STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOURTH JUDICIAL CIRCUIT**
COUNTY OF DARLINGTON	)	**C/A NO.: 2022-CP-16-00578**
	)	
John David Payne, II,	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANT DARLINGTON COUNTY SHERIFF'S OFFICE'S MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
South Carolina Department of Public Safety and Darlington County Sheriff's Office,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court on November 10, 2025 on the Motion of the Defendant Darlington County Sheriff's Office ('DCSO') seeking dismissal of the Plaintiff's claims pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. James E. Haarsgaard of Richardson, Plowden & Robinson, P.A. appeared on behalf of DCSO while Shipp Daniel of Parham Law Firm, LLC, appeared on behalf of the Plaintiff.

Before the Court were DCSO's Motion for Summary Judgment and Memorandum in Support as well as the Plaintiff's Memorandum in Opposition. Upon review and consideration of these filings and counsel's oral arguments, the Court finds that DCSO's Motion should be granted.

I. FACTS

This case involves the Plaintiff's arrest on June 21, 2020. According to the Plaintiff, he was driving home on Highway 151 in Darlington County, South Carolina after attending a barbeque at Lake Robinson when he lost control of his vehicle and was involved in a single vehicle accident. Sgt. Dennis Sullivan with the Darlington County Sheriff's Office responded to the accident scene, and the incident was depicted in Sgt. Sullivan's body camera footage which was provided to the Court.

Upon his arrival, Sgt. Sullivan was flagged down by citizens who informed him that the

driver, subsequently identified as the Plaintiff, was walking away from the wrecked vehicle. Sgt. Sullivan called out to the Plaintiff to "stop and come back," but the Plaintiff continued to walk away. Sgt. Sullivan reentered his patrol vehicle to catch up to the Plaintiff and, when Sgt. Sullivan exited his vehicle at the Plaintiff's position, he once again instructed the Plaintiff to stop walking away. The Plaintiff completely ignored Sgt. Sullivan and continued to walk down the side of the highway while smoking a cigarette.

Sgt. Sullivan then grabbed the Plaintiff by the arm and asked him if he was "all right" while leading the Plaintiff to the front of his patrol vehicle. The Plaintiff is seen in the body camera footage sweating profusely while leaning his head on the hood of Sgt. Sullivan's patrol vehicle. The Plaintiff does not make any statements, and Sgt. Sullivan is heard calling for emergency medical services on his radio.

Seconds later, the Plaintiff turned around and again attempted to walk away. Sgt. Sullivan stated "no, no, no" and asked the Plaintiff to listen to him. The Plaintiff did not respond. At that time, Sgt. Sullivan attempted to detain the Plaintiff and place him in handcuffs when the Plaintiff began to fight with Sgt. Sullivan. The Plaintiff fell backwards to the ground and the physical struggle ensued while Sgt. Sullivan repeatedly instructed the Plaintiff to "give me your arm." Bystanders can be heard in the body camera footage urging the Plaintiff to "listen to him for a second" and pull his arm out. During the struggle, the Plaintiff attempted to bite Sgt. Sullivan.

Trooper R.I. Lee of the South Carolina Department of Public Safety arrived on scene and attempted to assist Sgt. Sullivan with detaining the Plaintiff. The body camera footage shows that multiple bystanders were involved in attempting to assist law enforcement while the Plaintiff continued to resist. The Plaintiff also attempted to bite one of the bystanders. During the struggle, Sgt. Sullivan's body camera was knocked to the ground but continued recording.

Sgt. Sullivan can be heard telling the bystanders, "don't let him bite you, now." The

Plaintiff continued to refuse to place his hands behind his back despite numerous commands by both Sgt. Sullivan and Trooper Lee. Following a warning to Plaintiff that he was "about to get tased," Trooper Lee deployed his taser on the actively resisting Plaintiff. Even after the taser deployment, the Plaintiff continued to resist. Sgt. Sullivan and Trooper Lee were finally able to restrain the Plaintiff by using two pairs of handcuffs and, even then, the Plaintiff continued his attempts to flee the scene. In total, the physical struggle lasted approximately five minutes until law enforcement and bystanders were able to secure the Plaintiff in handcuffs.

During the struggle, Sgt. Sullivan injured his left shoulder and cut his right hand. The Plaintiff was assessed by EMS at the scene and did not sustain any injuries. The Plaintiff was transported by law enforcement to the hospital where his blood tested positive for THC. After being cleared by the hospital, he was transported to the Darlington County Detention Center where he was charged with Assault, Beating, or Wounding a Police Officer Serving Process or Resisting Arrest, Driving Under the Influence, and Possession of more than one Driver's License.

On June 22, 2020, a Darlington County Magistrate Judge found that the Plaintiff's resisting arrest charge was supported by probable cause and signed an arrest warrant. On August 13, 2020, the Plaintiff's resisting arrest charge was indicted by a Darlington County Grand Jury. On January 14, 2025, Plaintiff's resisting arrest charge was nolle prossed by the Solicitor's Office with "leave to restore." Important to DCSO's Motion, the Plaintiff testified that he cannot recall any details of this incident.

The Plaintiff filed this action on June 22, 2022 alleging five (5) causes of action against this Defendant: (1) Assault and Battery; (2) Gross Negligence; (3) Malicious Prosecution; (4) Excessive Force pursuant to the South Carolina Tort Claims Act; and (5) False Arrest/Imprisonment.

II. DISCUSSION

A. DCSO IS ENTITLED TO THE PROTECTIONS AND IMMUNITIES AFFORDED IT UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.

The South Carolina Tort Claims Act (the Act), S.C. Code Ann. § 15-78-10, et seq., which provides the exclusive remedy in tort against DCSO, is a limited waiver of governmental immunity. When examining a provision which potentially limits the liability of a government agency, the Court should liberally construe the portion of the Act in favor of a governmental defendant. S.C. Code Ann. § 15-78-200.

Under the Act, "[t]he governmental entity is not liable for a loss resulting from ... enforcement [of] any law." S.C. Code. Ann. § 15-78-60(4). Relevant here, S.C. Code Section 16-9-320 makes it unlawful "to assault, beat, or wound an officer when the person is resisting an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not." In this case, the Plaintiff's state law tort claims arise from his arrest which, as discussed below, was supported by probable cause. *See McCoy v. City of Columbia*, 929 F. Supp. 2d 541, 566 (D.S.C. 2013) (concluding the City of Columbia was immune from liability for the plaintiff's state law claims pursuant to S.C. Code Section 15-78-60(4)). The Plaintiff's alleged "loss" resulted from Sgt. Sullivan's enforcement of the State's criminal laws. However, the Court finds that the County cannot be liable for Sgt. Sullivan's enforcement of the law pursuant to the Act.

The Court finds that the Plaintiff's claims are also barred by the terms of § 15-78-60(5) because a governmental agency is not liable for a loss resulting from the performance of "any act or service which is in the discretion or judgment of the governmental entity or employee." The law necessarily grants certain discretion to its officers in handling the public business. *Arthurs v. Aiken*

Cnty., 525 S.E.2d 542, 546 (S.C. App. 1999), *aff'd as modified sub nom. Arthurs ex rel. Est. of Munn v. Aiken Cnty.*, 551 S.E.2d 579 (S.C. 2001).

Next, the Court finds that the Defendant is immune from liability under § 15-78-60(6) because it is not liable for a loss resulting from "civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of providing police or fire protection." "[T]he Act specifically exempts the Police from Liability concerning the methods which they choose to utilize to provide police protection." *Huggins v. Metis*, 371 S.C. 621, 624-25, 640 S.E.2d 465, 467 (Ct. App. 2006).

Finally, the Court finds that this Defendant is also afforded immunity and not liable for a loss resulting from the "institution or prosecution of any judicial or administrative proceeding." S.C. Code Ann. § 15-78-60(23). Accordingly, this Defendant is entitled to summary judgment as a matter of law.

B. PLAINTIFF'S FALSE ARREST/IMPRISONMENT CLAIM.

The elements of false arrest in South Carolina are "intentional restraint of another without lawful justification." *Carter v. Bryant*, 429 S.C. 298, 306, 838 S.E.2d 523, 527 (Ct. App. 2020). In an action for false arrest, the plaintiff has the burden of demonstrating lack of probable cause. *Jackson v. City of Abbeville*, 366 S.C. 662, 666, 623 S.E.2d 656, 658 (Ct. App. 2005). Probable cause does not turn on an individual's guilt or innocence, but rather "a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinary prudent and cautious person, under the circumstances, to believe likewise." 366 S.C. at 666, 623 S.E.2d at 658; *Gist v. Berkeley Cnty. Sheriff's Dep't*, 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct. App. 1999). "South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause." *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006).

Here, the undisputable evidence reviewed by the Court shows that Sgt. Sullivan's belief that the Plaintiff had committed the crime of resisting arrest[1] was reasonable. Specifically, the body camera footage shows that Sgt. Sullivan observed the Plaintiff walking away from a motor vehicle accident and failing to comply with orders to stop. The Plaintiff was incoherent and nonresponsive. When Sgt. Sullivan attempted to place the Plaintiff in handcuffs to detain him, a five-minute physical struggle ensued during which the Plaintiff attempted to bite Sgt. Sullivan and injured Sgt. Sullivan's shoulder and hand. Even the bystanders who were present attempted to assist Sgt. Sullivan in restraining the Plaintiff. The entire incident, including the foregoing events, is documented by Sgt. Sullivan's body camera footage. Moreover, the Plaintiff's law enforcement expert witness testified that it was "necessary" to keep the Plaintiff at the accident scene and that a subject resisting detention may properly be charged with resisting arrest.

In sum, the evidence in this case supports probable cause for Plaintiff's arrest. The Plaintiff has not offered any evidence to show that, at the time of his arrest, it was unreasonable for Sgt. Sullivan to believe that the Plaintiff had committed a crime. He does not have any memory of the incident and therefore cannot offer any admissible testimony to dispute the evidence before the Court. The body camera footage and the documents provided by Defendant constitute undisputed evidence such that no genuine issue of fact remains as to the Plaintiff's claims. A magistrate judge previously found probable cause existed for the Plaintiff's charge and issued an arrest warrant. A grand jury thereafter also found probable cause and indicted the Plaintiff on this charge. Based on the foregoing, the Plaintiff cannot prove that he was arrested without probable cause, and the Court finds that this claim should consequently be dismissed.

[1] In addition to resisting arrest, the Court finds that Sgt. Sullivan had probable cause to charge the Plaintiff with leaving the scene of an accident pursuant to S.C. Code Section 56-5-1220. *See Jackson v. City of Abbeville*, 366 S.C. 662, 666, 623 S.E.2d 656, 658 (Ct. App. 2005) ("[T]he determination of 'probable cause to arrest' for the purpose of [a plaintiff's] tort claims may properly include consideration of an uncharged offense" such that a finding of probable cause on the uncharged offense will defeat the plaintiff's claims).

C. PLAINTIFF'S MALICIOUS PROSECUTION CLAIM.

"To maintain an action for malicious prosecution, plaintiff must show (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of, the defendant; (3) termination of such proceeding in plaintiff's favor; (4) malice in instituting such proceedings; (5) want of probable cause, and (6) resulting injury or damage." *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 143 S.E.2d 607, 608 (S.C.1965). The South Carolina Tort Claims Act provides that a government entity is not liable for a loss resulting from the "institution or prosecution of any judicial or administrative proceeding." S.C. Code § 15-78-60(23). Courts applying this provision have previously recognized that, "[b]ecause the first element of a malicious prosecution claim requires the institution or continuation of original judicial proceedings, '[i]t 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 [SCTCA].'" *Land v. Barlow*, No. 2:21-cv-01883-RMG-MHC, 2021 WL 6495298, at *9 (D.S.C. Dec. 20, 2021); *see also Bellamy v. Horry Cty. Police Dep't*, No. 419-cv-03462-RBH-KDW, 2020 WL 2559544, at *5 (D.S.C. Apr. 30, 2020), *report and recommendation adopted*, No. 4:19-cv-03462-RBH-KDW, 2020 WL 2556953 (D.S.C. May 20, 2020) (dismissing malicious prosecution claim against police department); *Grant v. Berkeley Cnty. Sheriff's Off.*, No. 2:24-cv-4262-RMG-MHC, 2024 WL 4291416, at *8 (D.S.C. Sept. 6, 2024), *report and recommendation adopted*, No. 2:24-cv-4262-RMG, 2024 WL 4286217 (D.S.C. Sept. 25, 2024) (same).

The Court finds that this claim should be dismissed because, as explained above, the Plaintiff's arrest was supported by probable cause. Moreover, because this Defendant is immune from liability related to a loss from "institution or prosecution of any judicial or administrative

proceeding," the Plaintiff cannot prevail on his malicious prosecution claim, and it should be dismissed on this ground as well.

D. PLAINTIFF'S ASSAULT AND BATTERY CLAIM.

The South Carolina Supreme Court has long held that there is no claim for assault and battery if the Defendant "used only proper and sufficient force" for the purpose of a plaintiff's confinement. *Golden v. State.* 1 S.C. 292, 302 (1870). Other courts analyzing state assault and battery claims have more recently held similarly by finding that a police officer who uses reasonable force in effecting a lawful arrest is not liable for assault or battery. *See Roberts v. City of Forest Acres*, 902 F. Supp. 662, 671-2 (D.S.C. 1995); *Stewart v. Beaufort County*, 481 F. Supp. 2d 483 (D.S.C. 2007). The State undoubtedly allows officers to use force when justified in the course of their duties. *State v. DeBerry*, 250 S.C. 314, 320, 157 S.E.2d 637, 640 (1967).

In this case, the Court finds that the Plaintiff cannot prevail on his assault claim because the conduct alleged was lawful and authorized, and he was not placed in reasonable apprehension of immediate harmful or offensive touching. The Plaintiff testified that he blacked out prior to the single vehicular accident and does not remember the accident or any of the encounter with law enforcement. As such, he cannot establish the required elements for a viable cause of action for assault.

Furthermore, as stated above, a police officer who uses reasonable force in effecting a lawful arrest is not liable for assault or battery. *Roberts*, 902 F. Supp. 662 at 671-2. Plaintiff was involved in a single car accident, attempted to leave the scene, and fought with law enforcement personnel while attempting to flee. When law enforcement arrived on the scene, they found the incoherent, dazed, sweaty Plaintiff wandering on the side of the highway, and Sgt. Sullivan attempted to stop the Plaintiff from leaving the scene while checking to see if the Plaintiff was injured or impaired. At the very minimum, it was reasonable for law enforcement to believe that

the Plaintiff had been driving under the influence and, during their attempts to investigate the accident, law enforcement developed probable cause for resisting arrest when Plaintiff became physically combative and attempted to bite Sgt. Sullivan. The Plaintiff continued to physically resist law enforcement's attempts to place him in handcuffs for approximately five minutes.

Because the undisputable evidence before the Court shows that the Plaintiff's arrest was supported by probable cause and that Sgt. Sullivan used only that amount of empty hand control that was necessary to place the Plaintiff in handcuffs, Sgt. Sullivan's actions cannot constitute assault or battery. The Court therefore finds that this cause of action should be dismissed.

E. PLAINTIFF'S GROSS NEGLIGENCE CLAIM.

The Plaintiff briefly notes in his Complaint that DCSO was grossly negligent in arresting him without probable cause. The Court of Appeals has held that such a claim is not viable because it "is indistinguishable from [a] malicious prosecution claim." *Seabrook v. Town of Mount Pleasant*, 432 S.C. 441, 444, 853 S.E.2d 508, 510 (Ct. App. 2020). Nevertheless, as thoroughly discussed above, Sgt. Sullivan had probable cause to arrest the Plaintiff for resisting arrest as well as multiple other criminal offenses. The Plaintiff has not provided the Court with any evidence to the contrary much less evidence that Sgt. Sullivan or DCSO failed to exercise slight care as required to prove this claim.

To the extent that the Plaintiff's gross negligence claim is based on DCSO's policies or hiring and supervision of Sgt. Sullivan, the Court has not been provided with any evidence that DCSO's policies were inadequate or that Sgt. Sullivan violated those policies. Similarly, the Court has not been provided with any evidence that Sgt. Sullivan had a history of misconduct that would have put DCSO on notice as is required to prove a negligent hiring or supervision cause of action. *See Moore by Moore v. Berkeley Cnty. Sch. Dist.*, 326 S.C. 584, 590, 486 S.E.2d 9, 12 (Ct. App. 1997) ("[A]n employer may be liable for negligent supervision if the employee intentionally harms

another when...the employer knows or has reason to know that he has the ability to control his employee, and...the employer knows or should know of the necessity and opportunity for exercising such control."); *Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) (observing that negligent hiring and retention cases "generally turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties"). Consequently, the absence of any genuine issue of material fact as to this cause of action necessitates its dismissal.

Additionally, the Court finds that DCSO is also entitled to the protections afforded by the public duty rule. In *Jensen v. Anderson County Dep't of Social Services*, the South Carolina Supreme Court outlined the parameters of the public duty rule as follows:

> The law necessarily grants certain discretion to its officers in handling the public business. In one instance it may be wise for a public officer to pursue one course, in another instance, another course. Those charged with protecting the public interest should view that interest as supreme, should consider what is best for the public, and should be free at all times to prosecute the course that appears to be in the public interest. . . . It is well settled that an individual has no right of action against a public officer for breach of a duty owing to the public only, even though such individual be specially injured thereby. Where a duty is owing to the public only, an officer is not liable to an individual who may have been incidentally injured by his failure to perform it.

304 S.C. 195, 199, 403 S.E.2d 615 (1991).

In this case, DCSO owed a duty to the public at large to investigate and prosecute crimes and ensure the public safety. DCSO and its employee acted reasonably and prudently upon the discovery of criminal activity, i.e. resisting arrest, assaulting an officer, and suspected driving under the influence. DCSO does not owe any duty to the Plaintiff individually because its statutory duties are owed to the public in general. The gross negligence alleged in the Plaintiff's Complaint arises from duties owed to the public in general, and thus cannot give rise to a private right of action. This lack of a duty owed to the Plaintiff negates an essential element of his cause of action.

Because the Plaintiff cannot show any of the elements of his gross negligence claim, the Court finds that DCSO is entitled to dismissal of this cause of action.

F. PLAINTIFF'S EXCESSIVE FORCE CLAIM.

In this case, the Plaintiff has specifically limited his excessive force claim to the South Carolina Tort Claims Act. It appears, however, that South Carolina has not recognized a cause of action for excessive force pursuant to the SCTCA. The Court further finds that this cause of action should be dismissed for the same reasons discussed in Section II(D) above.

III. CONCLUSION

For the reasons set forth herein, the Court **GRANTS** Defendant Darlington County Sheriff's Office's Motion for Summary Judgment and hereby dismisses Plaintiff's claims against it, with prejudice.

AND IT IS SO ORDERED.

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The Honorable Paul M. Burch
Presiding Judge

November ___, 2025
Darlington, South Carolina

Darlington Common Pleas

Case Caption: John David Payne II VS Department of Public Safety South Caorlina , defendant, et al

Case Number: 2022CP1600578

Type: Order/Summary Judgment

So Ordered

s/Paul M. Burch, Judge #2048