

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

MOSI BUNDU, ET AL,)
)
 PLAINTIFF(S),)
)
 -VS-)
)
 RICKY CHASTAIN, ET AL.,)
)
 DEFENDANTS.)
 _____)

CASE NO.: 2017-CP-30-00008

TRANSCRIPT OF RECORD

JUNE 1, 2017
LAURENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF(S):

NO APPEARANCE BY PRO SE PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S):

RUSSELL W. HARTER, JR., ESQUIRE
JAMES D. JOLLY, JR., ESQUIRE

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FEB 28 2018

SC Court of Appeals

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

(NO EXHIBITS WERE INTRODUCED DURING THIS HEARING.)

1 THE COURT: Yes, sir, Mr. Jolly.

2 MR. JOLLY: My motion is not dependant in any way on
3 facts of the case, it's purely on the pleadings. However,
4 I'll be glad to give the Court a little bit of a factual
5 background just so you know the incident this matter arose
6 from.

7 On January 5, 2015 the Laurens City Police Department
8 received what is basically known as a hang-up call from this
9 street, Mock Street, in the city of Laurens. They had
10 police officers respond. When they got there, as soon as
11 they got out of their car, they heard a gunshot. This was
12 not the first time that they had been out to this street on
13 these hang-up calls before, so of course they took defensive
14 positions. They were around the 200 Mock Street area and
15 they saw an individual run in front of a house that was at
16 206 Mock Street. At some point they lost sight of him and
17 after a little while elapsed they started searching for him
18 and also going to some neighbor's doors where they saw a
19 light on inside.

20 They went to the house of 208 Mock Street, and as they
21 went up to the house a gentleman came out and he wanted to
22 know what was going on. They asked him if he heard a
23 gunshot and he said he did. They said, "Did you hear the
24 direction it came from?" and he pointed to -- I think it was
25 his left -- which was 206 Mock Street. That was the only

1 house on the street that the outside lights were on. They
2 saw an individual come out the front door on the porch and
3 go back in the house. So they went to 206 Mock Street,
4 knocked on the door, and Mr. Watts came out onto the porch.

5 He then -- they asked him if anybody else was in the
6 house. He said his girlfriend and he said, "Go on in the
7 house." Again, it's not dependant -- my motion is not
8 dependant on this, but I will represent to the Court that I
9 have heard the audio and I have a video of that, by the way,
10 and he clearly says, "Go on in the house." They went in.
11 They talked to the girlfriend. They observed around the
12 house -- it was a small house. They went back out on the
13 porch. They talked to Mr. Watts, and they left. That was
14 the extent of this situation.

15 Mr. Bundu, evidently, is the tenant at the house. Mr.
16 Watts was his nephew. Mr. Bundu was not on the scene. Mr.
17 Watts was staying at the house, obviously, with his
18 girlfriend. Following that, this lawsuit was filed by both
19 Mr. Bundu and Mr. Watts. Oh, and incidentally, Judge, to my
20 knowledge I have no information that anybody from the
21 Sheriff's Department was on the porch or on the house. They
22 might have responded backup, but on behalf of the City I
23 would tell you that it was city officers that went in the
24 house.

25 THE COURT: I've read the pro se complaint that was

1 filed here. I'm really still not quite sure what cause of
2 action they're alleging. I'll read it broadly and assume
3 that it's some sort of cause of action for trespass. To the
4 extent that I can even read that into it.

5 MR. JOLLY: Yes, sir.

6 THE COURT: I assume that the crux of your position is
7 that these were officers acting in good faith and if there
8 is any liability it would be on Mr. Harter's client, the
9 Sheriff's Department and Mr. Chastain, as opposed to any
10 individual officers in their individual capacity. Am I kind
11 of hitting the nail on the head there? And that they
12 basically didn't plead anything that looks anywhere close to
13 an actual cause of action.

14 MR. JOLLY: Well, it's close. Although we don't point
15 the finger at the Sheriff's Department, because as I said,
16 to my knowledge they never -- I don't even know if they went
17 in his yard. I know they were not in the house or on the
18 porch with us. Our position, Judge, is under the Torte
19 Claims Act all three officers have personal immunity. Mr.
20 Bundu and Mr. Watts sued them personally, not the Town of
21 Laurens. There are no allegations in the complaint of any
22 of the exceptions to personal immunity. I've listed those
23 out in my brief, but there are absolutely no allegations
24 that -- and there were no allegations that they were acting
25 outside of the course and scope of their employment. So the

1 only proper City defendant would have been the town, and
2 they did not sue the town. They sued them individually. So
3 my motion is under 12(b)(6) to dismiss all three of my
4 clients from the lawsuit. Thank you.

5 THE COURT: Mr. Harter?

6 MR. HARTER: Thank you, Judge. Also, we notified Mr.
7 Bundu and Mr. Watts of this hearing. Here is the filed copy
8 of my letter, Judge, where we let them know about this
9 hearing today. As I read the complaint I tried to
10 extrapolate what kind of claim it was. I was a little bit
11 confused too. It clearly looks like it was a State law
12 claim only and there are no individual officers of the
13 Sheriff's Office named. To the extent there's reference to
14 Laurens SC -- if he's referring to the County of Laurens
15 there would be no liability for the County of Laurens
16 because the Sheriff is responsible for any acts or omissions
17 of its officers, and not the county.

18 Judge, my motion is, again, not related to the facts of
19 the case at all. If you look at this file and find
20 something otherwise, I want to withdraw the motion. But the
21 papers and the information, the pleadings that we got served
22 with, or that I have, it's a proof of service that is signed
23 by, it looks like Mr. Bundu, where he says that the summons
24 and complaint were served. The other paperwork I have is a
25 civil action cover sheet. And then I have the pro se quote

1 summons and complaint of Mr. Bundu. Now, Your Honor, if
2 there's something else in The Court's file on that let me
3 know. I don't want to pursue, even if Mr. Bundu and Mr.
4 Watts are not here, I don't want to pursue an argument if
5 I'm not correct.

6 THE COURT: I don't see any proof of service in the
7 file. I wasn't even going to bring that up.

8 MR. HARTER: I do have it, and I'm really not raising
9 that. Judge, my motion is purely on the ground that -- and
10 I know as technical as it may sound, there was no summons.
11 No real summons that was ever served in connection with this
12 case. Rule 4 says that there has to be a summons that is
13 served with the complaint. A summons is exactly what -- you
14 know what a summons is. A summons is not the civil action
15 cover sheet. That's the document that must be served with
16 the complaint to initiate the action and give the Court
17 jurisdiction. As technical as it sounds -- as picky as it
18 may sound, I submit that is a fatal flaw to the claim of Mr.
19 Watts and Mr. Bundu.

20 Again, if I've got paperwork that's not complete and in
21 the file, and there is an actual summons, then I want to
22 withdraw this motion. I did not have anything like that. I
23 appreciate that Mr. Bundu and Mr. Watts are both pro se
24 litigants and they may not know what a summons is, but that
25 is the risk. That doesn't change the facts. Under Rule 4

1 this action should be dismissed because there was no -- it
2 was never properly initiated or instituted and there's no
3 summons that I am aware of.

4 THE COURT: I definitely tend to agree with you,
5 gentlemen. I will be dismissing this under Rule 12(b)(6) and
6 under Rule 4. So the case is dismissed. I've done a Form 4
7 order if you feel the need or if you gentlemen want to
8 consult with each other and send me something formal that's
9 fine. I've signed off on the Form 4 and that should take
10 care of it unless y'all feel the need.

11 MR. HARTER: A Form 4 is fine with me, Judge.

12 MR. JOLLY: Thank you, Judge. I will also note that we
13 were not served with a summons either. So I think Mr.
14 Harter's file is the same as mine.

15 THE COURT: I've noted it as far as the dismissal is
16 concerned I've noted the grounds for reason to dismiss.

17 MR. JOLLY: Thank you, Judge.

18 MR. HARDER: Thank you.

19 (Whereupon, the hearing concluded at 12:53 p.m.)

20 - - - END OF REQUESTED TRANSCRIPT OF RECORD - - -

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3 Certificate of Reporter

4 I, the undersigned, Tara T. Scott, Official Court
5 Reporter for the Eighth Judicial Circuit of the State of
6 South Carolina, do hereby certify that the foregoing is a
7 true, accurate, and complete transcript of record of all the
8 proceedings had and evidence introduced in the trial/hearing
9 of the captioned case, relative to appeal, in the Circuit
10 Court for Laurens County, South Carolina, on the 1st day of
11 June, 2017.

12 I do further certify that I am neither of kin, counsel,
13 nor interest to any party hereto.

14
15 Tara T. Scott

16 Tara T. Scott, CVR
17 Circuit Court Reporter
18 January 28, 2018
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