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STATE OF SOUTH CAROLINA ANDERSON SC IN THE COURT OF COMMON PLEAS

LCB

COUNTY OF ANDERSON 2016 APR -8 AM 10: 29

TENTH JUDICIAL CIRCUIT

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Dr. Gregg Battersby,
COMMON PLEAS AND
GENERAL SESSIONS

C. A. No. 2015-CP-04-01034 MAY 06 2016

SC Court of Appeals

Plaintiff,

vs.

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Sheriff John Skipper, in his official
capacity,

A TRUE COPY

Defendant.

APR 19 2016

Richard M. Bailey
ANDERSON CLERK OF COURT

This matter came before the Court on Defendant's Motion for Summary Judgment which was filed on December 22, 2015. The Court held a hearing on Defendant's Motion on January 25, 2016 and heard arguments from Defendant's counsel, Charles F. Turner, Jr., Esq. Robert L. Mebane, Jr., Esq. was also present on behalf of Defendant. Plaintiff appeared *pro-se*. After carefully considering the oral and written arguments presented by Defendant's counsel and Plaintiff, the Court makes the following findings of fact and conclusions of law.

PLAINTIFF'S ALLEGATIONS

In his Complaint, Plaintiff, a chiropractor providing chiropractic services out of his home, alleges that on August 2, 2013, he was arrested on one count of indecent exposure "by Defendant." Defendant is the Anderson County Sheriff, which is the law enforcement agency that swore out the warrants leading to Plaintiff's arrest. This charge, assigned Case Number 2013A0410100898, resulted from allegations that Plaintiff exposed himself to a former patient, Carrie Neal, at his place of business. The gravamen of the Plaintiff's allegations against Defendant is that when Carrie Neal originally reported the Plaintiff's conduct to law enforcement, the officer who created the incident report changed the incident report to fit the

elements of indecent exposure set forth in S.C. Code Ann. § 16-15-130. Plaintiff alleges that Ms. Neal alleged “she was in Plaintiff’s laundry room and made no mention of seeing Plaintiff’s genitalia,” but that “[m]embers of the [Anderson County Sheriff’s Office] changed her statement in the incident report claiming Neal was in Plaintiff’s office/therapy area and Plaintiff did expose his genitalia.”

The same charge as Plaintiff alleges, also stems from Case Number 2013A0410900191, that resulted from allegations that Plaintiff exposed himself to a former patient, Jan Morton, at his place of business. The gravamen of Plaintiff’s allegations against Defendant is that when Jan Morton originally reported Plaintiff’s conduct to law enforcement, the officer who created the incident report wrote that Plaintiff was wearing a robe at the time of the alleged events; whereas, in a recorded interview, Ms. Morton stated that Plaintiff was wearing a towel at the time of the incident.

Based on these factual allegations, Plaintiff asserted causes of action against Defendant for malicious prosecution, abuse of process, and false arrest and/or imprisonment, claiming that Defendant lacked probable cause to arrest Plaintiff.

FACTUAL SUMMARY

During the course of his investigation, Investigator Ashley of the Anderson County Sheriff’s Office completed Affidavits in support of arrest warrants based upon the statements given by Ms. Neal and Ms. Morton. Warrant 2013A0410900191 was based upon Ms. Morton’s statements given to the Anderson County Sheriff’s Office and Warrant 2013A0410100898 was based upon Ms. Neal’s statements. The Court finds that the Warrants were properly presented to the Honorable Samuel Lollis and The Honorable William Sharp, respectively, each of whom found sufficient probable cause to arrest the Plaintiff for the crime of indecent exposure.

Plaintiff was arrested on August 2, 2013 and retained the services of Sarah Drawdy, Esquire, to represent him. On August 30, 2013, Plaintiff participated in a preliminary hearing. At the hearing, the State presented the testimony of Investigator Stanley Ashley, and Ms. Drawdy cross-examined him. At the conclusion of the hearing, the court determined that probable cause existed to arrest Plaintiff and that the charges would go forward. The cases were then presented to the grand jury, who returned true bill indictments on November 19, 2013 on both charges (the Jan Morton charge was assigned Case Number 2013-GS-04-02177 and the Carrie Neal charge was assigned case number 2013-GS-04-02178). On February 28, 2014, the Plaintiff, through his counsel, filed a Motion to Compel the production of the audio recording of Investigator Ashley's interview with Ms. Morton and Ms. Neal. Approximately two months later, the 10th Circuit Solicitor's Office decided not to pursue the charges against Plaintiff and they were *nolle prossed*.

During the pendency of the criminal charges, the South Carolina Board of Chiropractic Examiners moved to suspend Plaintiff's license to practice chiropractic medicine.¹ A hearing was conducted on October 30, 2013, and during her examination of one of the members of the Board, the Court finds that Plaintiff's attorney conceded that the Anderson County Sheriff's Office had probable cause to bring charges against Plaintiff.

In early 2015, Plaintiff filed suit in this circuit against Allstate Insurance Company and attorney Kirk Moorhead, Esquire bearing case number 2015-CP-00667. In his Second Amended Complaint, the Court finds that Plaintiff alleged that Mr. Moorhead instructed Jan Morton and Carrie Neal to file complaints against Plaintiff with the Anderson County Sheriff's Office. Further, the Court finds that Plaintiff specifically pled in that action that "[t]he [Anderson

¹ In the Matter of Gregg Newton Battersby, DC License No. DC. 3011 (2013-24)

County Sheriff's Office] relied on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement to be truthful and had no knowledge of its falsity and that "[t]he [Anderson County Sheriff's Office] had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement."

Additionally, in *Battersby v. Dr. Joseph Carew, et al.*, Case Number 8:14-CV-761-HMH,² in which summary judgment was granted in favor of the Defendants, the Court finds that Jan Morton and Carrie Neal both provided sworn deposition testimony in which they both confirmed that Plaintiff exposed himself to them. The Court notes that Ms. Morton and Ms. Neal's deposition testimony was given roughly one year after the original arrest warrants for Plaintiff were issued in July 2013. Ms. Neal's deposition was taken on June 3, 2014 and Ms. Morton's deposition was taken on June 18, 2014.

STANDARD OF REVIEW

Under Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct.App. 2010). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *Id.*

² In that action, Plaintiff filed suit against 10 members of the South Carolina State Board of Chiropractic Examiners alleging that these individuals violated his due process rights under the Fourteenth Amendment by temporarily suspending his license to practice chiropractic medicine pending his evaluation by a physician to determine whether he was under a physical or mental disability that would make his further practice a danger to the public. Summary judgment was entered on behalf of the Defendants in that action.

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008).

PLAINTIFF’S CLAIMS

A. Malicious Prosecution

The Court finds that probable cause existed for Plaintiff’s arrest, and thus Plaintiff’s claims for malicious prosecution and false arrest/imprisonment fail as a matter of law.

In South Carolina, "to 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 [the] plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Pallares v. Seinar*, 407 S.C. 359, 366, 756 S.E.2d 128, 131 (2014).

"An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause." *Id.*

Malice is defined as the deliberate[,] intentional doing of an act without just cause or excuse. Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice. In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution.

Probable cause in this context does not turn upon the plaintiff’s guilt or innocence, but rather upon whether the facts within the prosecutor’s knowledge would lead a reasonable person to believe the plaintiff was guilty of the crimes charged.

Where a plaintiff bases the claim on an opponent’s institution of civil causes of action, probable cause exists if the facts and circumstances would lead a person of ordinary intelligence to believe that the plaintiff committed one or more of the acts alleged in the opponent’s complaint. (internal citations omitted).

Id. at 366-367.

“South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution.” *Kinton v. Mobile Home Indus., Inc.*, 274 S.C. 179, 262 S.E.2d 727 (1980).

Moreover, a witness statement serves as affirmative evidence of probable cause. See *McBride v. Sch. Dist. of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). (emphasizing that several witness statements supported a finding that probable cause existed for the plaintiff’s arrest).

B. False Arrest/Imprisonment

In South Carolina,

[t]he essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. 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.

The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. Although 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.

McBride, 389 S.C. at 567.

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The Court finds that Defendant was correct in determining that probable cause existed based on the direct statements of the victims, Carrie Neal and Jan Morton. As set forth above, a

witness statement is sufficient to establish probable cause. *McBride, supra*. Furthermore, “a facially valid warrant provides the probable cause necessary to comport with constitutional requirements.” *Anderson v. State AG of S.C.*, 2008 U.S. Dist. LEXIS 116083 (D.S.C. August 20, 2008).

The Court finds that Defendant obtained facially valid arrest warrants which were both supported by probable cause. The Court also finds that Plaintiff has failed to demonstrate any evidence to suggest that Defendant or Defendant’s deputies, deliberately or with a reckless disregard for the truth, made material false statements in the affidavits or omitted material facts from the affidavits with the intent to make, or with reckless disregard of whether they thereby made, the affidavits misleading. The Court also finds that the true bill indictments presented by the Anderson County grand jury constituted sufficient evidence of probable cause for Plaintiff’s arrest. *Kinton, supra*.

The Court also notes that as recently as June 2014, even after the criminal action was *nolle prossed*, Ms. Morton and Ms. Neal both maintained, that Plaintiff exposed himself to them. The Court finds that their statements were credible and provided sufficient evidence to support a finding of probable cause. *McBride, supra*. After considering all of the following, the Court finds that the facts and circumstances within Defendant’s knowledge were overwhelmingly sufficient to warrant a prudent person to believe that Plaintiff had committed a criminal offense. As such, the Court finds probable cause existed to make the arrest and, therefore, Defendant’s conduct did not amount to malicious prosecution or false arrest/imprisonment.

The Court also finds that Plaintiff’s allegations that members of the Anderson County Sheriff’s Office changed Ms. Neal’s story to fit the crime of indecent exposure is totally without merit. The Court finds that Ms. Neal’s incident report clearly alleged that Plaintiff exposed his genitalia to Ms. Neal. The Court also notes that this information was then written in a

supplementary report, which Investigator Stan Ashley prepared based upon his interview with Ms. Neal.

Most importantly, the Court finds that in determining whether or not probable cause exists, the key factors leading to Defendant's good faith belief that a crime had been committed were Ms. Morton's and Ms. Neal's statements that the Plaintiff exposed himself to each of them. *McBride*, 389 S.C. at 567.

The Court also finds that whether Plaintiff was wearing a robe or a towel (Morton report), or which room Plaintiff was in when he exposed himself (Neal report), would not affect any reasonable officer's determination that the crime of indecent exposure had been committed. Indeed, such a fact is wholly immaterial to the underlying charge. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (holding that a fact is material if proof of its existence or non-existence would affect disposition of the case under applicable law).

Finally, the Court finds that on two separate occasions Plaintiff has maintained an inconsistent position with regard to the existence of probable cause as to the Anderson County Sheriff's Office's arrest. In case number 2015-CP-00667, Plaintiff pled that the Anderson County Sheriff's Office (and thus Defendant) "had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement." Additionally, in his hearing in front of the South Carolina Board of Chiropractic Examiners, Plaintiff's then counsel conceded that the Anderson County Sheriff's Office had probable cause to bring charges against Plaintiff. The Court finds that Plaintiff's argument that the Anderson County Sheriff's Office lacked probable cause to support his arrest at a minimum, supports a finding of judicial estoppel, barring Plaintiff from asserting his claims for malicious prosecution and false arrest/imprisonment. *See Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004).

C. Abuse of Process

The Court also finds that Defendant's conduct did not amount to an abuse of process.

In South Carolina, "[t]he tort of abuse of process consists of two elements: an ulterior purpose, and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *McBride*, 389 S.C. at 564.

Indeed, the essence of the tort of abuse of process centers on events occurring outside of the process, namely: The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.

Swicegood v. Lott, 379 S.C. 346, 353, 665 S.E.2d 211, 214 (Ct. App. 2008).

In this case the Court notes that: 1) Defendant's office obtained statements from two victims (Carrie Neal and Jan Morton) indicating that Plaintiff had exposed himself to them; 2) Defendant's deputies obtained arrest warrants issued by an Anderson County Magistrate, who found that probable cause existed to arrest Plaintiff; 3) a preliminary hearing was held after Plaintiff's arrest, during which Plaintiff's counsel was allowed to cross-examine witnesses, and after which, the Court found that probable cause existed for Plaintiff's arrest; and 4) a true bill indictment was issued by a grand jury. For all these reasons and the reasons discussed above, the Court finds that Defendant had sufficient probable cause to arrest Plaintiff. The Court also finds that nothing Defendant did could be viewed as any form of extortion as Defendant was merely acting on the reports of two victims and simply performing his official duties as the chief law enforcement officer of the Anderson County Sheriff's Office. Finally, the Court finds that Plaintiff has failed to demonstrate any evidence to suggest that Plaintiff's arrest was supported by coercion, an ulterior purpose, or a willful act, other than Defendant's efforts to enforce the

law against indecent exposure. For all of these reasons, the Court finds that Plaintiff's claim for abuse of process fails as a matter of law.

DEFENDANT'S IMMUNITY

Additionally, the Court also finds that Defendant is entitled to immunity under the South Carolina Tort Claims Act, S.C. Code 15-78-10 *et seq.*

S.C. Code Ann. § 15-78-20 provides in pertinent part:

The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.

Id.

The Act defines an employee as "any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." *Id.* at § 15-78-30. Therefore, as a law enforcement officer, the Court finds that Defendant is protected under the Act.

The Act further provides:

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 therefor 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.

Id. at § 15-78-70.

“The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” *Flateau v. Harrelson*, 355 S.C. 197, 204 (Ct. App. 2003).


The Court finds that Defendant was acting within his official duties and is entitled to immunity. The Court finds that Defendant followed the proper procedure in pursuing a charge against Plaintiff. Furthermore, there is no doubt that the procedures that were followed in this case fall within Defendant's official duties. Assuming the events in this case fell outside of Defendant's official duties, the Court notes that conceivably every arrest made by the Anderson County Sheriff's office or any other sheriff's office within this state would fall outside of a sheriff's or its deputy's official duties. This logic defeats the whole purpose of Defendant's duties as the chief law enforcement officer for the Anderson County Sheriff's office, and the legislative intent of the Act. “In determining the legislative intent, it is proper to consider the purpose sought to be accomplished.” *Arkwright Mills v. Murph*, 219 S.C. 438, 444, 65 S.E.2d 665, 667 (1951). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). Therefore, the Court finds that Defendant is entitled to immunity.

(LB)

CONCLUSION

For the reasons set forth above, Defendant's Motion for Summary Judgment is granted as to all of Plaintiff's claims against Defendant in this case.

IT IS SO ORDERED.



R. Lawton McIntosh
Judge, Tenth Judicial Circuit

Dated: 4-7-16

Anderson, South Carolina

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