

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-37-00138

Lloyd Lash,)
)
Plaintiff,)
)
v.)
)
Seneca Police Department,)
Detective Rory Jones,)
)
Defendants,)
_____)

ORDER GRANTING SUMMARY
JUDGMENT TO THE DEFENDANTS

FILED
CLERK OF COURT
2013 SEP 20 PM 1:35

This matter is before the Court on the Motion for Summary Judgment of Defendants, Seneca Police Department and Detective Rory Jones. For the reasons set forth below, the Court grants summary judgment to both Defendants as to all causes of action raised by the Plaintiff. The Court finds the statute of limitations ran prior to the filing of the Plaintiff's Complaint on all causes of action except malicious prosecution. Furthermore, the Court finds that the Defendants are entitled to summary judgment as to all causes of action, including malicious prosecution, based upon the existence of probable cause to arrest, detain and try the Plaintiff. Additionally, the Court finds that the Plaintiff's claim for intentional infliction of emotional distress is barred by the South Carolina Torts Claim Act.

FACTS PRESENTED

Arthur Roberts was murdered in the City of Seneca on February 10, 2004. On February 25, 2009, the Plaintiff was arrested pursuant to warrants issued by the Municipal Court for the City of Seneca for murder, attempted robbery while armed with a deadly weapon, and possession of a weapon while in the commission of a crime. The Plaintiff was acquitted on all of these charges on March 31, 2011. This suit was initially

filed against Rory Jones and the Oconee County Sheriff's Office on February 20, 2013. The City of Seneca was added as a Defendant in the Amended Complaint on March 15, 2013. The Oconee County Sheriff's Office was subsequently dismissed from the case.

The Complaint contains six causes of action: malicious prosecution, abuse of process, negligence, false arrest, false imprisonment and intentional infliction of emotional distress. The Plaintiff contends that he has always maintained his innocence of any involvement in the murder of Mr. Roberts and argues he was arrested without probable cause because the evidence relied upon to establish probable cause consisted primarily of unreliable statements by his sister (Corina Whitner), his brother in law (Terrell Whitner), and an individual by the name of Andrew Holland. The Plaintiff argues the statements by Mr. and Mrs. Whitner are insufficient to create probable cause because the two of them testified at trial that they signed the statements because they were warned they could be criminally charged for withholding information and, thus, risk losing their children. The Plaintiff argues Holland's statement is insufficient because it was different from previous statements given by him. With regard to the statute of limitations, the Plaintiff argues that the statute did not begin to run until either the date of acquittal or, at the earliest, sometime during the criminal trial when the Whitners testified as to the circumstances of their statements.

The Defendants, for purposes of their motion, acknowledge that the statute of limitations for malicious prosecution would not begin to run until the day of acquittal but argue the statute began to run as to all other causes of action on the day the Plaintiff was arrested. With respect to probable cause, the Defendants argue the Plaintiff's arrest was made pursuant to lawfully obtained warrants; that the Plaintiff was

subsequently indicted by the county grand jury on all charges; and that the trial court in the criminal case, when asked to dismiss the case for insufficient evidence, found that there was more than sufficient evidence to send the case to the jury for determination.

APPLICABLE LAW AND ANALYSIS

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Id.* at 545. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). If triable issues exist, those issues must go to the jury. *Young v. South Carolina Department of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).

Summary judgment is appropriate when it is clear there is no genuine issue of material fact. *McClanahan v. Richland County Council*, 350 SC 433, 567 SE 2d 240 (2002).

Statute of Limitations

The Defendants contend that all the Plaintiff's causes of actions are barred by the applicable Statute of Limitations except malicious prosecution. This Court agrees. The South Carolina Tort Claims Act is the exclusive remedy for any tort committed by a governmental entity or its employees. S.C. Code Ann. §15-78-70(a) (1976, as amended). Under the Act, the statute of limitations is two years unless a verified claim is filed, which extends the period to three (3) years. S.C. Code Ann. §15-78-100 (1976, as amended). Since no verified claim was filed, the two year statute applies. Even if a verified claim had been filed or the Tort Claims Act did not apply, the regular Statute of Limitations would be three years under S.C. Code Ann. §15-3-530 (4)(1976, as amended) and still would have run before this suit was filed.

With respect to the accrual of a cause of action under the Tort Claims Act, "the statute of limitations begins to run when the Plaintiff should know that he might have a potential claim against another, not when he develops a full blown theory of recovery." *Joubert v. S.C. Department of Social Services*, 341 S.C. 176, 190, 534 S.E. 2d 1,8 (SC App. 2000); S.C. Code Ann. §15-78-110 (1976, as Amended). The date on which discovery should have been made is an objective, not subjective question. *Kruetner v. David*, 320 S.C. 283, 465 S.C. 2d 88 (1995). "A cause of action accrues when the Plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." *Brooks v. City of Winston Salem, N.C.*, 85 F 3d 178 (4th Cir. 1996) (quoting *Nasim v. Warden, Md. House of Correction*, 64 F 3d 951 (4th Cir. 1995) (en banc), cert. denied 516 US 1177 (1996)).

is *prima facie* evidence of probable cause. *McBride v. School District of Greenville County*, 389 SC 546, 698 SE 2d 845 (SC App 2010); *Kinton v. Mobile Home Industries, Inc.*, 274 SC 179, 262 SE2d 727 (1980).

Finally, in the criminal trial of this case, the defense made a motion at the conclusion of the evidence for a directed verdict. The standard for ruling on a motion for a directed verdict by a Defendant in a criminal case requires the trial judge to submit a case to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. *State v. Mitchell*, 341 SC 406, 409, 535 SE2d 126, 127 (2000) (quoting *State v. Martin*, 340 SC 597, 533 SE2d 572 (2000)). The trial Court determined there was sufficient evidence to allow the case to go to the jury.

Intentional Infliction of Emotional Distress

Additionally, summary judgment is granted as to this cause of action based on the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act does not waive sovereign immunity for the tort of intentional infliction of emotional harm/ emotional distress. Section 15-78-50 states:

Any person who may suffer **loss** proximately caused by a tort of the state, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as herein after provided. (Emphasis added).

Section 15-78-30(f) of the South Carolina Tort Claims Act specifically states that a “loss” does not include the intentional infliction of emotional harm. See *Wilkes v. Young*, 28 F 3d 1362 (4th Cir. 1994) (stating in footnote 4 that “The South Carolina Tort Claims Act would appear to preclude recovery for any loss resulting from intentional

infliction of emotional harm"). Therefore, the City of Seneca and Jones cannot be sued for intentional infliction of emotional distress.

CONCLUSION

Wherefore, based upon the foregoing, this Court grants the Defendants' Motion for Summary Judgment as to all causes of action in the Plaintiff's Complaint.

IT IS SO ORDERED.

This 15 day of Sept, 2014.



R. Lawton McIntosh, Judge
Tenth Circuit Judge

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SEP 25 2014
CLERK OF COURT - OCONEE COUNTY

Lloyd Lash

Seneca Police Department, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

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DEC 01 2014

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

S/ R. LAWTON McINTOSH

Circuit Court Judge

2155

Judge Code

09/15/2014

Date

FORM7

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2013-cp-37-00138

November, 26, 2014

Lloyd Lash

v.

Seneca Police Department,

Detective Rory Jones,

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DEC 01 2014
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served a copy of the judgment challenged, and the letter requesting the transcript from the court reporter on November, 26, 2014. I did this by mail.

Cc: James D. Jolly Jr., Esq

Lloyd Lash /142 Industrial dr. lot c5/

Lexington sc 29072/803-361-6687

Lloyd Lash