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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKLEY COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Judge

Case No. 2020-CP-08-00773
Appellate Case No. 2021-001173

Stephanie Michelle GardnerAppellant,

vs.

Berkeley County Sheriff's Office and
Town of Moncks Corner, Respondents,

APPELLANT'S REPLY BRIEF

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QUESTIONS PRESENTED

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2. DID THE COURT ERR IN RULING ON SUMMARY JUDGEMENT THAT GARDNER WAS NOT FALSLY ARRESTED BECAURE THAT WARRANT WAS ISSUED AFTER THE ARRESTED.....4

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4. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGEMENT THAT THE TORT CLAIMS ACT PROVIDS IMMUNIITY FOR FALSE ARREST AND MALICIOUS PROSECUTION FOR ARREST AND PROSECUTION WITHOUT PROBABLE CAUSE.6

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STATEMENT OF THE CASE

This action for False Arrest, Malicious Prosecution, Abuse of Process and Defamation was brought by Stephanie Michele Gardner (Gardner) against Town of Moncks Corner (TOMC) and Berkeley County Sheriff's Office on March 20, 2020. TOMC filed an answer March 24, 2020 as a qualified general denial and defenses under the SC Tort Claims Act. BCSO filed an Answer on March 15, 2020 and an Amended Answer on November 19, 2020. The Answer is a qualified general denial and defenses under the SC Tort Claims Act. BCSO filed a motion for Summary Judgment on February 19, 2021. TOMC filed Summary Judgment Motion on March 1, 2021.

A hearing on the motion was held on April 5, 2021 before Judge Dickson. Judge Dickson granted Summary Judgment to both Defendant on April 27, 2021. Gardner filed a motion to Reconsider on May 6, 2021. The Motion to Reconsider was denied on September 13, 2021. Notice of Appeal was filed October 8, 2021

STATEMENT OF THE FACTS

Late on the evening of April 27, 2018, Stephanie Gardner went to the residence of her friend Samantha Eason on Loadstone Court in Moncks Corner because she needed a place to stay overnight. Eason was in the process of moving out and the residence had no electricity. Eason and Gardner left the residence shortly after Gardner arrived and went to a store to buy beer. RoA P. 307 l. 15 - p 308 l. 21 Gardner deposition. Gardner and Eason returned to the residence and were trying to recharge a phone from a battery at the rear of the residence. Shortly after their return members of the Berkley County Sheriff's Office Drug Enforcement Community Action Team including Brooks Barlow arrived to serve a family court bench warrant on Michael Molyneaux. When the Law Enforcement officers arrived Molyneaux was outside working on a motor vehicle. Molyneaux ran inside the residence through the front door and locked himself in a bathroom. RoA p. 214 l. 8 - p. 316 l. 23. Members of the task force including Barlow entered the residence in pursuit of Molyneaux. When Barlow entered the rear of the residence, he found Eason, Gardner, Cory Gethers, and Nathan Pesek around the battery being used to charge the phones. In response to a question by Barlow, Eason stated that the residence was her home. Eason later identified the bedroom as being shared by her and Molyneaux. Eason consented to a search of her home. RoA p. 430 incident report. There was marijuana found in the Eason bedroom and she told Barlow it belonged to her. RoA p. 435 incident report No one was charged with possession of the marijuana belonging to Eason.

Lt. Ham discovered drugs hidden in a couch along with a phone belonging to Gethers. RoA p. 433 incident report. Barlow confronted Plaintiff, Eason, Gethers and Pesek regarding the drugs found in the couch and told them "since no one claimed ownership of the plastic bags

containing the said substance they would all be arrested due to it being in a common area of the residence.” RoA p. 435 incident report

Gardner, Eason, Pesek, Gethers, and Molyneaux were then all arrested at the scene by Barlow and charged with possession with intent to distribute the drugs found in the couch. RoA p. 436 Incident report. On April 28, 2018, after the arrests identical warrants were obtained by the defendants for all those arrested. The warrants all used this identical language. RoA 246 l. 11-14. Deposition of Barlow.

“On 4/27/2018, while located at 112 Lodestone Ct., Moncks Corner, Berkeley County, SC, the defendant, Stephanie Gardner, did violate Section 44-53-370 (b) (SC Code of Laws, PWID Heroin. While located on a consent search of the said residence, the defendant was an occupant, Law Enforcement Officers located 13 gg of presumptive Methamphetamine, 14.9 gg of presumptive cocaine, .4 gg of presumptive Heroin and .3 gg of presumptive Cocaine Base under a couch cushion in the living room of the residence. All of which was done against the peace, law, and dignity of the State of South Carolina. RoA 416- 419

Gardner’s bonds amounts were set at a total of \$210,000.00. She was jailed for 45 days until her bond was drastically reduced and it was 180 days from her arrest until the charges were dismissed.

Short after her arrest the Berkeley County Sheriff Office posted her name and the charges on Facebook accusing her of being a drug trafficker. RoA 445

ARGUMENT

QUESTION ONE

THE COURT ERRED IN RULING ON SUMMARY JUDGMENT THAT THE ARREST AND PROSECUTION OF GARDNER WAS SUPPORTED BY PROBABLE CAUSE.

Gardner has established that she was arrested without probable cause. An arrest without probable cause causes an injury in establishes an inference that the prosecution was with malice as that term is construed in the context of a malicious prosecution action. This meets the elements of a malicious prosecution claim.

QUESTION TWO

2. DID THE COURT ERR IN RULING ON SUMMARY JUDGEMENT THAT GARDNER WAS NOT FALSLY ARRESTED BECAURE THE WARRANT WAS ISSUED AFTER THE ARREST

The question as to the actual arrest being before the warrant was raised below in the motion to reconsider and the memorandum in support. Motion to consider paragraph 4. Memorandum page 3, Paragraph 4. As *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (S.C. App. 2020) acknowledges a warrantless arrest may support a claim of false imprisonment. Here the warrants were obtained after Gardner was arrested and jailed. Deposition of Gardner RoA 335 l. 2-12

QUESTON THREE

THE COURT ERRED IN RULING ON SUMMARY JUDGEMENT THAT THE BERKELEY COUNTY SHERIFF'S OFFICE DID NOT ARREST AND PROSECUTE GARDNER RELYING ON AN AGREEMENT BETWEEN THE SHERIFF'S OFFICE AND THE TOWN OF MONCKS CORNER.

This question is fully briefed in the Gardner's Appellants Brief.

QUESTION FOUR

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT THAT THE TORT CLAIMS ACT PROVIDES IMMUNIITY FOR FALSE ARREST AND MALICIOUS PROSECUTION FOR ARREST AND PROSECUTION WITHOUT PROBABLE CAUSE.

Defendants claim the decision to arrest someone without probable cause is a discretionary decision protected by the Tort Claims Act and that an arrest and prosecution without probable cause is the execution or enforcement of the order of any court or during the lawful implementation of any process.

A more detailed discussion of *Wortman v. Spartanburg*, 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992) is called for. In *Wortman* the Plaintiff was arrested when he claimed lottery tickets found in a restaurant. After the arrest he served with a warrant charging him "playing a gambling game at a public place in violation of S.C.Code Ann. § 16-19-40 (1985)". The Supreme Court held that section 15-78-60(4), of the Tort Claims act did not apply because possession of lottery tickets is not a crime. Here proximity to hidden drugs is also not a crime.

The Supreme Court has held the immunities of the Tort Claims Act do not apply to actions such as this. The facts of Wortman are indistinguishable from this case. This is a proper balancing of the Constitutional rights of citizens with the protection of lawful law enforcement actions. Here Gardner was arrested for being in proximity to hidden drugs as this is not a crime, the Tort Claims act does not bar this claim. In similar fashion this Court had this before it in *Gist v. Berkeley County Sheriff's Dept.*, 336 S.C. 611, 521 S.E.2d 163 (S.C. App. 1999) and allowed the case to proceed because of genuine issues of material fact as to the existence of probable cause citing *Wortman*. See also *Hassell v. City of Columbia*, 430 S.C. 620, 846 S.E.2d 373 (S.C. App. 2020) and *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (S.C. App. 2020)

Respondents argue that as an additional sustaining ground Gardner's claim is barred by §5-78-60(23) as arising out of institution or prosecution of any judicial or administrative proceeding. This was not specifically plead as an affirmative defense and the Town cites no authority for their position. The only case citing this provision is *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 743 S.E.2d 109 (S.C. App. 2013) which denied relief on this ground.

QUESTION FIVE

THE TRIAL COURT ERRED IN RULING ON SUMMARY JUDGEMENT THAT THE BERKELEY COUNTY SHERIFF'S OFFICE WAS PRIVLEDGED TO PUBLISH A LIBELOUS ACCUSATION TO THE PUBLIC AT LARGE ON FACEBOOK WHEN THE SHERIFF' OFFICE HAD KNOWLEDGE THAT THE ARREST WAS WITHOUT PROBABLE CAUSE

This question is fully briefed in the Gardner's Appellants Brief.

QUESTION SIX

THE COURT ERRED IN RULLING THAT THE THERE NOT A GENUINE ISSUE OF MATERIAL FACT AS TO MALICE

This question is fully briefed in the Gardner's Appellants Brief.

CONCLUSION

Gardner has demonstrated that there are genuine issues of material fact as to all elements the claims for false arrest and malicious prosecution. She has demonstrated that her arrest was without probable cause. She has demonstrated that an arrest and prosecution without probable cause is maintainable against both BCSO and TOMC. The summary judgment should be reversed, and the case remanded for trial.

Respectfully Submitted

s/Louis D. Nettles