

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge
C/A No. 06-CF-40-5442
Case Tracking #:

T. Terrell Bryan,

Appellant,

v.

SCC,

Respondent.

NOTICE OF APPEAL

PLEASE TAKE NOTICE, that Appellant, T. Terrell Bryan, hereby appeals the order(s) of the Honorable DeAndrea G. Benjamin, dated 3/27/12 & 4/11/12; Appellant received the last order on or about 4/23/12. see attached orders.

4/23/12, SC
dated

Without prejudice,

x. T. T. B. all rights reserved,
T. Terrell Bryan
#254638, CX14, PC I
430 Oaklawn Rd.
Pelzer, SC 29569

OTHER COUNSEL OF RECORD:

Anne R. Culbreath
P.O. Box 1509
Greenville, SC 29602-1509

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MAY 14 2012

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County

DeAndrea G. Benjamin, Circuit Court Judge

C/A. No. 06-CP-40-5442

Case Tracking #: _____

T. Terrell Bryan,

Appellant,

v.

SCDC,

Respondent.

PROOF OF SERVICE

I, the pro se Appellant, T. Terrell Bryan, hereby certify I served: Anne R. Culbreath; P.O. Box 1509; Greenville, SC 29602-1509, & Richland Co./Clerk; P.O. Box 2756; Columbia, SC 29202-2756, a copy of: this; Notice of Appeal; & Motion to Proceed in Forma pauperis, Affidavit in Support & Memorandum, by U.S. Mail, with postage prepaid.

9/03/12, SC
dated

Without Prejudice,

x. T. T. B., all rights reserved,
T. Terrell Bryan
#254539, CX14, PC I
430 Oaklawn Rd.
Pelzer, SC 29669

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SC Court of Appeals

4. Do you have **any** cash or checking or savings accounts? Yes No

If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? Yes No

If "Yes," describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

Date

Signature of Applicant

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JAN 10 2004

NOTICE TO PRISONER: A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211-1629

Re: Bryan v. SCAC, 06-CP-40-5442
Case Tracking #: _____

Dear Clerk,

Enclosed for your filing is ~~two (2)~~ ^{one (1)} copies of: Proof of service, Notice of Appeal, order granting summary judgment to the defendant, Form 4 order, & motion to proceed in forma pauperis Affidavit in support & memorandum.

Please provide me a case number & stamp/filed copy of same.
Thank you.

S/O / B
dated _____, SC

Without prejudice,
x. TMB all rights reserved,
T. Terrell Bryan
#254638, ext 14, PCI
430 Oaklawn Rd.
Pelzer, SC 29669

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MAY 14 2012

SC Court of Appeals

IV. STATEMENT OF CLAIM - continued.

A large section of the page is crossed out with a large, hand-drawn 'X' over a series of horizontal lines, indicating that the content has been redacted or is otherwise void.

RECEIVED
STATE PRISONER

20 COURT OF ADDRESS

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No. 06-CP-40-42

Khalil Salam, John Hammond, Christopher)
Owens, Johnny Calloway and Terrence T.)
Bryan,)

Plaintiff,)

vs.)

South Carolina Department of Corrections,)
Lt. Bird, Sgt. Williams, Captain Price,)
Officer Outlaw, et al.,)

Defendant.)

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SC Court of Appeals

ORDER GRANTING SUMMARY JUDGMENT TO THE DEFENDANTS

*Granted 10 (ten) minutes for case file
grant viewing of video tape
grant several compels; place instructions
appointment of counsel*

RICHLAND COUNTY
FILED
2012 MAR 29 AM 9:22
JEANNETTE W. McBRIDE
C.C.P. & G.S.

This matter came before me on March 1, 2012 by way of Defendants' Motion for Summary Judgment. Plaintiff's filed and argued several motions which this Court ruled on during the course of the hearing and under separate order. The Plaintiffs appeared *Pro se* and Anne R. Culbreath appeared on behalf of the Defendants. After due consideration of the memoranda filed by the parties in support of their respective positions, supporting documentation, videotaped evidence of the prison incident at issue in this litigation, and after consideration of the lengthy oral argument at the hearing, the Court grants the Defendants' Motion for Summary Judgment. Accordingly, the Court makes the following findings of fact and conclusions of law.

I. PROCEDURAL HISTORY

The Plaintiffs in this litigation filed a single lawsuit in state court in Richland County on September 18, 2006. The Plaintiffs alleged claims for cruel and unusual punishment and deliberate indifference pursuant to §42 U.S.C. 1983 as well as state law claims for gross

SCANNED

negligence, due process, conspiracy, retaliation and assault and battery. The Defendants removed this case to federal court in October of 2006. The federal court severed the original suit into five individual suits. Defendants moved for summary judgment in each of the five cases pending in the federal court. Under five separate orders, the district court granted the Defendants' Motion for Summary Judgment as to the Plaintiffs' federal law claims for cruel and unusual punishment and deliberate indifference. This Court adopts the factual history set forth in the reports and recommendations of United Magistrate Judge Thomas E. Rogers, III. and accepted by U.S. District Judge Terry L. Wooten. The federal court then remanded this matter back to Richland County for resolution of Plaintiffs' state causes of action. The parties participated in lengthy discovery.

II. FINDINGS OF FACT

The Court's finding of facts are in the light most favorable to the nonmoving parties. The Plaintiffs alleged that on September 13, 2006, while inmates in the Special Management Unit at Perry Correctional Institution, ^{two} one of the individual Defendants sprayed mace into the cell of Inmate Johnny Calloway. No mace was sprayed into the cells of the other Plaintiffs. The Defendants established that the use of mace on Inmate Calloway occurred pursuant to SCDC policy when inmate Calloway refused to surrender a weapon. The Defendants further established that Inmate Calloway broke a sprinkler head to dissipate the mace dispersed in his cell. Evidence presented by the parties also revealed that after removing Inmate Calloway from his cell the Defendants utilized fans to further dissipate the mace from that wing, that Mr. Calloway was afforded the opportunity to shower and that Mr. Calloway underwent medical examination. Evidence also was presented that there were only there centimeters between the door of an SMU cell and the floor and that the other Plaintiffs did not seek medical attention.

III. SUMMARY JUDGMENT

A trial court may properly grant summary judgment when “the pleadings, depositions, answers to interrogatories and admissions on file, together with 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.” Rule 56 (c), S.C.R.C.P. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the nonmoving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000).

Once the party moving for summary judgment has met its initial burden of proof of showing a lack of genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is indeed a genuine issue for trial. *Id.*

✓ “Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ. *Priest v. Brown*, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). It is not sufficient that one create an inference, which is not reasonable, or an issue of fact that is not genuine. *Id.* The judge is not required to single out some morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine. *Id.* (Citing *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1994)).” *inch under door*

IV. FINDINGS OF LAW

Plaintiffs set forth state causes of action for assault and battery, conspiracy, retaliation, state due process and gross negligence. During the course of the hearing, the court granted the Defendant South Carolina Department of Corrections' Motion for Summary Judgment as to the intentional torts of assault, battery, conspiracy and retaliation, as the South Carolina Tort Claims Act bars the Plaintiffs' recovery against a government agency for alleged intentional torts. Also during the course of the proceedings the Court granted the individually named Defendants summary judgment as to the non-intentional torts alleged by the Plaintiffs pursuant to South Carolina Code § 15-78-70. During the course of the hearing, all Plaintiffs voluntarily dismissed their causes of action for conspiracy and abuse of process. Plaintiffs Salam, Hammond, Owen, and Bryan also voluntarily dismissed their respective causes of action for retaliation.

A. RETALIATION

In Plaintiff Calloway's cause of action for retaliation, the Plaintiff made a vague allegation of "retaliation" in his Complaint, with no explanation as to the basis for said claim. The Court finds that Mr. Calloway provided no evidence to support such allegation. The Court also finds that the State of South Carolina had not recognized such a cause of action by a prisoner. Accordingly, the Court hereby grants the Defendants' Motion for Summary Judgment as to Plaintiff Calloway's retaliation allegation.

B. ASSAULT

As to the Plaintiffs' claims for assault, South Carolina defines an assault as the placement of a person "in reasonable fear of bodily harm by the conduct of the defendant." *Jones By Robinson v. Winn Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E2d 429, 432, (S.C. Ct. App. 1995). Based on all of the evidence presented, as well as the memorandum of the Plaintiff, where it was admitted no Plaintiff was placed in fear, there is simply no genuine issue of material

fact that Plaintiffs were in "reasonable fear" from the exposure to mace directed at Inmate Calloway. There is also no genuine issue of material fact that the Defendants intended to place the Plaintiffs in fear of bodily injury.

The Court further concludes that the Defendants' use of mace to extract Inmate Calloway and his weapon from the cell did not constitute an assault, as Defendants' actions were authorized under state and common law. Section 24-1-280 of the South Carolina Code provides prison employees with the status of peace officers to control inmates. South Carolina law also authorizes the director of prisons and prison employees to suppress disorder. Section 24-3-750 of the South Carolina Code provides immunity to those suppressing disorder in a prison.

2.) The Court concludes that, in the light most favorable to the Plaintiffs, the evidence presented indicates that the Defendants engaged in a lawful activity and were justified in their actions. ^{mace is a self-defense tool as defendants' argued. Mace at most, subduable by the extraction team} The Court concludes that there is no genuine issue of fact as to the Plaintiffs' claim for assault and therefore, grants summary judgment to the Defendants as to said causes of action. ^{Williams v. Benjamin}

C. BATTERY

1.) Battery is "the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree." *Jones by Robinson*, 457 S.E.2d at 432. The Plaintiffs' Complaint alleged that the Defendants battered Mr. Calloway by employing mace. During oral argument the remaining Plaintiffs alleged "dissipated mace entered their respective SMU cells and equated to battery." ^{by way of the fan.} Defendants argued that even if the dissipation of mace into a neighboring cell could be construed as a battery, there was no evidence of intent on the part of the Defendants and that the use of mace was lawful and authorized by the state statutes outlined above. ^{intent was the fan was closed.}

Plaintiffs did not argue that the use of mace was not warranted, instead Plaintiffs argued throughout the proceedings that Defendants utilized too much chemical munition in responding ^{plaintiff argue they used the fan to blow mace in their cells.}

to the threat created by Mr. Calloway's possession of a weapon and refusal to relinquish same.

The federal court previously granted summary judgment as to the Plaintiffs' claims for cruel and unusual punishment and deliberate indifference pursuant to §42 U.S.C. 1983. The Plaintiffs cannot re-litigate said causes of action in the state court and their argument is misplaced and irrelevant to the State causes of actions.

adopted it to rule out A&B
The court apparently accepts the report & re of the United States Magistrate on deliberate indifference to adjudicate rule on Assault & battery claim.

In reviewing all of the evidence presented in this matter in a light most favorable to Plaintiffs, I find that the utilization of mace by the Defendants was lawful and authorized. There is no genuine issue of fact and, therefore, the Court grants the Defendants' Motion for Summary Judgment as to battery.

no consideration given to Affidavit as what can be seen & heard on video tape.

D. GROSS NEGLIGENCE

The Plaintiffs allege that the South Carolina Department of Corrections was grossly negligent in hiring, retaining, and supervising employees, as well as grossly negligent in providing medical care. The Plaintiffs' Complaint did not set forth separate facts setting forth the basis of gross negligence.

The South Carolina Tort Claims Act preserves immunity for "loss resulting from . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . prisoner [or] inmate . . . except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code § 15-78-60 (25). "Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." . . . It is the failure to exercise even the slightest care." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 566 S.E.2d 536 (quoting *Richardson v. Hambright*, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988)).

In the light most favorable to the Plaintiffs, the Court concludes that there is no genuine issue of fact. The Plaintiffs presented no evidence to support their claims of gross negligence in hiring, training or supervising employees. The evidence presented further reveals that Mr. Calloway received medical examination and care after the incident at issue. The other Plaintiffs did not seek treatment for alleged exposure, though Plaintiffs did receive treatment for other nonrelated health issues in the weeks after the incident. ^{presented medical records} The evidence presented by the parties ^{How?} reveal that the South Carolina Department of Corrections did exercise at least slight care. There is no genuine issue of matter fact that the South Carolina Department of Corrections was grossly negligent and, as such, the Court grants Summary Judgment to South Carolina Department of Corrections as to the Plaintiffs' gross negligence claims. *Some don't have instructions, warnings or recommendation of Mace & apparently have not inquired into it. Can such be said to be an exercise of slight care.*

p. 2

The Court has carefully considered all evidence presented by the parties, as well as the parties' arguments presented at the hearing. As outlined above, the Court hereby GRANTS the Defendants' Motion for Summary Judgment.

IT IS SO ORDERED.



The Honorable DeAndrea G. Benjamin
Judge, Fifth Judicial Circuit,

March 27, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2006CP4005442

Khalil Salaam #250460, et al

South Carolina Department of Corrections, 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.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Dismissal); 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 _____

JEANETTE W. McBRIDE
S.C.P. & C.S.
2012 APR 13 AM 10:14
RICHLAND COUNTY
FILED

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 : Plaintiff's rule 59 (e) motion is denied.

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge VA

Judge Code 2161

Date 04/11/2012

For Clerk of Court Office Use Only

This judgment was entered on the 13 day of April, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of April, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Pro Se

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court Jeanette W. McBride

T. Terrell Bryan
#254638, CX14, P&I
430 Oaklawn Rd.
Pelzer, SC 29669

AMS

S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211-1629

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MAY 08 2012

P.C.I. MAILROOM

Department of Corrections has not exercised this responsibility for the conduct of the institution, the Department does assume the responsibility for the conduct of the institution.

D. M. Roberts, Jr., Warden
Pennsylvania State Penitentiary
Harrisburg, Pennsylvania