

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. 13-CP-37-138

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SC Court of Appeals

LLOYD LASH Appellant,

v.

OCONEE COUNTY SHERIFF'S DEPARTMENT, et al, Respondent.

**SUPPLEMENTAL
RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Lloyd Lash,)
)
 Plaintiff,)
)
 v.)
)
 Seneca Police Department, and Detective)
 Rory Jones,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT
 DOCKET NO. 2013-CP-37-138

**MEMORANDUM IN OPPOSITION
 TO DEFENDANTS' SENECA POLICE
 DEPARTMENT'S AND RORY JONES'
 MOTION FOR SUMMARY JUDGMENT**

Because the Plaintiff has raised a genuine issue of material fact in the above-referenced case as to Defendant Jones' and Defendant Seneca Police Department's (hereinafter referred to as Defendant Seneca) lack of probable cause for arrest, detainment, and prosecution, as well as to their entitlement to immunity, Plaintiff opposes Defendant's Motion for Summary Judgment.

STATEMENT OF THE FACTS

On February 10, 2004, George Arthur "Butch" Roberts was murdered in Oconee County, South Carolina. Following an investigation of the murder by Defendant Oconee Sheriff's Department and Defendant Seneca, which included interviewing witnesses, neighbors, and potential suspects, the case was declared "cold" after sitting for several years unsolved. In hopes of resolving the case, Defendant Seneca assigned Defendant Jones to the investigation of the case in order to have a "fresh pair of eyes" on the case. No additional evidence was collected or tested except for a new statement from a previous suspect to the murder, Andrew Holland, which was given to Defendant Jones five years after the murder on May 18, 2009. Although Defendant Seneca and Defendant Jones were aware that this statement, the third from this previous suspect, provided the only actual evidence linking Plaintiff to the crime, they chose to not confirm or investigate this statement and the motives behind the statement which was later determined to be

false. Based on this false statement, Defendant Seneca and Defendant Jones arrested Plaintiff on the charges of Attempted Armed Robbery, Possession of a Weapon in the Commission of Violent Crime, and Murder. At all times relevant to this action, Plaintiff maintained his complete innocence as to all charges. Armed with no further evidence and still refusing to investigate the previous subject's third statement which completely changed his story, Defendant Seneca and Defendant Jones incarcerated and prosecuted the Plaintiff for almost two years. On March 31, 2011 after a jury trial, Plaintiff was acquitted of all charges.

STANDARD OF REVIEW

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 Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).

ARGUMENTS

I. When viewing the evidence in the light most favorable to the Plaintiff, there are genuine issues of material fact that must be decided by a jury.

The entirety of this case rests on the interpretation of the facts presented, especially in light of Defendant Seneca and Defendant Jones' behavior in the investigation of the 2004 murder. As demonstrated by the transcript of the Plaintiff's criminal trial as well as the deposition of Defendant Jones, Defendant Seneca and Defendant Jones had notice of the lack of evidence linking Plaintiff to the crime as well as to the unreliability of the last minute statement of a previous subject implicating Plaintiff both prior to Plaintiff's arrest as well as long after his arrest and through the trial. However, Defendant Seneca and Defendant Jones continued the arrest and prosecution of the Plaintiff with no probable cause and no actual evidence against him, forcing him to spend almost two years in jail and endure a trial in order to clear his name and free himself. Due to not only the complexity of the factual dispute that exists between the Plaintiff and the Defendants, but also the need for judgment of credibility of the Defendants in their testimony in this matter, this case must be submitted to the jury for a determination of liability and damages. As such, the Plaintiff opposes summary judgment on all causes of actions as the facts presented above present genuine issues of material fact on all presented causes actions that cannot be avoided. In taking the facts in a light most favorable to the Plaintiff, Mr. Lloyd Lash was arrested and prosecuted for crimes he did not commit and for which there was no reliable evidence demonstrating differently. Due to the actions of the Defendants, Mr. Lash lost not only two years of his life while he was incarcerated, but also endured emotional distress, lost wages, loss of employment opportunities, stress, and embarrassment.

(i) Malicious Prosecution and Abuse of Process

It is clear that the Plaintiff has articulated a case for malicious prosecution and abuse of process based on the facts and trial testimony in this matter. “[T]o maintain an action for malicious prosecution, a plaintiff must establish: (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.” Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965). Malice is defined as “the deliberate intentional doing of an act without just cause or excuse.” Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. at 479, 289 S.E.2d at 416. Malice may also be inferred from a want of probable cause to institute the prosecution. Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967) details the essential elements of abuse of process as, “first, an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding.”

It is undisputed that the Defendants participated in the institution and continuation of the proceedings against the Plaintiff in their arrest and detainment of the Plaintiff for charges he was later acquitted of by a jury of his peers. It is also undisputed that the Plaintiff was fully acquitted of the charges and the arrests expunged off of his record. Based on these undisputed facts, this element of the proceeding being adjudicated in Plaintiff's favor is satisfied. Finally, it is undisputed that Plaintiff has endured emotional and monetary damages due to his unlawful arrest and incarceration. Plaintiff was arrested and detained for almost two years of his life, preventing him from enjoying even the simplest of pleasures and causing him to be denied job opportunities, employment and wages to assist in providing for his family. Additionally Plaintiff spent two years away from his family, alone in a jail cell while the community discussed the

horrific nature of his alleged crimes. Throughout this time Plaintiff was enduring stress, embarrassment, anxiety, and other emotional distresses. Even if Defendants were to dispute Plaintiff's damages, any arguments about the validity of damages would constitute a genuine issue of material fact and should be presented to the jury. As such, Plaintiff would argue that, even if the Court finds a dispute regarding the elements of malicious prosecution, when taken in a light most favorable to the Plaintiff, there exists a material issue of genuine fact and the issue must be submitted to a jury.

Regarding the issues of malice and lack of probable cause in the institution of the proceedings, review of the facts and circumstances of the charges in question demonstrate that Defendant Jones and Defendant Seneca had no probable cause whatsoever for the arrest or the incarceration of Plaintiff. South Carolina supports the contention that the malice requirement can be satisfied through want of probable cause, allowing for both remaining elements of malicious prosecution to be satisfied through the Defendants' failure to have probable cause for the arrest and incarceration. Margolis v. Teletech, 239 S.C. 232, 122 S.E.2d 417, 420 (1961). Additionally, as discussed above, Defendant Jones and Defendant Seneca refused to take necessary steps to properly investigate the new statement given by a previous suspect, Andrew Holland, which was given to Defendants after almost five years of Mr. Holland maintaining a completely different story. Additionally Mr. Holland's prior statements were also supported by several statements made by his girlfriend and mother of his child, all of which were then deemed to be false after Mr. Holland made his most recent statement to Defendant Jones. Following Mr. Holland making this new statement, although it severely conflicted with previous statements and evidence in the case as well as conflicting with basic logic, the Defendants made no effort to investigate the allegations and instead went to work on molding the case to fit Mr. Holland's

statement against Plaintiff. The arrest warrants in this matter do not even lay out the probable cause for the charges, but instead crave reference to an investigative report of Defendant Seneca. This vagueness in the basis for the arrest warrants leaves serious questions as to what information the Magistrate had prior to making the determination of probable cause in this matter. With all of the serious factual conflicts present in the case, the numerous changing statements, and the complete lack of actual evidence in this matter, there exists serious questions as to the presence of probable cause to not only charge the Plaintiff with these crimes, but also to continue a prosecution based on the lies of a convicted criminal.

In addition, based on the transcript of the Plaintiff's criminal trial and the deposition of Defendant Jones, there is a serious question of as to the truthfulness of the Defendants' investigation. Defendant Jones testified in his deposition that the basis for the Plaintiff's arrest was witness statements collected in the investigation. Defendant Jones Deposition pg. 56, lns. 13-14. In examining both Terrell Whitner's statement and Corina Whitner's (Tonette) statement, the brother-in-law and sister of Plaintiff, Defendant Jones admits that he, on multiple occasions, threatened them both with criminal charges should they not give him information related to Plaintiff. Deposition of Defendant Jones pg. 44, lns. 15-17, 23-25, pg. 50, lns. 12-17. In fact, Defendant Jones even admitted in his deposition that he told both Terrell Whitner and Corina Whitner that they would be arrested and that DSS would take their children. Deposition of Defendant Jones pg. 54, lns 10-15. The power of these threats, which Plaintiff would contend were much more serious than just advisement of rights, is more fully revealed when it is taken into consideration that both Terrell Whitner and Corina Whitner had already informed investigators from Defendant Seneca of their lack of knowledge regarding this murder, their lack of knowledge of any involvement Plaintiff had in this murder, and their desire to be left alone.

However, after these threats were made and Terrell Whitner was brought to South Carolina on "unrelated" charges, Defendant Jones succeeded in getting statements from Terrell Whitner and Corina Whitner which were written in such a way to insinuate guilt of the Plaintiff as well as to match previous statements of Andrew Holland, a previous suspect with detailed and ever changing information regarding the murder. Ms. Whitner even testified in court that Defendant Jones was pressuring her and that she only signed the statement he wrote for her because he was talking about taking her kids from her and her losing all her schooling and Mr. Whitner testified that he only gave his statement after speaking with Ms. Whitner and knowing that if he did not tell Defendant Jones what he wanted, he would not get out of jail. Clearly the Whitners felt that Defendant Jones and Defendant Seneca would stop at nothing to implicate Plaintiff, especially in light of Defendant Jones making threats about their family and then those threats seemingly coming to fruition. Following the statements of Terrell Whitner and Corina Whitner, another statement was taken from Andrew Holland which changed the specifics of Plaintiff's involvement along with other persons' involvement in the murder but more closely tailored the story of what happened to the new statements. No questions were ever asked as to why Andrew Holland kept changing his story and why he, along with multiple other people that he named as being involved in the murder, were never charged, arrested, or even pushed further for information. Defendant Jones openly admits that one person Andrew Holland named as assisting in disposing of the murder weapon, Josh Hunter, refused to cooperate, refused to give a statement or even speak with Defendant Jones, but yet no action was taken to charge Mr. Hunter. Deposition of Defendant Jones pg 30, lns. 7-13.

Also of note in this matter is the fact that Defendant Jones received this case in 2009, almost five years after the murder took place. At the time he received this case, all pertinent

persons, including Andrew Holland and the Whitners, have been interviewed and had given statements or had stated that they had no information. The prior investigators on the case, who had significantly more investigative experience than Defendant Jones, were unable to gather enough information to charge Plaintiff, but Defendant Jones, within a very short period of time, was able to produce statements from people who had maintained that they had no information for four years (the Whitners) and had received a new statement from Andrew Holland which changed his story, matched with Mr. Whitners' story which he admitted to be false, and further implicated Plaintiff in the case. Finally, even with all this new information and leads, Mr. Holland's statement was never verified and no actual evidence was ever found linking Plaintiff to the murder. No DNA of the Plaintiff's was found, no murder weapon was ever found although Andrew Holland, based on his statement, should have known exactly where it was, no footprints or fingerprints ever matched with the Plaintiff, no eye witnesses were discovered, and many of the persons Andrew Holland stated were involved in the murder with Plaintiff were not investigated, interviewed, or even subpoenaed to trial.

As the main issue in question is the facts within the Defendants' purview pointing to the Plaintiff as a viable suspect, the existence of evidence questioning the honesty of the Defendants' causes their credibility, an issue which courts demand the jury make a decision regarding, to also come into question and forms a genuine issue of material fact. It is also apparent through the evidence, taken in a light most favorable to the Plaintiff, that with the severe lack of evidence against Plaintiff, that the decision to continue on with the arrest and incarceration of Mr. Lash finds its basis in malice, fraud, or intent to harm. Upon a cursory review of the background, previous statements, and circumstances surrounding these charges and the statements given by various persons, statements that were revealed at trial to be untrue and inaccurate of the witness'

testimony, it is obvious and clear that this demonstrates not only a lack of probable cause but also a definite decision of malice, fraud or intent to harm.

Therefore, when viewing all of the evidence in a light most favorable to the Plaintiff, the Plaintiff has articulated a complete case for malicious prosecution and Defendants' summary judgment motion should be denied.

In examining the Plaintiff's cause of action for abuse of process, the same arguments articulated above would apply. An examination of the transcript of Plaintiff's criminal trial demonstrates a genuine issue of material fact as to Defendant Jones' purpose in continuing this action against Plaintiff even without the necessary evidence. As there existed no probable cause to arrest, incarcerate and prosecute Plaintiff, the motives of Defendants, especially Defendant Jones appears to be based solely in malice, fraud, or other ulterior and improper purposes. Furthermore, as supported by the transcript, Defendant Jones assisted in withholding information such as statements and witness information from the Plaintiff and Plaintiff's counsel in furtherance of his improper purpose. As such, when viewing all of the evidence in a light most favorable to the Plaintiff, the Plaintiff has articulated a complete case for abuse of process and Defendants' summary judgment motion should be denied.

(ii) Negligence

In order to establish liability in a negligence action, the plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). Statutes, relationships formed in contract, status, property interests, or some other special circumstances have been found to create a legal duty on the part of a defendant towards a plaintiff. Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520

S.E.2d 142 (1999); Jensen v. Anderson County Dep't of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991). In the case at hand, Plaintiff contends that Defendant Jones and Defendant Seneca acted negligently in the investigation, arrest, detainment and incarceration of Plaintiff by failing to procure any probable cause for his arrest, incarceration, and prosecution. Examination of the South Carolina Tort Claims Act, as explained in Arthurs ex rel. Estate of Munn v. Aiken Cnty, demonstrates that, "the State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages contained herein." South Carolina Tort Claims Act, Section 15-78-40. The Tort Claims Act goes further and states that, "... [l]iability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty." South Carolina Tort Claims Act, Section 15-78-20(a). This theory of recovery set out in the Tort Claims Act specifically creates a duty for the Defendant, in situations such as this case, to act prudently in their execution of their duties. Plaintiff would thus contend that the above detailed actions of the Defendant demonstrates the breach of Defendant's duty of care and resulting damages incurred and endured by the Plaintiff. As detailed above, Plaintiff bases his cause of action for negligence against Defendant Jones and Defendant Seneca on far more than just a negligent investigation or a negligent arrest, but instead on multiple ignored attempts to properly investigate and prosecute this case properly which includes failing to look at all suspects and ignorance of exculpatory evidence which pointed to Plaintiff's innocence. As such, based on the above listed arguments, the Plaintiff has raised genuine issues of material fact as to the claim of negligence and the Defendants' motion for summary judgment should be denied.

(iii) False Imprisonment and False Arrest

South Carolina courts have held that, “the essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990); Thomas v. Colonial Stores, Inc., 236 S.C. 95, 113 S.E.2d 337 (1960). In order to prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 521 S.E.2d 163 (Ct.App.1999). In the same vein of torts, courts have held that the fundamental issue in determining the lawfulness of an arrest is whether there was “probable cause” for the arrest. *Id.* quoting Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992). In determining the presence of probable cause, “all the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received.” State v. Roper, 274 S.C. 14, 17, 260 S.E.2d 705, 706 (1979); *see also* State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996) (“Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officers [sic] disposal.”). The issue of probable cause is a question of fact and ordinarily one for the jury. *Id.* Both of these causes of action, when dealing with law enforcement defendants, center on whether there was probable cause for the arrest and subsequent detention. As much more fully discussed above, Defendant Jones and Defendant Seneca failed to establish probable cause to arrest and subsequent detain and incarcerate Plaintiff in this case as they not only failed to properly investigate the statements given in this matter but that they relied on information that they knew was false in order to achieve the guise of probable cause in order to move the case to trial. In taking the facts in a light most favorable to the Plaintiff, Detective Jones’ sole basis for arresting, incarcerating, and

prosecuting Plaintiff was a false statement given to Detective Jones by a known liar, manipulator, and suspect in the very charges he was giving a statement in regards to Mr. Lash. As such there is a genuine issue of material fact as to whether probable cause existed for the arrest and imprisonment of Plaintiff and summary judgment should be denied.

(iv) Intentional Infliction of Emotional Distress

Plaintiff's claim for intentional infliction of emotional distress, also known as a claim of outrage, grounds itself in the already heavily discussed behavior of Defendants. Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778-79 (1981) explains the test for intentional infliction of emotional distress by laying out the following elements:

(1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.

Ford v. Hutson further explains that, "although 'severe' emotional distress is usually manifested by 'shock, illness or other bodily harm,' such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional infliction of emotional distress. 276 S.C. 157, 162, 276 S.E.2d 776, 778-79 (1981). As this cause of action is highly fact intensive, the question of whether Defendants' behavior rose to the level of the tort of intentional infliction of emotional distress is one more appropriate for a jury than for a judge. As held by the Court in

Ford v. Hutson, “when evidence is in conflict and susceptible of more than one reasonable inference, it is the province of the jury to make a factual determination.” Id. As discussed in regards to the Defendants’ lack of probable cause in arresting, incarcerating, and prosecuting Plaintiff, neither Defendant Seneca nor Defendant Jones acted reasonably. Their actions, in their ignorance of the truth and Mr. Lash’s rights, resulted in calculated and intentional decisions causing Plaintiff physical, emotional, and financial damages. As the United States Constitution guarantees a man’s right to be free of unlawful searches and seizures under the Fourth Amendment, it is undisputed that no man should be forced to endure, as Mr. Lash was forced to, the emotional distress that comes from a violation of our most sacred rights. Based on these arguments as well as the arguments enumerated above, there exists a genuine issue of material fact as to the claim of intentional infliction of emotional distress and the Defendants’ motion for summary judgment should be denied.

II. Defendant Seneca and Defendant Jones are not entitled to summary judgment because Plaintiff has established that genuine questions of material fact exist on the issue of Defendant’s immunity.

While the South Carolina Tort Claims Act cloaks governmental agencies in immunity from suit in many aspects, the Act is clear in that there are exceptions to this immunity. South Carolina Code Ann. Section 15-78-70 specifically provides that government employees may be liable in tort actions [indicating]:

- (a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the *scope of his official duty* is not liable therefore except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the *scope of his official duties* or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

Frazier v. Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004).(emphasis in original). As the conduct complained of Defendant Jones and Defendant Seneca detailed above involves malice, fraud, and intent to harm, qualified immunity would not apply. As such, the defendants' reliance on qualified immunity fails and summary judgment should not be granted on this ground.

III. Plaintiff's claims are not barred by the Statute of Limitations as his claims did not arise until March 31, 2011.

It is undisputed that the shortest applicable statute of limitations to this matter would be two years under the South Carolina Tort Claims Act. S.C. Code Ann. §15-78-110(a). Additionally it is also undisputed that the standard for when the statute of limitations begins to run is, "when the facts and circumstances of the injury would put a person of common knowledge on notice that some right has been invaded or the claim against another party exists." Joubert v. S. Carolina Dep't of Soc. Servs., 341 S.C. 176, 192, 534 S.E.2d 1, 9 (Ct. App. 2000). In the case at hand, the Defendants concede that the Plaintiff's claims for malicious prosecution did not arise until he was acquitted, however the Plaintiff feels that although acquittal is not an element of the Plaintiff's remaining charges, it was not until trial when the Defendants' true actions in regards to this investigation, arrest, and prosecution of Plaintiff was revealed and his causes of actions thus arising. Specifically, at trial both Terrell Whitner and Corina Whitner testified under oath that they were coerced into signing their statements and that they only signed what Defendant Jones wrote in order to save themselves

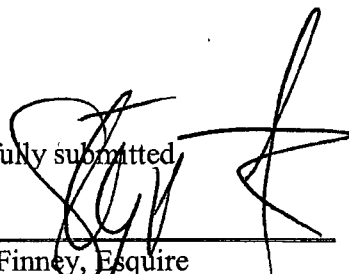
and their family. Additionally, following the first day of trial, Defendants revealed additional information in the form of another statement against Plaintiff. This blatant discovery abuse by Defendants goes to the clear existence of malice, fraud, recklessness and negligence the Plaintiff has pled in his multiple causes of actions. This hidden discovery also prevented Plaintiff from being put on notice that his rights had been invaded and that there existed a claim against another party, the direct standard for when a statute of limitations begins to run. Finally, it is axiomatic that the Plaintiff's causes of action for false arrest and imprisonment, negligence, abuse of process, and intentional infliction of emotional distress, while not listing as an element acquittal of criminal charges, necessarily require that a criminal defendant be acquitted of his charges prior to a cause of action accruing and the statute of limitations beginning to run. Plaintiff had no control over when his case would be called to trial and what evidence the prosecutor would present as part of the Defendants' investigation, thus blocking him from fully being aware of what causes of action he had against Defendants until his trial in March of 2011. As such, Plaintiff's actions are not barred by the statute of limitations and Defendants' motion for summary judgment should be denied on this ground.

CONCLUSION

Because the Plaintiff has raised genuine issues of material fact and because the Defendants are not entitled to immunity, nor are the Plaintiff's claims barred by the requisite state of limitations, the Defendants' motion for summary judgment should be completely and totally denied.

Signature page to follow

Respectfully submitted



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July 28, 2014

1 A. Yes.

2 Q. Okay. In all of those three warrants, it's
3 based on witness statements that -- the information, witness
4 statements or I'll read it specifically.

5 It says that this did occur at 517 Livingston
6 Circle within the city of Seneca and there is a written
7 report, sorry, on file with the Seneca Police Department, and
8 it says the same thing here, there's a written report on file
9 and there's a written report on file on all three warrants;
10 is that correct?

11 A. Yes, sir.

12 Q. What's that written report?

13 A. It would be the incident report as well as any
14 reports obtained -- associated with that case number.

15 Q. Okay. With respect to the information contained
16 on the warrant, is there any information contained on the
17 face of the warrant for the magistrate to sign that would be
18 any information that you received from a specific witness in
19 this case?

20 A. One more time, please.

21 Q. Is there any information contained on the face
22 of these warrants that I'm showing you that the magistrate
23 could read and see that this murder charge and those other
24 two charges were based on a specific witness statement?
25 Like, for example, a witness saw the defendant kill the

1 never located him?

2 A. I conversated with him over the phone.

3 Q. Over the phone. All right. We'll get to him in
4 a minute.

5 Did you take a written statement from
6 Mr. Whitner?

7 A. Yes, sir.

8 Q. Did you ever threaten -- I think you said the
9 first time Mr. Whitner didn't want to have anything to do
10 with it, right?

11 A. That's correct.

12 Q. Okay. Did you follow up with him with making
13 any threats against him to arrest him, incarcerate him if he
14 was not cooperative with you?

15 A. Just made it known to him if it was proven if he
16 was part of this incident that possible charges could follow
17 if proven.

18 Q. I understand that. And could you also
19 understand that someone receiving that could become afraid
20 because they might feel that you're going to arrest them?

21 A. I didn't tell him I was going to arrest him.

22 Q. I understand.

23 A. I just advised him of the situation and if it
24 was proven that he attempted to help or helped in any way
25 before or after, that charges could follow.

1 and/or at work.

2 Q. Was -- did she give you any information that
3 Mr. Lash had confessed the murder to her?

4 A. There was something in her statement to the
5 effect of -- at the end of her statement that there was a
6 doubt that, you know, a suspicion that something could be.

7 Q. And I'm familiar with that.

8 A. Yeah.

9 Q. Did she ever say to you, "My brother told me he
10 shot and killed Mr. Roberts"?

11 A. No.

12 Q. Okay. Did you inform Ms. Williams that the same
13 thing that you informed Mr. Whitner of, that if you found out
14 she was involved, she would be charged?

15 A. Who is Ms. Williams?

16 Q. I'm sorry, Tonette.

17 A. I did advise her the same.

18 Q. The same thing?

19 A. Yes, sir.

20 Q. Very good. Just so to be accurate, what's
21 Tonette's last name?

22 A. Whitner now.

23 Q. Whitner?

24 A. It was Bowen then.

25 Q. Got you.

1 A. I did, yes, sir.

2 Q. Is that where they both live?

3 A. Yes, sir.

4 Q. And so those conversations took place in
5 Charlotte?

6 A. First one with Terrell did. The second one with
7 Terrell -- the second one with Terrell was Oconee County.

8 Q. I believe when you talked to Tonette, you told
9 her, also, not only if you found out she was involved that
10 you would charge her, but I believe is it -- isn't it true
11 you told her she would be charged with conspiracy and that
12 her kids could be taken away from her if she was locked up?

13 A. I advised both of them as any -- if they're
14 charged with this type of crime, DSS could potentially get
15 involved, yes.

16 MR. FINNEY: Okay. Let's mark this.

17 (PLF. EXH. 1, Arrest Warrant, was marked for
18 identification.)

19 (PLF. EXH. 2, Arrest Warrant, was marked for
20 identification.)

21 (PLF. EXH. 3, Arrest Warrant, was marked for
22 identification.)

23 MR. JOLLY: Is this his copy?

24 MR. FINNEY: I'm going to attach them to his
25 deposition.

1 that he acted -- Mr. Holland acted as a middleman between
2 Josh Hunter and Lloyd Lash; is that correct?

3 A. That's correct.

4 Q. With respect to the passing of the murder
5 weapon, correct?

6 A. Yes.

7 Q. All right. Did Josh Hunter become a suspect in
8 this murder case at that time?

9 A. I attempted to conversate with him and meet up
10 with him for an interview, and he refused and did not
11 cooperate at all.

12 Q. So, is the answer yes or no?

13 A. No.

14 Q. All right. Was Lloyd Lash still a suspect at
15 that time?

16 A. Yes.

17 Q. And that would have been in 2009?

18 A. Yes, sir.

19 Q. What was Mr. Holland's criminal background at
20 the time you reinterviewed him?

21 A. I'm not sure the extent of it without it in
22 front of me.

23 Q. Do you know that he did have a criminal
24 background at the time you reinterviewed him?

25 A. Yes.

RECEIVED

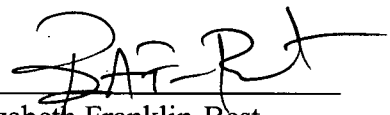
SEP 03 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 1, 2015



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