

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No.: 2018-CP-40-01224

Kevin L. Paul,

Plaintiff,

v.

Walmart Stores East, L.P.; Wal-Mart Supercenter,
d/b/a Wal-Mart Store #1339; and Richland
County Sheriff's Office,

Defendants.

ORDER

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SC Court of Appeals

This matter comes before this Court by way of two motions on behalf of the Defendant Richland County Sheriff's Office. The first is a motion for summary judgment and the second a motion for a protective order. A hearing on these motions was held on January 30, 2020 in Columbia, South Carolina. Present at the time and presenting oral arguments were counsel for the Plaintiff, Patrick McLaughlin, Esq., and for this Defendant, Robert D. Garfield, Esq. For the reasons discussed herein, this Court grants this Defendant's motions.

I. FACTUAL BACKGROUND

Taking the facts in a light most favorable to Plaintiff, on March 29, 2017, a Wal-Mart associate reported a suspected shoplifter to the Richland County Sheriff's Department ("RCSD"). RCSD Deputy Melvin Brown was dispatched to the store on Two Notch Road in Richland County, South Carolina.

Deputy Brown met the Wal-Mart Loss Prevention Officer ("LPO") regarding the shoplifting at which time the LPO stated that he that he observed the suspect passing all points of sale while in possession of unpaid merchandise, which included two televisions. The shoplifter was stopped outside the store by Wal-Mart employees and identified himself as Plaintiff Kevin Paul. In the absence of identification on his person, Deputy Brown obtained suspect's name and date of birth and made an inquiry through National Crime Information Center (NCIC). Brown contacted the RCSD desk sergeant to ascertain whether "Kevin Paul," by and through information provided by the shoplifter, had any previous charges but the desk sergeant stated that he had none. The shoplifter was placed under arrest and transported to the Alvin S. Glenn Detention Center ("ASGDC").

Plaintiff brought a tort claims against RCSD for the causes of action of gross negligence defamation, and malicious prosecution.

II. LEGAL STANDARD

Summary judgment is appropriate “if 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 judgment as a matter of law.” S.C.R.C.P. 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (Ct. App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct. App. 1991), (citations omitted), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

III. ANALYSIS / TORT CLAIMS ACT

A. Generally: South Carolina Tort Claims Act

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act (“SCTCA”) “which reinstated sovereign immunity for the State and its political subdivisions with certain exceptions.” *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). “The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions.” *Id.* The SCTCA “removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act.” *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

B. Immunity under S.C. Code Ann. §15-78-60(20)

S.C. Code Ann. §15-78-60(20) provides that governmental entities are not liable for a loss resulting from the “an act or omission of a person other than an employee including but not limited to *the criminal actions of third persons.*” (Emphasis added)

Taking the facts in a light most favorable to Plaintiff, any damages sustained in this matter arose as a result of the criminal activities of his brother, Mack Brown. As Plaintiff testified in his October 16, 2018 deposition:

Q: The information that the merchant had at the time of your brother's arrest, he provided the following information according to this form, Kevin Lee Paul. Is that your name?

A: Yes, sir.

Q: All the information that I have that was reported to [Deputy Brown] at the scene, all of that is correct about you?

A: Yes, sir.

See, Pl. depo., p. 54.

Q: That's pretty slick, wasn't it?

A: Yes, sir. You got to understand, he [Mack Brown] is a criminal. He knows. He takes in stuff. He knows how to get around stuff.

Id., pp. 57-58.

Q: In fact, he didn't get any information wrong. Everything he got was correct that he provided the authorities, didn't he, about you?

A: Yes.

Q: At the scene?

A: Yes, sir.

Q: You weren't there to refute it obviously?

A: No, sir.

Id., p. 58.

Q: In your estimation, anybody who would've been there listening to this would have assumed him standing there would have been Kevin Paul?

A: Oh, yes, sir. That part, yes, sir.

Id., p. 59.

Q: You were a victim of identity fraud, identity theft, correct?

A: Yes, sir. You're right about that.

Q: There was identity fraud and theft.

A: Yes, sir.

Q: That your brother committed on you?

A: Yes, sir.

Id., p. 114.

Based on the foregoing testimony, “but for” Plaintiff’s brother’s shoplifting and then giving false arrest to the police, Plaintiff would not have suffered the damages as alleged in the Complaint. To this extent, Plaintiff’s alleged loss arose from the criminal actions of the third party Mack Brown and therefore, is fully barred by the SCTCA.¹

C. Immunity under S.C. Code Ann. §15-78-60(1)

Moreover, pursuant to the SCTCA, the Sheriff is afforded immunity for damages relating to an “administrative action or inaction of a legislative, judicial, or quasi-judicial nature.”

Following these events, an arrest warrant was issued against Plaintiff for shoplifting. On May 1, 2017, both RCSD officials notified the Pontiac Magistrate Judge’s Office that Plaintiff was not the individual for whom the warrant was intended. This charge was subsequently dismissed by the Pontiac Magistrate on or about June 26, 2017. From the date of the March 29, 2017 shoplifting until the dismissal of June 26, 2017, RCSD employees conferred with the (1) Sumter County Sheriff’s Office; (2) Pontiac Magistrate’s Office; (3) Plaintiff, and (4) Plaintiff’s counsel in an effort to clarify the inaccurate record. After the June 26, 2017 dismissal, the matter was expunged by way of an Order for Destruction of Arrest Records issued by Pontiac Magistrate Judge George A. Surles on July 31, 2017.

This Court, when considering the relevant facts in light of the administrative tasks undertaken by this Defendant and the magistrate court, views Plaintiff’s deposition testimony as instructive:

Q: With respect to this lawsuit, March 29, 2017, the arrest of your brother -- as a result of all of these events -- you were never arrested, correct?

A: [] Yes, sir.

Q: You were never taken into custody, correct?

¹ That as to Plaintiff’s defamation claim, this Defendant asserts the affirmative defense of conditional or qualified privilege. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if: (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). When the occasion gives rise to a qualified privilege, a prima facie presumption to rebut the inference of malice exists, and the plaintiff has the burden to show either actual malice *or* that the scope of the privilege has been exceeded. *See, Kunst v. Loree*, 424 S.C. 24, 43, 817 S.E.2d 295, 304-05 (Ct. App. 2018). This Court finds that it was the false information furnished by Plaintiff’s brother to Wal-Mart and law enforcement employees which led to its inclusion on charging documents. As such, this Defendant is entitled to a qualified privilege. Since Plaintiff is not alleging actual malice on the part of this Defendant’s representatives, Plaintiff’s cause of action for defamation fails.

A: Yes, sir.

Q: You were never handcuffed, correct?

A: Yes, sir.

Q: You were never transported to the detention center, correct?

A: Yes, sir.

Q: You were never booked into the detention center, correct?

A: Yes, sir.

Q: You were never actually detained at all, were you?

A: No, sir.

Q: [] You never went to bond court or had to post a bond here, is that right?

A: Yes, sir.

See, Pl. depo., pp. 125-126.

Q: [] You never appeared in court?

A: No, sir.

Q: [] Because it was continued?

A: Yes, sir.

Q: So they could clear up the confusion?

A: Yes, sir.

Q: Investigator Truluck had asked the court to continue your case so they could clear up the confusion?

A: Yes, sir, that's true.

Id., pp. 128-129.

Q: [] You never met anyone from the Richland County Sheriff's Department until you met with Investigator Holdorf?

A: Correct.

Q: [] As a result of sitting down with Investigator Holdorf and your lawyer, the confusion was cleared up from the Richland County Sheriff's Department's standpoint?

A: Yes, sir.

Q: Within 24 hours of sitting down with Investigator Holdorf, Investigator Holdorf was contacting the clerk and telling them to clear up the confusion?

A: Yes, sir.

Q: You never went to court?

A: No, sir.

Id., pp. 127-128.

Taking the facts in a light most favorable to Plaintiff, roughly three months transpired from the date of the shoplifting until the dismissal of the charge. His charge was thereafter expunged one month later. Plaintiff argues that it was the inaction or negligence of RCSD personnel to adequately and swiftly 'clear up the confusion' with the Magistrate's Court and effectuate a dismissal of the charge.² Even if there had been a delay in this regard, the nature and timing of RCSD employees' actions simply constitute immune functions under the SCTCA. Here, the record reflects that the RCSD, at a minimum, had communications with the Sumter County Sheriff's Department (which possessed background information of Plaintiff and his brother); the Pontiac Magistrate's Court (the court with jurisdiction over Plaintiff and the shoplifting charge); as well as Plaintiff and his attorney, with whom RCSD officials personally met for purposes of correcting or curing the administrative errors. Consequently, this Court finds that these administrative actions (or any such alleged inactions) on the part of this Defendant's employees were of a judicial or quasi-judicial nature and as a result, the Defendant RCSD is entitled to absolute sovereign immunity.³

² This Court finds that Plaintiff's theory of liability in this respect amounts to a "negligent investigation," for which no cognizable cause of action exists. In *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997), the South Carolina Supreme Court ruled that a sheriff and his deputies were entitled to judgment as a matter of law on a negligence action arising out of the execution of an arrest warrant. The Supreme Court concluded that "the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them." 484 S.E.2d at 592. The Court explained that "police owe a duty to the public at large and not to any individual." *Id.* Consequently, *Wyatt* demonstrates that South Carolina does not recognize a cause of action for a negligent performance of a criminal investigation.

³ Plaintiff also alleges a cause of action for malicious prosecution. To state a malicious prosecution claim, he must prove: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in

MOTION FOR PROTECTIVE ORDER

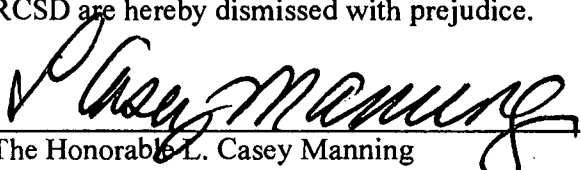
On October 22, 2019, Plaintiff's counsel conducted the discovery deposition of RCSD Investigator Travis Holdorf, a fact witness and employed by this Defendant for over twenty years. In light of Plaintiff's counsel's examination of said deponent on a specified topic, this Defendant sought a protective order based upon examination that was made in bad faith, and in such manner so as to unreasonably annoy, embarrass, and harass Holdorf in contravention of the requisite rules of court.

The subject matter at issue was Plaintiff's inquiry regarding Holdorf's home address information. At the time of the deposition, defense counsel offered to furnish this personal and sensitive information under the terms and conditions of this Court's Confidential Order dated July 10, 2019. Counsel for Plaintiff declined the offer and asserted that he was entitled to this information in the discovery deposition and that defense counsel improperly instructed the deponent not to respond to the question. Since this Court is granting the Defendant RCSD's motion for summary judgment herein, this motion is deemed moot. However, this Court denies this Defendant's request for the awarding of costs and sanctions in this regard.

CONCLUSION

Based upon the foregoing reasons, **IT IS THEREFORE ORDERED** that the Defendant's RCSD's motion for summary judgment and motion for a protective order are each **GRANTED** and that the causes of action against the Defendant RCSD are hereby dismissed with prejudice.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Circuit Court Judge, Fifth Judicial Circuit

Columbia, South Carolina
February 24, 2020

instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damages. *See, McBride v. School District of Greenville County*, 698 S.E.2d 845, 855 (2010). This Court finds that probable cause existed to believe, based on the false information furnished by his brother, that the shoplifting was carried out by Plaintiff. Since Plaintiff cannot establish the fifth criterion regarding probable cause, Plaintiff's action for malicious prosecution fails. Moreover, pursuant to the SCTCA, the Sheriff is afforded immunity for malicious prosecution. S.C. Code Ann. §15-78-60(23) provides absolute immunity for the "institution or prosecution of any judicial or administrative proceeding." In *McCoy v. City of Columbia*, 929 F.Supp.2d 541 (D.S.C. 2013), Judge Joseph F. Anderson, Jr., applying South Carolina law to a state law claim, ruled that a malicious prosecution claim was barred by Section 15-78-60(23).