit court. *Henderson v. Allied Signal, Inc.,* 373 S.C. 179, 183 (2007). Summary judgment is only appropriate when, viewing all facts and inferences in the light most favorable to the nonmoving party, there is no genuine issue as to any material fact. *Id*. Because there is a genuine issue regarding the existence of probable cause for Appellant's arrest, summary judgment was improper, and this Court should reverse the circuit court's grant of summary judgment.

Probable cause is ordinarily a question for the jury unless the evidence yields only one conclusion. *Law v. S.C. Dep't of Corr.,* 368 S.C. 424, 436 (2006). For example, *Law* describes an arrest and prosecution based on a thorough investigation that involved multiple witness interviews. *Id*. at 437. Those witness interviews corroborated the allegations and led to a finding of probable cause. *Id*.

The South Carolina Supreme Court held in *Jones v. Columbia* that probable cause is a "good faith belief that a person is guilty of a crime when this belief rests on <u>such grounds that would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise</u>." 301 S.C. 62, 65 (1990) (emphasis added).

Inherent in the *Jones* definition is the requirement that an investigator act with sufficient caution as warranted by the case being investigated. Probable cause is not a high bar, but it is "by no means a toothless standard." *State v. Warner,* 436 S.C. 395, 404 (2022). The language in *Jones*, oft cited in probable cause cases, requires action in line with the "ordinary prudent and cautious man [or woman]." The words "prudent" and "cautious" require law enforcement to act with a level of care that would avoid mistakes.

In this case, the only evidence supporting the arrest of Appellant was a fingerprint. The evidence relied on by the investigator when matching the fingerprint should have

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Without any meaningful analysis of the major cases related to immunity, none of the district court opinions cited by the circuit court should have affected this decision.

tipped her off that more investigation was needed prior to any arrest. The fingerprint card suggested both that Appellant worked for an alarm company and that he had a clean criminal record by virtue of his eligibility for a concealed weapons permit.

This is not an attempt by Appellant to assert an action for a "negligent arrest." Rather, it incorporates the caution required by *Jones* into the analysis, which is required by the South Carolina Supreme Court. Officers must take care to avoid mistakes. In this case, no care was taken to avoid such a mistake. Contrary to the way Appellant was treated, the main suspect in this case was never arrested because he never showed up for an interview. (Dep. of Rains, p.34, ll.10-14; p.39, l.15 – p.40, l.10). Had Rains paid attention to the very evidence she was relying on to arrest Appellant, she would have noticed it warranted some caution in proceeding.

Along the same lines, Respondent appears to recognize this in implementing policies and procedures. Rains admitted they would try to get in touch with a suspect during the initial phase of an investigation. (Dep. of Rains, p.35, ll.16-25). Interviewing suspects is clearly set out in the Richland County Sheriff's Department policies and procedures related to investigations. (Dep. of Rains, Exhibit 8).

The failure to act in a cautious manner in the face of evidence contrary to Appellant's responsibility for the crime being investigated is sufficient to create a dispute over a material fact. The question of probable cause in this case should be decided by a jury. The Court should reverse the grant of summary judgment for Respondents.

III. THE CIRCUIT COURT ERRED IN FINDING THE SHERIFF'S OFFICE DID NOT NEGLIGENTLY SUPERVISE ITS INVESTIGATOR.

As previously stated, this Court should reverse the grant of summary judgment when there is a genuine dispute over a material fact.

The circuit court found there was no evidence of prior instances that would demonstrate a foreseeable risk Rains would cause harm. (MSJ Order, p.9). This is an incorrect analysis and is based on a misunderstanding of South Carolina law related to negligent supervision. This Court recognized these cases turn on two elements:

knowledge of the employer and foreseeability of harm to third parties. *Doe v. ATC,* 367 S.C. 199, 206 (Ct. App. 2005).

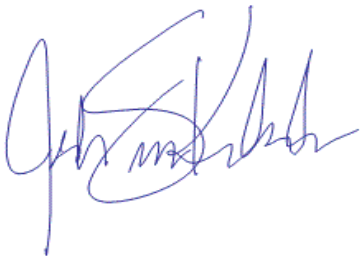
The circuit court based its decision on prior knowledge. The negligent supervision in this case is based on contemporaneous knowledge. Rains did not have probable cause to arrest Appellant. A cautious officer would have evaluated the evidence and hesitated to act, as the law requires in a probable cause situation. However, she brought her insufficient probable cause to supervisors who did not stop her from continuing with the arrest of Appellant. (Dep. of Rains, p.46, l.16 – p.47, l.16).

The same factual dispute over probable cause applies to this cause of action. Because Rains lacked probable cause, but her supervisors approved her actions, they had knowledge of her actions and should have foreseen that the failure to use caution in acting would lead to a result like Appellant's wrongful arrest. The elements of this cause of action are met and the Court should reverse the grant of summary judgment.

CONCLUSION

The circuit erred in granting summary judgment. There is a genuine dispute over material facts in this case. Additionally, the circuit court's grant of absolute immunity to law enforcement officers was a legal error. For these reasons, the grant of summary judgment should be reversed, and the case remanded to the circuit court for trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Plaintiff Christopher Shimeld served the Initial *Brief of Respondent* and *Designation of Matter* on the opposing counsel listed below.

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Service was accomplished this 14th day of November, 2022 by electronic mail and will be mailed via United States Postal Service if requested by counsel.

Respectfully Submitted,

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