

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEA
For the Ninth Judicial Circuit

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Civil action No: 13-CP40-10870

Terrell McCoy,
Plaintiff,

v.

City of North Charleston,
Defendants

COMPLAINT

(Jury Trial Demand)

RECEIVED

FEB 24 2017

SC Court of Appeals

2013 NOV 22 AM 10:56
JULIE J. ARNSTRONG
CLERK OF COURT

FILED

I, the pro se Plaintiff, Terrell McCoy, complaining of the Defendants, above named, States as follows:

STATEMENT OF Claim

(1) During the early month of September 2013, I mailed one letter to North Charleston Police Department and the City of North Charleston requesting for documents in connection with the retention period for 911 calls (and radio transmission) made at the North Charleston Police Department during the year of 2006 Pursuant to the Freedom of Information Act S.C. Code Ann. §§ 30-4-10 thru-165.

(2) I also requested for the unedited copy, CAD OPERATION REPORT, dispatch log Number, 2006036162. This request was forward to Charleston County Consolidated 9-1-1 Center. A different agency from NCPD.

(3) Before all these request were made, I made a request seeking information on a dispatcher that work for North Charleston Police Department in March of 2006. The information that I seek pertain to my criminal case. Warrant No. F969254. This request was made July 12, 2013. The request was answered and the documents I seek, were sent to me on July 23, 2013. In this request, I requested for all the name of police officers, that work for the North Charleston Police Department, last names from A-F.

(4) During this time I was seeking for a dispatcher name Jenic Fowler, who answered a 911 call in my criminal case. When her name did not appear in the documents the City of

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North Charleston provided, I made another request asking did the North Charleston Police Department have someone working as a dispatcher in 2009 by the name of J. Fowler and this request was answered on August 2, 2013.

5: A female name. Beth Woodall replied to my request on August 2, 2013 and stated the following:

I am in receipt of your second FOIA request regarding the identification of a North Charleston Police officer named James or J. Fowler. The documents I previously sent to you indicated that there was no active officer named Fowler in 2009. However, in speaking with a clerk from Human Relations, I learned that dispatchers have a different classification. While they technically fall under the North Charleston Police Department, they are considered civilian employees. We did have a female dispatcher name Jenie Fowler who was employed in 2009. She did not appear in the first search because that search was for police officers only and did not include any civilian employees. I hope this information is helpful to you. Ms. Fowler is no longer an employee of the North Charleston Police Department. She is currently employed by Charleston County in the Consolidated Dispatch Center.

(6) When I made my third request on September of 2013, requesting for documents in connection with the retention period for 911 calls, (and radio transmission) made at the North Charleston Police Department during the year of 2006 pursuant to the FOIA, my request was forwarded to the Charleston County Consolidated 9-1-1 Center. When I requested the unedited copy, CAD OPERATION REPORT, dispatch log No. 2006036162, and documents concerning the procedures a 911 dispatch caller must follow when taking a 911 call from a civilian during emergencies, my request was sent to Charleston County Consolidated 9-1-1 center. A different agency from North Charleston Police Department according to Beth Woodall, because she stated Jenie Fowler no longer work for NCPD, and that she is employed by Charleston County Consolidated 9-1-1 Center.

(7) When I did not receive a response from North Charleston Police Department or City of North Charleston in a timely matter define in FOIA 30-4-10 thru-165

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I sent an FOIA appeal to the City of North Charleston Legal Department on September 26, 2013. More than 30 days have elapsed and I still have not received requested documents.

8. According to the FOIA 30-4-30, which is the "legislative intent" it states the following:

§§ 30-4-30 Right to Inspect or copy Public records; fees; Notification as to Public Availability of records; presumption upon failure to give notice; Records to be Available when requestor appears in person.

(C) Each Public Body, upon written Request for Records made under this Chapter, shall within fifteen Days (excepting Saturdays, Sundays, and Legal Public Holidays) of the receipt of any such request notify the person making such request of its determination and the reasons there of. Such determination shall constitute the final opinion of the public body as to the availability (Public) of the requested Public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the documents within the fifteen days allowed here in the request must be considered approved.

(9) The defendants have violated this act when it failed to reply or send the requested public record to me pursuant to the Freedom of Information Act.

RELIEF

DECLARATORY Judgment & Injunctive Relief

(10) Pursuant to S.C. Code Ann. §§ 30-4-100. I states the following:

(a) Any citizen of the state may apply to the circuit

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for either or both a Declaratory Judgment and Injunctive Relief to enforce the provisions of this Chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a Public Vote in Public Session whichever comes later. The Court may order equitable relief as it considers appropriate, and a violation of this Chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(1) I also request that the requested documents be furnished to me and/or;
REASONABLE ATTORNEY'S FEES/COST OF LITIGATION

30-4-100

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable Attorney Fees and other cost of litigation. If such person or Entity prevails in part, the Court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof

10-29-13

15 Janelle McCoy
PCIDOX 19
430 Oaklawn Rd
Pelzer, SC 29669

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
TERRELL MCCOY, #256070,

Plaintiff,

v.

NORTH CHARLESTON POLICE
DEPARTMENT AND SERGEANT
THOMAS DECKARD,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-7706

DEFENDANTS' MOTION
TO DISMISS

FILED
2015 MAR 30 PM 3:38
JULIE J. ARYSTROM
CLERK OF COURT

Before the court are the defendants, moving to dismiss the plaintiff's Complaint which alleges that in 2006, exculpatory evidence was destroyed by the North Charleston Police Department and Sergeant Thomas Deckard¹ in an effort to improperly convict him. The plaintiff's Complaint has been untimely filed and should be dismissed pursuant to the statute of limitations. Further, Sergeant Deckard should be dismissed as he is not a proper defendant pursuant to the South Carolina Tort Claims Act ("TCA"), § 15-78-10, *et seq.*

The plaintiff has brought this action pursuant to the TCA, which states that "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110.

In this case, the plaintiff claims that he was arrested on March 27, 2006, and appointed Lorelle Proctor as his public defender. The Complaint further alleges that Prosecutors Greg Voigt and Burns Wetmore both worked on the case for the solicitor's office.

The plaintiff complains that exculpatory evidence (a 911 tape) was not turned over to his

¹ As of the date of this motion, Sergeant Thomas Deckard has not been personally served with this lawsuit.

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attorney because it was destroyed before production. However, the complaint further alleges that through recent Freedom of Information Act requests, he believes that the tape was destroyed on June 25, 2006, which was more than two months after his lawyer had apparently requested the 911 tape.

Thus, the plaintiff now believes that he can pinpoint a date on which the 911 tape was destroyed. Such is not a salient fact. From the four corners of his complaint, it is revealed that he knew that the police and prosecutors did not have a 911 tape to present to his attorney many years ago. And, even assuming that the plaintiff's complaint is true, it would appear that both he and his attorney actually argued motions regarding the 911 tape prior to his conviction. On February 2, 2009, the plaintiff claims that he argued before the Honorable Roger Young that he should be entitled to the 911 tape and at that point the solicitor's office told the judge that they did not have a 911 tape and that it had been destroyed apparently as part of a retention schedule.

Inasmuch as the plaintiff and his public defender argued for the production of the 911 tape at trial, clearly the plaintiff knew that a piece of evidence was not going to be produced by February 2, 2009. Therefore, this complaint is untimely as being filed outside the two-year statute of limitations.

Further, pursuant to the TCA:

On or after January 1, 1989, a person when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting ... in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also Proveaux v. Med. Univ. of S.C.*, 326

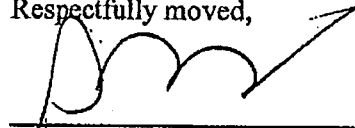
S.C. 28, 482 S.E.2d 774 (1997) (granting summary judgment to hospital employee based on his

being immune from suit under S.C. Code Ann. § 15-78-70(c)).

At all times relevant to the allegations in the Complaint, Sergeant Deckard was an employee of the North Charleston Police Department acting in his capacity as a detective. Therefore, Sergeant Deckard is not a proper defendant and should be dismissed from this action.

Wherefore, for the foregoing reasons, the Complaint should be dismissed, and in the alternative and at the very least, Sergeant Deckard should be dismissed from this suit.

Respectfully moved,



Sandra J. Senn
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
Sandy@sennlegal.com
Attorney for the Defendants

March 27, 2015
Charleston, South Carolina