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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2016-000650

Terrell McCoy, 256070 Appellant

v.

North Charleston Police Department and
Sgt. Thomas Deckard, of which, North Charleston
Police Department is, Respondent

Appellant's Reply Brief

Pro Se Appellant
Inmate Terrell McCoy

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Senn Legal LLC
P.O. Box 12279
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STATUTES

S.C. Code Ann § 15-78-110

S.C. Code Ann § 15-78-70(b)

ISSUE ON APPEAL

I. The Trial Court did not properly grant Defendant's Motion to Dismiss

II. Respondent's actions does constitute actual fraud.

Appellants Reply

The statute of limitation of the tort act runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Bayle v. S.C. Department of Transportation SC App. 2001, 344 S.C. 115, 542 S.E.2d 736

The date on which discovery of the cause of action should have been made is an objective, rather than subjective question. See: Joubert v. South Carolina Dept of Social Services, 341 S.C. 176, 534 S.E.2d 1 (Ct. App. 2000):

The Respondent's state in their reply to Appellant's Initial Brief that he was aware that a 911 tape recording existed and was destroyed in 2006, and in February, 2009. (Respondent's Reply Brief pg. 4 line 10-16)

The Respondents also stated Ms. Proctor knew of the tape's existence during 2006, and admits that nothing was mentioned about a 911 tape during Appellant's first trial. (Respondent's Reply Brief pg. 4-5)

The Supreme Court has stated a cause of actions

begins to run the date the injured party knows or should have known by the exercise of due diligence that the Cause of arises from the wrongful conduct. Boyle Supra.

The Respondents point out in their Reply brief that the Solicitor failed to request the 911 tape recording prematurely during the Criminal investigation phase of Appellant's Criminal Case, (Respondents Reply Brief page 6, Line 1-6) Despite trial Counsel's request for discovery.

This constitutes "actual fraud" as the Solicitor, a officer of the Court, who represented Respondents, failed to subpoena any exculpatory evidence, from its clients, which could have exonerated the Appellant.

Appellant's trial Counsel, admitted she had made numerous request for evidence after the filing of her Brady motion. (Second trial transcript pg 634 Line 20-25. See Chewning V. Ford Motor Company, 354, S.C. 72

The trial judge, stated that from his understanding of the Case, Ms. Proctor had requested for a 911 tape recording and they were informed that the 911 tape didn't exist. (Second trial transcript pg 636 Line 1-3)

The trial judge's ruling became law of the Case, during that time, ~~and~~ Respondents can not produce any evidence which shows the jury was charge with

Spoilation of evidence during Appellant's Second trial.

If Ms. Proctor was informed the 911 tape recording did not exist, then Appellant was never put on notice that a right of his had been invaded during February 2009. See Bayle, Id

1 Mr. Wetmore's made assumptions that the 911 tape did not exist, and was perhaps destroyed only b/c 3 years had pass between the time of Appellant's arrest and trial. Mr. Wetmore admitted that he, ~~did~~ not in his office, made attempts to receive the 911 tape recording from his clients. (Appellant's Second trial transcript pg. 634 line 1-9)

After Appellant's wrongful conviction, he moved due diligently, through the FOIA, and discovered a 911 tape recording did exist but was destroyed on June 25, 2006 despite trial Counsel's request for the 911 tape on April 10, 2006.

1. Please note that Mr. Wetmore was not the Original Solicitor of the Case. The Solicitor was Greg Voigt, whom was not present. See Appellant's Second trial transcript pg. 634 Line 20-25

The hearing held outside the presence of the jury, during February, 2009 was solely for the purpose of the 911 dispatcher's failure to appear to trial, ~~de-~~
~~spite~~ (See Second trial transcript pg. 631 Line 18-25)

The statute SC Code Ann § 15-78-70(b) renders Inapplicable the statute of limitation found in § 15-78-110.

In this case Respondents admitted, the Solicitor never made request for the 911 tape recording. If this is true, Respondents actions constituted actual fraud, as in a Criminal proceedings, all evidence relating to the crime, must be held until after the prosecution. (NCPD Retention Period Schedule pg.

As stated earlier, Appellant was misinformed by the trial judge that the 911 tape recordings did not exist in February, 2009, so therefore he was ^{not} put on notice that a right of his had been invaded.

Appellant Request that Judge Nicholson's ruling is reverse, and remanded to the lower Court.

September 8, 2016

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North Charleston Department
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Respondent

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Appellant's Reply Brief has been served upon the Respondent's Counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 9th day of September, 2016, to the following:

Robin Jackson

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Charleston, SC 29422

September 9, 2016

Ridgville South Carolina

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SC Court of Appeals

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September 9, 2016

The Honorable Jenny Abbott Kitchens
Clerk, South Carolina Court of Appeals
Post office Box 11629
Columbia, SC 29211

RE: McCoy v. North Charleston Police Dept et al
Case No. 14-CP-10-7786

Dear Madam Clerk:

Please find enclosed the original, and one (1) copy of ~~Reply~~ Appellant's Reply Brief, and Certificate of Service in the above reference matter. Please file the original and return the file stamped copy me. By copy of this letter, I am serving the Respondents.

With kind regards, I am

Sincerely,

J. Jackson

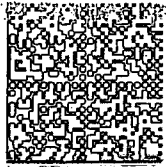
Enclosures

cc: Robin Jackson

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CHARLESTON SC 294

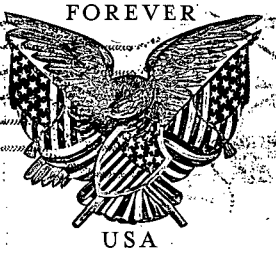
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