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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2022-000447
Case No. 2019-CP-40-1299

Christopher Shimeld, ... Appellant,

v.

Richland County Sheriff's Office,..... Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is an appeal from the dismissal of a malicious prosecution and negligent training, supervision, and/or retention action brought by the Appellant Christopher Shimeld against the Respondent Richland County Sheriff's Office ("RCSO").

This action arises from the Appellant's arrest on April 6, 2018, in the State of Florida, based on an arrest warrant issued in South Carolina on March 16, 2018, for the offense of Burglary (Non-Violent) in the Second Degree. The Appellant was charged in connection with a burglary occurring on March 1, 2018, at the Discount Tobacco store in Richland County, South Carolina.

On March 5, 2019, the Appellant filed a civil action against the RCSO. The Complaint includes causes of action for false arrest, malicious prosecution, and negligent training, supervision, and/or retention against the RCSO.[1] On May 6, 2021, the RCSO filed a motion for summary judgment citing numerous grounds. (Motion). A hearing was held on September 27, 2021, before Circuit Court Judge Alison Renee Lee. On March 15, 2022, Judge Lee entered an order granting summary judgment to RCSO on all causes of action. (Order).

[1] In his Complaint, the Appellant also alleged a false arrest cause of action, but that claim was voluntarily withdrawn because the arrest was effected by warrant.

The Appellant did not file any motion to alter or amend pursuant to Rule 59(e), SCRCP. Instead, the Appellant filed a Notice of Appeal to this Court on April 15, 2022.

STATEMENT OF FACTS

Taking the facts in a light most favorable to the Appellant, during the early morning hours of Thursday, March 1, 2018, a burglary occurred at Discount Tobacco, a commercial establishment operating on Two Notch Road in Richland County, South Carolina. (Pl's Ex. 1). Ismat Ardab, the owner of the business, represented to responding deputies that the suspect cut through an inner drywall to gain entry. (Pl's Ex. 1). While inside the store, the suspect rummaged through the office and stole cash, and miscellaneous merchandise, including roughly 162 cartons of cigarettes. (Pl's Ex. 1). The suspect also cut wires to the alarm box and surveillance camera located in the inner office. (Pl's Ex. 1). This rendered the alarm system inoperable, and as a result, there was no immediate notification to police dispatch. (Pl's Ex. 1). RCSD deputies collected fingerprints on items in Ardab's office, including the alarm box, which prominently contained an ADS alarm company decal. (Rains Dep., p. 13; Def's Ex. 1).

RCSD Investigator Vicki Rains was assigned this criminal investigation. (Rains Dep., p. 8). She first spoke with Ardab. (Rains Dep., p. 9). Ardab suggested that a person of interest was an individual named Hank Osborne. (Rains Dep., p. 11). According to Ardab, Osborne had initially installed the security system. (Rains Dep., p. 12). He additionally had returned to the store on several

occasions as well as his office area. (Rains Dep., p. 12). Rains' several attempts to locate Osborne were unsuccessful. (Rains Dep., p. 13).

During Rains' investigation, the fingerprint analysis revealed that the alarm box contained fingerprints. (Rains Dep., p. 13). This latent print had been tested and positively matched those on file of the Appellant. (Rains Dep., p. 13). The positive match and identification were shared with Rains at that time. (Rains Dep., p. 13). Thereafter, Rains obtained a Department of Motor Vehicles ("DMV") Report which included the Appellant's personal identifying information. (Rains Dep., pp. 13-14). Specifically, that the Appellant had a valid South Carolina driver's license and resided in a local apartment complex. (Rains Dep., pp. 13-14).

Rains went to the Appellant's apartment as referenced in the DMV report. (Rains Dep., pp. 13-14). According to the apartment management, the Appellant had moved out and had not provided contact information, such as a forwarding address or telephone number. (Rains Dep., p. 16).

Rains then re-interviewed Ardab, who advised Rains that the burglary was likely conducted by two individuals. (Rains Dep., p. 23). Rains then prepared photo lineups with the Appellant and Osborne in which both Ardab and the store clerk selected the Appellant and Osborne as the two males who had frequently hung out together. (Rains Dep., p. 14; Def. Ex. 2).

On Tuesday, March 13, 2018, Rains then contacted the manager of ADS to obtain background information regarding the alarm system at Discount Tobacco. (Rains Dep., Ex. 1). The manager informed Rains that a new ADS alarm system had been installed at that location. (Rains Dep., pp. 45-46). Critically, the manager advised Rains that the Appellant had never been employed by ADS. (Rains Dep., pp. 21-23). Rains contacted the manager a second time. (Rains Dep., Ex. 1). Again, the manager not only insisted that the Appellant had never worked for ADS, but their service technicians are employed by ADS and are not contracted by third parties. (Rains Dep., Ex. 1).

On March 16, 2018, Rains then applied for an arrest warrant with the Richland/Upper Township Magistrate. (Rains Dep., pp. 40-46). In Rains' sworn arrest warrant affidavit, she described that the burglary was effectuated by way of:

> [F]orce[d] entry by cutting through the back of the business and entering through the office where the camera was unplugged & the alarm system was torn from the ceiling & destroyed. There is a fingerprint match for the defendant on the alarm box that was torn from the ceiling. I spoke with the manager of the alarm company who installed the alarm system and he stated he has never heard of the defendant nor has the defendant ever been employed by the alarm company who installed the alarm. The victim stated the defendant has never been in the office with the alarm system and he does not know the defendant. The estimated amount of Theft is $28,000.

(Def's Ex. 3).

At that time, the Magistrate Judge found that probable cause existed and issued an arrest warrant for the Appellant's arrest for the offense of Burglary (Non-Violent) in the Second Degree. (Def's Ex. 3). According to the Complaint, the Appellant was arrested on April 6, 2018, in the State of Florida and was held in a local detention center for some period of time. (Comp. ¶ 13).

STANDARD OF REVIEW

"A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 662 S.E.2d 40, 41 (2008). "An appellate court reviews the grant of summary judgment under the same standard applied by the trial court." *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826, 829 (Ct. App. 2009). "The trial court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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." *Id.*

"Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo." *Id*. "When the circuit court grants summary judgment on a question of law, we review the ruling de novo." *Stoneledge at Lake Keowee Owners' Association, Inc. v. Builders Firstsource - Southeast Group*, 413 S.C. 630, 776 S.E.2d 434, 437 (Ct. App. 2015).

ARGUMENTS

I. The trial court was correct in granting summary judgment on the Appellant's cause of action for malicious prosecution based on immunity pursuant to Section 15-78-60(23) of the Tort Claims Act.

The trial court ruled that the Appellant's malicious prosecution claim is barred by Section 15-78-60(23) of the Tort Claims Act, which provides for absolute sovereign immunity for any loss resulting from "institution or prosecution of any judicial or administrative proceeding." S.C. Code Ann. § 15-78-60(23). (Order, p. 8). The Appellant argues that the grant of immunity under Section 15-78-60(23) represents an "absurd" interpretation of the statute and not one intended by the General Assembly. The Appellant is mistaken.

It is well settled that the elements of malicious prosecution under state law are: "(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." *Broyhill v. Resolution Management Consultants, Inc.*, 401 S.C. 466, 736 S.E.2d 867, 870-71 (Ct. App. 2012). Thus, one of the six elements that the Appellant needs to prove is "the institution or continuation of original judicial proceedings." In virtually identical language, Section 15-78-60(23) provides absolute immunity for the "institution or prosecution of any

judicial or administrative proceeding." S.C. Code Ann. § 15-78-60(23). Therefore, because an element of a malicious prosecution cause of action falls squarely within an immunity provision, authority from the Supreme Court and this Court dictate that a governmental entity enjoys absolute immunity for that cause of action.

This issue has often arisen in the context of Section 15-78-60(17), by which a governmental entity enjoys absolute sovereign immunity for "conduct ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17). In applying this immunity exception, the Supreme Court and this Court have looked strictly at the elements of the cause of action to determine if sovereign immunity attaches. In the seminal case of *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 642 S.E.2d 726 (2007), the Supreme Court determined that "[n]one of the elements required for either cause of action ... include 'intent to harm.' Although it is true that harm may result from an intentional interference with existing or prospective contractual relations, it is not necessary that the interfering party intend such harm." 642 S.E.2d at 732. Consequently, where "intent to harm" is not an element of the cause of action, the Supreme Court concluded that the immunity exception is inapplicable. Citing *Eldeco*, this Court applied the same analysis in *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (Ct. App. 2008), with respect to an abuse of

process claim. In that case, this Court observed that "the tort of abuse of process contains neither an element of intent to harm, nor actual malice." 665 S.E.2d at 214. Because neither "intent to harm" nor "actual malice" is an element of the abuse of process claim, this Court concluded that such a claim could proceed against the entity.

In the present case, unlike in *Eldeco* and *Swicegood,* a requisite element of a malicious prosecution claim – the institution and prosecution of a judicial proceeding – does constitute immune conduct under the Tort Claims Act. As a result, the trial court correctly ruled that RCSO is entitled to absolute sovereign immunity on Shimeld's malicious prosecution claim.

This very issue was adjudicated in the case of *McCoy v. City of Columbia*, 929 F.Supp.2d 541 (D.S.C. 2013), where the United States District Court correctly ruled that a malicious prosecution claim against a municipality was barred by Section 15-78-60(23). Judge Joseph F. Anderson Jr. wrote as follows:

> The City also contends that it is immune from liability for McCoy's malicious prosecution claim under the SCTCA's immunity relating to "the institution or prosecution of a judicial proceeding." S.C. Code Ann. § 15-78-60(23). The Magistrate Judge recommended that the court grant the City's motion for summary judgment on this issue because McCoy's cause of action for malicious prosecution plainly falls within this express exception. The court agrees.

929 F.Supp.2d at 567, n. 10. Similarly, in *Thompson v. City of Columbia*, 2005 WL 8164911 (D.S.C. 2005), Judge Cameron M. Currie ruled: "It is fairly clear from the plain language of the statute, particularly § 15-78-60(23), that the legislature intended to exclude claims for malicious prosecution from the waiver of immunity for governmental entities in the Tort Claims Act." 2005 WL 8164911, *4. Judge Currie recognized that "[u]nder South Carolina law, the first element of a claim for malicious prosecution is 'institution or continuation of original judicial proceedings, either civil or criminal.'" 2005 WL 8164911, *3. She thus concluded that "there is no set of facts alleged in the complaint or that could be proved to support Plaintiff's claim of malicious prosecution against City, a governmental entity." 2005 WL 8164911, *4.

As the trial court recognized, other federal judges have also dismissed state law claims for malicious prosecution as barred by Section 15-78-60(23) immunity. *See, Smith v. Koon*, 2021 WL 1172692 (D.S.C. 2021) (finding malicious prosecution claim against Lexington County Sheriff is barred by Section 15-78-60(23); *Bellamy v. Horry County Police Department*, 2020 WL 2556953 (D.S.C. 2020), *adopting* 2020 WL 2559544 (D.S.C. 2020) (dismissing malicious prosecution claim against Horry County Police Department based on Section 15-78-60(23) immunity); *Palmer v. Santanna*, 2018 WL 1477600, *5 (D.S.C. 2018) ("the Town of Summerville is immune from liability on this claim because the

SCTCA provides that a 'governmental entity is not liable for a loss resulting from ... institution or prosecution of any judicial or administrative proceeding'"); *Terrell v. City of Spartanburg*, 2018 WL 4782334 (D.S.C. 2018) ("[t]he City is immune from liability for malicious prosecution under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-60(23)").

In sum, the trial court correctly ruled that the RCSO is entitled to absolute sovereign immunity for the institution and prosecution of a criminal proceeding as required by the literal language of Section 15-78-60(23). Quite simply, under the Tort Claims Act, there is no state law remedy for malicious prosecution against a governmental entity.

Nonetheless, the Appellant argues that the trial court's interpretation of Section 15-78-60(23) is "absurd" on the premise that "[i]f the circuit court's interpretation is correct, law enforcement has no liability for any arrest." *See*, Appellant's Brief, p. 9. That argument is meritless. In essence, the Appellant appears to suggest that there would be no deterrent or compensation in cases where a person is unlawfully arrested pursuant to a warrant in the absence of probable cause. That is absolutely not true. The Fourth Amendment and causes of action brought under 42 U.S.C. § 1983 provide a sufficient deterrent as well as compensation for victims of unlawful arrests by warrant. There does not need to be concurrent state law liability and dual methods of compensation under state

and federal law for police misconduct to be discouraged. Instead, it is entirely permissible and sound public policy for the General Assembly to have placed reasonable limits on law enforcement's liability under state law where police often work under the most difficult and trying of circumstances. In fact, prior to the abrogation of sovereign immunity in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), there was no state law liability for malicious prosecution against a governmental entity. Thereafter, when enacting the Tort Claims Act in 1986, the General Assembly, as a policy decision, continued to provide for sovereign immunity for malicious prosecution as well as other causes of action arising from the "institution or prosecution of any judicial or administrative proceeding." *See*, S.C. Code Ann. § 15-78-60(23). This is no different than the similar policy decision made by the General Assembly in 1986 to preserve and continue, by way of example, with absolute sovereign immunity for claims alleging nuisance or actual fraud. *See*, S.C. Code Ann. §§ 15-78-60(7) and (17).

The Appellant's argument is also flawed because Section 15-78-60(23) provides immunity only for malicious prosecution claims and not false arrest claims. Hence, not all arrests are subject to immunity. Frankly, it makes sense that the General Assembly would provide law enforcement with immunity for malicious prosecution claims and not false arrest claims. A false arrest claim, unlike a malicious prosecution claim, involves a warrantless arrest. But in contrast, a

malicious prosecution claim involves an arrest pursuant to a facially valid warrant, which necessarily includes the procedural safeguard that probable cause was determined by a neutral and detached magistrate rather than the law enforcement officer, thereby justifying state law tort immunity in that context.[2]

The Appellant also makes the curious argument that Section 15-78-60(23) does not apply to malicious prosecution cases because there exist reported state court decisions where Section 15-78-60(23) immunity was never applied or even discussed in adjudicating malicious prosecution claims. However, that argument is not persuasive. It is axiomatic that an appellate courts' silence on an issue does not mean the issue does not exist or is not meritorious. As former Chief Judge Alex Sanders so aptly stated, "appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811, 817 (Ct. App. 1991). A review of the cases cited by the Appellant does not reflect that the defense of sovereign immunity was even raised, let alone addressed, on appeal. It is also well settled that sovereign immunity is an affirmative defense, which if not raised, is waived. *See*, *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894, 898 (1994) ("sovereign immunity is an affirmative defense that must

[2] In *Dorn v. Town of Prosperity*, 375 Fed. Appx. 284 (4th Cir. 2010), the Fourth Circuit addressed the differences between causes of action for false arrest and malicious prosecution under South Carolina law. The Fourth Circuit explained that "[t]he distinction between malicious prosecution and false arrest ... is whether the arrest was made pursuant to a warrant." 375 Fed. Appx. at 286. The Court further explained that an arrest pursuant to a facially valid warrant, even if determined to be without probable cause, does not state a claim for false arrest but rather a claim for malicious prosecution.

be pled"). Therefore, if Section 15-78-60(23) immunity was not raised in the cases cited by the Appellant, then the appellate courts could not have addressed an unpled and waived defense. To suggest that the appellate courts implicitly ruled that Section 15-78-60(23) has no application to malicious prosecution claims is without merit. Certainly, the host of federal court judges, as cited above, conclude otherwise.

Finally, the Appellant makes a new argument raised for the first time on appeal. He argues that Section 15-78-60(23) is "a state codification of the absolute immunity afforded to prosecutors" and thus provides for only prosecutorial immunity. *See*, Appellant's Brief, p. 9. That position lacks merit on both procedural and substantive bases.

As a threshold matter, the Appellant has not preserved this issue for appellate review. In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by*, the trial court." *Id.*

(Emphasis in original). That argument was not raised to nor addressed by the trial court, and the Appellant failed to file a Rule 59(e) motion requesting the trial court to address and specifically rule on that issue. As a result, that issue has been waived for appellate review.

Nonetheless, even if this Court finds the issue to be properly preserved, the Appellant's position lacks merit for several reasons. First, there is no language in Section 15-78-60(23) limiting its applicability to prosecutors alone and not law enforcement officers who institute criminal actions by seeking arrest warrants from magistrates or municipal judges.[3] Second, in *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001), this Court has already identified Section 15-78-60(1) and (2) as codifying common law prosecutorial immunity. 553 S.E.2d at 508. This Court in *Williams* did not cite Section 15-78-60(23) as providing for prosecutorial immunity. At any rate, if prosecutorial immunity is codified by Section 15-78-60(1) and (2), as the *Williams* Court held, then Section 15-78-60(23) would be rendered duplicative or surplusage if it too provides only for prosecutorial immunity. For, it is a well settled rule of statutory construction "that

[3] The Supreme Court has explained that "[w]here the terms of the statute are clear, the court must apply those terms according to their literal meaning." *Brown v. South Carolina Department of Health and Environmental Control*, 348 S.C. 507, 560 S.E.2d 410, 414 (2002). "An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute." *Id.* A court has "no right to impose another meaning" to the statute. *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 725 S.E.2d 693, 695 (2012).

statutes should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *Abraham v. Palmetto Unified School District No. 1,* 343 S.C. 36, 538 S.E.2d 656, 662 (Ct. App. 2000).

Moreover, even if there is a valid question as to the meaning and scope of Section 15-78-60(23), it is critically important to recognize that provisions of the Tort Claims Act "must be liberally construed in favor of limiting the liability of the State." *See,* S.C. Code Ann. § 15-78-20(f). This rule of statutory construction was expressly adopted by the General Assembly and has likewise been applied by the appellate courts in construing the Tort Claims Act. *See, Faile v. South Carolina Department of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"). *See also*, *Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990); *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). Therefore, to the extent the Court finds any ambiguity in the statute, as the Appellant may suggest and which the RCSO denies, such ambiguity must be resolved in favor of limiting the liability of the State.

In sum, the trial court correctly ruled that the RCSO is entitled to absolute sovereign immunity for the institution and prosecution of a criminal proceeding as required by the literal language of Section 15-78-60(23). Quite simply, under the Tort Claims Act, there is no state law remedy for malicious prosecution against a

governmental entity. The summary judgment in the RCSO's favor on the malicious prosecution claim should be affirmed.

II. The trial court was correct in granting summary judgment on the Appellant's cause of action for malicious prosecution based on a finding that the evidence available to the investigator supports a finding of probable cause as a matter of law.

The Appellant further contends that trial court erred in finding that probable cause for his arrest existed as a matter of law. The trial court reviewed the evidence available to Investigator Rains and concluded those "historical facts" supported a finding of probable cause that the Appellant participated in a burglary at the Discount Tobacco store on March 1, 2018.

As the Supreme Court has held, "the proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *Mack v. Lott*, 415 S.C. 22, 780 S.E.2d 761, 761 (2015). In *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005), this Court explained that "[p]robable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime." 623 S.E.2d at 658, *citing State v. George*, 323 S.C.

496, 476 S.E.2d 903 (1996). "Probable cause is determined as of the time of the arrest, based on facts and circumstances -- objectively measured -- known to the arresting officer." *Jackson*, 623 S.E.2d at 659. Importantly, "[t]he determination of probable cause is not an academic exercise in hindsight." *Id.*

"The term 'probable cause' does not import absolute certainty." *Lapp v. South Carolina Department of Motor Vehicles*, 387 S.C. 500, 692 S.E.2d 565, 568 (Ct. App. 2010). In fact, "[a] finding of probable cause may be based upon less evidence than would be necessary to support a conviction." *Id*. Thus, it is well settled that probable cause does not turn on an individual's actual guilt or innocence." *State v. Manning*, 400 S.C. 257, 734 S.E.2d 314, 319 (Ct. App. 2012). This Court has previously explained that "[a]lthough the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion." *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656, 660 (Ct. App. 2005).

In *State v. Brockman*, 339 S.C. 57, 528 S.E.2d 661 (2000), our Supreme Court relied on the "two-step process" for determining probable cause as articulated in *Ornelas v. United States*, 517 U.S. 690 (1996). Our Supreme Court explained the "two-step process" as follows: "First, a court must determine the events which occurred leading up to the stop or search. Second, the court must decide whether these historical facts, viewed from the standpoint of an objectively

reasonable police officer, amount to reasonable suspicion or to probable cause." 528 S.E.2d at 664.

In the case at bar, the trial court applied that "two-step process." The court summarized the "historical facts" available to Investigator Rains as follows:

> In a light most favorable to Plaintiff, the facts available to Investigator Rains and within her knowledge are cited herein. Rains had a positive fingerprint match for Plaintiff on the alarm unit which had been torn from the ceiling at the incident location. The alarm unit was affixed with an ADS decal and both Ardab, business owner, as well as the ADS manager confirmed that ADS installed the alarm system at that location. The ADS manager unequivocally stated and assured Rains he had never heard of Plaintiff; Plaintiff never worked for ADS; and Plaintiff would not have been in a position as a non-employee to perform an ADS alarm installation. The business owner similarly represented that Plaintiff had never been in the office with the alarm system. Finally, Ardab and his store clerk identified Plaintiff as a potential suspect.

(Order, pp. 6-7). Based on those "historical facts," when viewed from the standpoint of an objectively reasonable police officer, there existed probable cause for the Appellant's arrest.

On appeal, the Appellant does not dispute the "historical facts" available to Investigator Rains based on her investigation. Instead, the Appellant argues that Rains' investigation did not proceed further whereby she could have interviewed him and developed exculpatory evidence prior to seeking an arrest warrant. While

he denies making a claim for a "negligent arrest,"[4] he instead insists that the probable cause analysis requires an officer to exercise caution so as to avoid making a mistake. In effect, the Appellant is arguing that the exercise of "caution" requires an error-less investigation and requires an investigator to develop exculpatory evidence. That, however, is contrary to established principles.

Indeed, it is well settled that a law enforcement officer is not required to conduct an error-free investigation or to pursue every possible lead before an arrest warrant is obtained. In *Baker v. McCollan*, 443 U.S. 137 (1979), the United States Supreme Court held that "[t]he Constitution does not guarantee that only the guilty will be arrested." 443 U.S. at 145. The Supreme Court explained that law enforcement is not required "to investigate every claim of innocence" and is not required to perform "an error-free investigation" to avoid liability for a false arrest. 443 U.S. at 146. The Fourth Circuit has similarly held that "a police officer's failure to pursue potentially exculpatory evidence was not in itself sufficient to negate probable cause." *Torchinsky v. Siwinski*, 942 F.2d 257, 264 (4th Cir. 1991).

[4] The Appellant denies making a claim for a "negligent arrest" because a cause of action for "negligent arrest" or "negligent investigation" is not recognized under South Carolina law. In *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999), the South Carolina Court of Appeals held that "[f]alse imprisonment is an intentional tort; negligence is not an element." 521 S.E.2d at 167. Similarly, in *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), our Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, the *Gist* and *Wyatt* cases demonstrate that South Carolina does not recognize a cause of action for negligent arrest or negligent investigation.

The Fourth Circuit further ruled that "probable cause does not require an officer to be certain that subsequent prosecution of the arrestee will be successful." *Id*., *citing Krause v. Bennett*, 887 F.2d 362, 371 (2d Cir. 1989). *See*, *Brice v. Nkaru*, 220 F.3d 233, 239, n.5 (4th Cir. 2000) ("the police are not required to conduct a trial before making an arrest"). Moreover, "[r]easonable law enforcement officers are not required to exhaust every potentially exculpatory lead or resolve every doubt about a suspect's guilt before probable cause is established." *Wadkins v. Arnold*, 214 F.3d 535, 541 (4th Cir. 2000). *See*, *Torchinsky*, 942 F.2d at 264 ("It will, of course, always be possible to contend in court that an arresting officer might have gathered more evidence, but judges cannot pursue all the steps a police officer *might* have taken that *might* have shaken his belief in the existence of probable cause"). (Emphasis in original). *See also, Smith v. Reddy*, 101 F.3d 351 (4th Cir. 1996); *McKinney v. Richland County Sheriff's Dept.*, 431 F.3d 415 (4th Cir. 2005).

In sum, contrary to the Appellant's position, well-settled federal and state law on the issue of probable cause has never held investigating officers to the standard of perfection or anything approaching that. An officer is not required to exhaust every potentially exculpatory lead or resolve every issue of guilt or innocence before proceeding with obtaining an arrest warrant from a neutral and detached magistrate. As the trial court found, the undisputable "historical facts" as collected by Investigator Rains were sufficient to lead an objectively reasonable officer to believe

that probable cause existed for the Appellant's arrest. For that reason, summary judgment was correctly granted and should be affirmed on that additional basis.

III. The trial court was correct in granting summary judgment on the Appellant's negligent training, supervision, and/or retention cause of action.

As a final issue on appeal, the Appellant argues that the trial court erred in dismissing his negligent training, supervision, and/or retention cause of action. That position lacks merit for both procedural and substantive reasons.

As a threshold point, the Appellant has not preserved this issue which is presented only in a short, conclusory manner with no supporting authorities cited. It is well settled that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also, Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

Nonetheless, even if this Court reaches the merits, the Appellant fails to point to any evidence in the record to support his negligent supervision claim. Under South Carolina law, an employer may be liable for negligent supervision when (1) his employee intentionally harms another when he is on the employer's premises, is on premises he is privileged to enter only as employee, or is using the

employer's chattel; (2) the employer knows or has reason to know he has the ability to control the employee; and (3) the employer knows or has reason to know of the necessity and opportunity to exercise such control. *See*, *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495, 496 (1992). "Supervisory liability … requires the court to focus specifically on what the employer knew or should have known about the specific conduct of the employee in question." *Hoskins v. King*, 676 F.Supp.2d 441, 448 (D.S.C. 2009).

In effect, the Appellant's negligent training, supervision, and/or retention claim fails for a lack of evidence of foreseeability. The applicable standard for foreseeability in this context is "whether the employer knew the offending employee was in the habit of misconducting himself in a manner dangerous to others." *Doe v. ATC, Inc.*, 367 S.C. 199, 624 S.E.2d 447, 450-451 (Ct. App. 2005). Thus, it is necessary that the plaintiff "demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties." 624 S.E.2d at 451. In other words, in the absence of evidence that the RCSO knew or should have known of the necessity to exercise control over its employee, there can be no liability for negligent supervision. *See, Brockington v. Pee Dee Mental Health Center*, 315 S.C. 214, 433 S.E.2d 16 (Ct. App. 1993).

In the case at bar, the trial court reviewed the available evidence and concluded:

> Specifically, that Plaintiff has not presented evidence that Sheriff Lott or Rains' supervisors knew or should have known that Rains engaged in previous conduct for which to place the RCSD on notice that Rains effectuated unlawful arrests and, consequently, created an unreasonable or undue risk of harm to the public. For instance, according to the Defendant, the record is devoid of any evidence that Rains had been the subject of a disciplinary action or an internal affairs investigation. In short, there is no evidence that Rains had the propensity for this type of improper behavior or had engaged in such a course of conduct in the past sufficient to put the Sheriff or Rains' supervisors on notice of the possible danger to third parties.

(Order, pp. 9-10). Based thereon, the trial found that "the Plaintiff's claim for negligent supervision fails for a lack of evidence of foreseeability." (Order, p. 10). On appeal, the Appellant has not demonstrated that the trial court's analysis is flawed in any respect. More telling, the Appellant has not pointed to any evidence in the record to support a finding of foreseeability. For each of these reasons, the summary judgment on the negligent training, supervision, and/or retention claim should be affirmed.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Richland County Sheriff's Office respectfully requests that his Court affirm the order of Circuit Court Judge Alison Renee Lee granting summary judgment to the Respondent.

Respectfully submitted,

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