THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
J.C. NICHOLSON, JR., Circuit Court Judge

Case No. 2016-CP-10-03542
Appellate Case No.: 2017-002532

Bryan Okeith Seabrook, Appellant,

v.

Town of Mount Pleasant and Rae Wooten, in her Official Capacity as Coroner of Charleston County, Defendants,

Of which Town of Mount Pleasant is the Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. By not allowing the question of probable cause to be submitted to the jury, did the trial court err by granting summary judgment for the respondent, where the arrest warrant omitted materially relevant facts and contained false and misleading information?

II. Did the trial court err by granting summary judgment for the respondent on the grounds that the statute of limitations had run as to all claims?

III. Did the trial court err by granting summary judgment for the respondent on the grounds that it is immune to suit under the South Carolina Tort Claims Act?

STATEMENT OF THE CASE

On May 9, 2013, an arrest warrant was issued for Bryan Seabrook (hereinafter, "Appellant") for Homicide by Child Abuse following the death of Elijah Washington (hereinafter, "Decedent"). (R. p. 391). Appellant was arrested and transported to the Al Cannon Detention Center where he remained on a No Bond until he was released on a reduced surety bond of $75,000 on October 25, 2014, a total of 535 days of detention. (R. p. 392). Upon review of the facts by the Ninth Circuit Solicitor's Office, the charge against Appellant was dismissed on September 11, 2015. (R. pp. 393-396).

Appellant filed his Complaint on July 8, 2016 and Amended Complaint on September 8, 2016, with service being effectuated July 11, 2016 and September 15, 2016, respectively. (R. pp. 155-180). The appellant brought claims of False Arrest, Malicious Prosecution and Negligence/Gross Negligence pursuant to the South Carolina Tort Claims Act (hereinafter, "SCTCA") against the Town of Mt. Pleasant (hereinafter, "Respondent") based on the acts and omissions of Andrew DeCamp and Justin Hembree of the Town of Mt. Pleasant Police Department in the arrest and prosecution of the appellant on the charge of Homicide by Child Abuse, and claims of Negligence/Gross Negligence, Malicious Prosecution and Abuse of Process pursuant to the South Carolina Tort Claims Act against Rae Wooten, in her official

capacity as Coroner of Charleston County, for instituting an inquest to determine the manner and cause of death of decedent with an ulterior purpose (R. pp. 155-180).[1] Respondent answered Appellant's Amended Complaint on October 17, 2017. (R. pp. 181-188).

On May 1, 2017, Respondent filed a Motion for Summary Judgment (R. pp. 189-192). Appellant and Respondent both filed a Memorandum of Law on September 18, 2017. (R. pp. 193-412). A hearing was held on September 20, 2017 (R. pp. 114-146) and the court granted summary judgment in favor of the respondent as to all Appellant's causes of action which, the appellant is now appealing to the South Carolina Court of Appeals. (R. pp. 3-16). Appellant filed his Notice of Intent to Appeal on December 11. 2017 (R. pp. 415-430) and served it on the respondent on December 11, 2017. (R. p. 431).

The appellant contends that the trial court erred by not allowing the question of probable cause to be submitted to the jury, the trial court erred by granting summary judgment for the respondent, where the arrest warrant omitted materially relevant facts and contained false and misleading information; by determining that the statute of limitations had run as to all the appellants claims; by granting summary judgment for the respondent on the grounds that it is immune to suit under the South Carolina Tort Claims Act.

[1] The Court granted Defendant Wooten's motion for summary judgment by order filed on October 11, 2017, to which Appellant elected not to appeal.

STATEMENT OF FACTS

Decedent was born to Brittney Hartwell (hereinafter "Mother") and Christopher Washington (hereinafter "Father") on February 11, 2011. Upon the birth of decedent, it was noted that mother had not presented for any pre-natal care of decedent during the pregnancy period. (R. pp. 231-233). Two days later, the decedent was removed from mother and custody was given to his paternal grandmother, Dorothy Williams (hereinafter "Williams"), and soon thereafter, the father's parental rights were terminated. (R. p. 234). Prior to decedent's birth, the mother's other two children, a daughter born August 11, 2008 (hereinafter "oldest child") and a daughter born March 13, 2010 (hereinafter "middle child"), had previously been removed from the mother and physical custody was given to their maternal grandmother, Marty Dixon (hereinafter "grandmother"). (R. p. 235, lines 3-4). Grandmother's boyfriend, Appellant, moved in with grandmother in March 2012. (R. p. 235, lines 3-4).

On December 13, 2012, DSS gave physical custody of decedent back to mother, who moved into grandmother's home along with Appellant, oldest child, and middle child. (R. p. 235, lines 5-8). Appellant noticed decedent had bruising on his face and chest, was vomiting often, was running a fever, and always lethargic. (R. p. 235, lines 6-8). A week later, while Appellant and grandmother were at work, the three (3) minor children were left in the sole custody and care of mother. (R. p. 235, lines 9-10). Mother transported decedent to Nason Medical Center where he presented with a broken left leg, which according to Dr. Jeffrey Misko, appeared to be intentional. (R. p. 403, lines 2-23, R. p. 235, lines 9-12).

A safety plan was put in place by DSS wherein mother was required to move out of grandmother's home and grandmother became custodian of the minor children. (R. p. 238).

Thereafter, on March 11, 2013, DSS allowed mother to return to grandmother's home after completing a parenting class. (R. p. 238, R. p. 235, lines 15-16).

On March 18, 2013, decedent was under the supervision and care of numerous individuals, including his mother, grandmother, Appellant, and others. (R. pp. 235-237). The only time the decedent was in the sole custody and care of Appellant was for the 90 minutes before decedent became unresponsive. (R. p. 236). At approximately 6:20 p.m., Appellant rushed into the East Cooper Hospital with decedent, who was unresponsive. (R. p. 236, lines 49-55). He was quickly taken into the Emergency Room by a nurse where he received approximately twenty-nine (29) minutes of CPR before being pronounced dead at 6:49 p.m. (R. pp. 239-243). The ER assessment noted numerous bruises to his body and bleeding into his rectum, blood pooling, left leg injury, and prior trauma to his abdomen. (R. pp. 239-243).

The Town of Mount Pleasant Police Department was dispatched to East Cooper Hospital and immediately identified Appellant as contributing to the decedent's death by committing physical and sexual abuse against the decedent. (R. pp. 244-247).

Upon the child's death, the court appointed a Guardian-ad-Litem for the decedent in the ongoing DSS proceeding quit without notice, mainly due to her frustration with DSS and their handling of this matter, having recalled that the last time she saw the decedent was at mother's house, and while he was fine emotionally, he was like a totally different child and "I knew he shouldn't have been there". (R. p. 256, lines 7-21). In short, the investigation revealed that he was both abused and neglected from birth to death while in the custody of his mother and Williams. (R. p. 256, lines 9-16).

On March 20, 2013, March 25, 2013, and April 3, 2013, oldest child and middle child were interviewed at the Lowcountry Children's Center (hereinafter "LCC") by Don Elsey, Ed. D.

Older child, age four (4), stated "Elijah got popped by Bryan on his booty" and "was able to demonstrate with an open hand" that "the pop was on the bottom." (R. pp. 270-275). The age of older child limited her ability to respond to Dr. Elsey's questions; it was unknown as to whether the child could respond to trauma specific questions; unknown as to whether the child was able to follow directions since she required redirection at times, and most importantly, unknown as to whether the child was able to order events sequentially. (R. pp. 270-275).

Middle child, having just turned three (3) years old, was deemed by Dr. Elsey to have given a "problematic non-disclosure", and while she was able to follow directives, was unable to order events sequentially, unable to demonstrate any abuse, unable to present as an accurate reporter, and unaware of the death of her younger brother. (R. pp. 270-275). Both children stated that they had been told by Aunt Leisa that what happened to Elijah was a secret, and in a different context, by Appellant. (R. pp. 270-275). In short, the girls gave different information during each interview and could not give any time frame due to their own psychological developmental level. (R. pp. 270-275). Specifically, as stated by Dr. Elsey at the Coroner's Inquest on July 13, 2016, "I think that a lot of times when we interview young children, people want to know tell me when it happened, the time frame. Kids can't do that. Developmentally, a child may say it happened two years ago or it happened ten years from now, which makes no sense." (R. pp. 270-275, R. p. 285, lines 5-13).

On March 20, 2013, an autopsy of the decedent was performed at the request of Coroner Rae Wooten, who attended alongside Officer Andrew DeCamp, Officer Dan Eckhart, Dr. Cythia A. Schandl (hereinafter "Schandl"), Dr. Meredith H. Frame, Mr. Raymond Edwards, Ms. Eowyn Corcrain, and Charleston County Deputy Coroner Mr. Scott Ramsey. (R. pp. 244-247). DeCamp was advised that further testing and injury aging would need to be performed to determine an

exact cause of death, but the autopsy revealed that the decedent has undergone past physical trauma or traumas in the past weeks, which may have led to a mesentery laceration in the stomach, causing blood to hemorrhage down the abdomen and pool in the decedent's groin. (R. pp. 244-247). The decedent's liver had adhered to his diaphragm, which indicated past trauma. (R. pp. 244-247).

Later that same day, mother informed Officer DeCamp and Coroner Wooten at a joint meeting that the week prior to his death, decedent was complaining of stomach pain and that he threw up milk a couple minutes after consuming it. (R. pp. 244-247). Mother further advised that MUSC performed a blood test on decedent to test his ability for blood clotting out of concern for his constant bruising on March 6, 2013. (R. pp. 244-247).

On May 6, 2013, DeCamp and Hembree attended a meeting with Coroner Wooten and Dr. Schandl, who explained her findings illustrated in the autopsy report. (R. pp. 324-325, lines 23-9). According to DeCamp, Dr. Schandl described the cause of death as being acute blunt force trauma to the torso, and she defined medically acute as being "within twenty-four (24) hours, but in this case, she believed the trauma likely occurred within four (4) hours." (R. pp. 331-333, lines 16-14). DeCamp believed the "likely within four (4) hours" was given to them by Dr. Schandl to be used as an investigative tool to work with, but readily admits, "however, I don't think that within four (4) hours was set in stone. So therefore, I used the word acute, which was established as within twenty-four (24) hours." (R. pp. 333-334, lines 21-9).

The autopsy report itself simply defines the cause of death as, "blunt trauma to the torso" and does not reveal a time or place where the injury occurred. (R. pp. 351-356). In explaining her findings in the decedent's belly at the Coroner Inquest on July 12, 2016, Dr. Schandl testified that, "there were areas that made it look like it was quite acute, which to us means that there

were no cells coming to start to clean up. We put that at around *six (6)* hours from when that starts to happen. And then there were also findings in other areas that suggested 24 to 26 hours, maybe even longer of course, up to those more chronic changes that were scarring that could be weeks or even months old. So that was the findings in the belly." (R. p. 370, lines 7-16). Dr. Schandl was asked to clarify why she chose to list "blunt trauma to the torso" as the cause of death, and specifically, does she consider "blunt trauma" to be a one-time thing or multiple things, to which she replied, "That's a very good question, and that's why I worded it like that, because one could say *acute* blunt trauma. That would mean, well, it looks like something happened, and something happened like if you were in a car crash. In this case, since there are many different injuries and they seem to be happening over time, I lumped it. It's a lump." (R. pp. 389, lines 12-24).

On May 9, 2013, Arrest Warrant 2013A1020900106 was drafted for the arrest of Appellant for the crime of Homicide by Child Abuse by Officer DeCamp, who presented to the home of Magistrate J. Lawrence Duffy for signature. (R. p. 391). DeCamp was unable to recall whether Judge Duffy asked him any specific questions regarding the facts as stated in the arrest warrant, nor was DeCamp able to recall supplementing the facts giving rise to probable cause included in the arrest warrant through any oral statements. (R. pp. 310-311, lines 23-1, R. p. 311, lines 23-24). More specifically, DeCamp does not recall informing Judge Duffy that the "eyewitnesses" referred to in the arrest warrant were ages four (4) and three (3), nor does he recall informing Judge Duffy that the medical term "acute" meant within twenty-four (24) hours. (R. p. 334, lines 10-14).

That same afternoon, a traffic stop was made on a dark green Honda Civic driven by Appellant and he was placed under arrest without incident. (R. pp. 244-247). Appellant was

taken to the Town of Mount Pleasant Police Department wherein he invoked his right to counsel on two separate occasions. (R. pp. 235-237). Appellant was transported to the Al Cannon Detention Center where he remained on a No Bond from May 9, 2013 until he was released on a reduced bond of $75,000 surety on October 25, 2014, a total of 535 days of detention. (R. p. 392).

Upon review of the facts by the Ninth Circuit Solicitor's Office, it became clear that the Court would direct a verdict for the appellant as a matter of law, thus the charge against Appellant was dismissed on September 11, 2015. (R. pp. 393-396).

As outlined above, this appeal follows an order granting summary judgment to Respondent on Appellant's claims of false arrest, malicious prosecution, and gross negligence against Respondent.

ARGUMENT

Appellate review of the trial court's granting of a motion for summary judgment is *de novo*. In a *de novo* review, an appellate court may review the cause in its entirety without any influence from the decision of the trial court. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Const. art. V, §§ 5 and 9, S.C. Code Ann. § 14-3-320 and -330, and S.C. Code Ann § 14-8-200). Summary judgment is inappropriate when the evidence raises a genuine issue of material fact, that is, "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Rule 56(c), SCRCP; *Tupper v. Dorchester County,* 326 S.C. 318, 487 S.E.2d 187 (1997).

Therefore, the South Carolina Court of Appeals should reverse the granting of Respondent Town of Mount Pleasant's Motion for summary judgment.

I. By not allowing the question of probable cause to be submitted to the jury, the trial court erred by granting summary judgment for the

respondent, where the arrest warrant omitted materially relevant facts and contained false and misleading information.

As to the first argument of the appellant, the existence of probable cause, the false arrest claim has only one disputed element, whether the restraint was lawful. In South Carolina, the issue of probable cause is a question of fact, not of law, and ordinarily one for the jury. *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990).

The lawfulness of the arrest is determined by the existence of probable cause. In *Wortman v. Spartanburg,* 310 S.C. 1, 425 S.E. 2d 18 (1992) the court held:

> "The fundamental question in determining whether an arrest is lawful is whether there was "probable cause" to make the arrest. *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990). Probable cause is defined as a good-faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. *Gathers v. Harris Teeter Supermarket*, 282 S.C. 220, 317 S.E.2d 748 (Ct.App. 1984). In South Carolina, the issue of probable cause is a question of fact and ordinarily one for the jury. *Jones*, 301 S.C. at 65, 389 S.E.2d at 663."

Appellant alleges the warrant lacked probable cause based on its conclusory allegations, the presentation of materially false and misleading information and the withholding of materially relevant information. Materially false information or omissions of information in the officer's possession can negate probable cause. *Franks v. Delaware*, 428 US 154 (1978); *Miller v. Prince Georges County*, 475 F.3d 621 (4th Cir. 2007); *Smith v. Reddy.*101 F3d 351 (4th Cir 1996).

South Carolina has adopted this line of reasoning in *State v. Davis*. *State v. Davis,* 354 S.C. 348, 359-60, 580 S.E.2d 778, 784 (Ct.App.2003). To determine the materiality of the false allegations, a court must "excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether or not the "corrected" warrant affidavit would establish probable cause. If the "corrected" warrant affidavit establishes probable cause, no civil liability lies against the officer." *Miller* at 628 (citations omitted).

Applying the law to the facts of this case, probable cause must be discerned from the four corners of the warrant affidavit, which read:

> "ON MARCH 19TH, 2013 AT APPROXIMATELY 1902 HOURS, CHARLESTON COUNTY CONSOLIDATED DISPATCH WAS CONTACTED BY EAST COOPER MEDICAL CENTER STAFF AND REPORTED A SUSPICIOUS DEATH OF A TODDLER, ELIJAH WASHINGTON (DOB: 2/11/11). THE UNRESPONSIVE VICTIM WAS TRANSPORTED BY THE DEFENDANT FROM 1175 MATHIS FERRY ROAD, APARTMENT C6 TO EAST COOPER MEDICAL CENTER, BOTH SITES LOCATED IN THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA, IN CHARLESTON COUNTY. THROUGH INVESTIGATION, IT WAS LEARNED THAT THE VICTIM WAS IN THE CUSODIAL CARE OF THE DEFENDANT ON MARCH 19, 2013, AND THAT THE VICTIM WAS ENTRUSTED TO THE SOLE CUSTODIAL CARE OF THE DEFENDANT ON MARCH 19, 2013 FROM APPROXIMATELY 1600 HOURS TO THE TIME OF THE VICTIM'S HOSPITAL ADMITTANCE. THAT AT THE TIME OF THE HOSPITAL ADMITTANCE, THE VICTIM WAS IN FULL CARDIO-PULMONARY ARREST. THAT AUTOPSY RESULTS INDICATE THAT THE VICTIM SUSTAINED FATAL ACUTE ABDOMINAL INJURIES, RESULTING FROM BLUNT FORCE TRAUMA. THAT EYEWITNESSES REPORTED THAT THE DEFENDANT STRUCK THE VICTIM SHORTLY BEFORE THE VICTIM BECAME UNRESPONSIVE. THAT THE DEFENDANT DID CAUSE THE DEATH OF THE TWO-YEAR-OLD VICTIM WHILE COMMITTING CHILD ABUSE, AND THE DEATH OCCURRED UNDER CIRCUMSTANCES MANIFESTING AN EXTREME INDIFFERENCE TO HUMAN LIFE."

Of the seven (7) sentences included in the Affidavit, the first, second and fourth are not in dispute (with the exception that Appellant is referred to as "defendant" in sentence two (2), which implicates Appellant), however, viewing the remaining facts included in the affidavit line by line demonstrates the lack of probable cause, or in the very least, creates a question of fact for the jury to decide.

In the third sentence, Respondent conclusively asserts "that the victim was in the custodial care of the defendant on March 19, 2013, and that the victim was entrusted to the sole custodial care of the defendant on March 19, 2013 from approximately 1600 hours to the time of the victim's hospital admittance." As written, it implicates Appellant by naming him as

"defendant" and misleads the reader to believe Appellant was the *only* caretaker for the victim the entire day of March 19, 2013, and more specifically, for the final two and half hours before the decedent became unresponsive. An accurate statement would be, "that the victim was in the custodial care of at least three (3) adult caretakers on March 19, 2013, including the victim's mother, grandmother, and grandmother's boyfriend, and that the victim was entrusted to the sole custodial care of the grandmother's boyfriend from approximately 1630 hours to the time of the victim's hospital admittance." An accurate statement, as written above, properly informs the reader that there were other adults that could have contributed to the victim becoming unresponsive and is a more accurate timeline of events leading up to his death.

In the fifth sentence, Respondent includes false and misleading information, by asserting "that autopsy results indicate that the victim sustained fatal acute abdominal injuries, resulting from blunt force trauma." As written, it misleads the reader to believe that a fatal blow was delivered by someone shortly before the victim died. An accurate statement would be, "that the Autopsy Final Report written by Dr. Schandl listed the cause of death as blunt force trauma to the torso, with the date of injury being March 19, 2013 at an unknown place and time." An accurate and true statement, as written above, properly informs the reader as to the listed cause of death, the inability to determine where and at what time the injury occurred on the day of March 19, 2013, and provides the reader with exculpatory information related to Appellant.

In the sixth sentence, Respondent conclusively asserts, "that eyewitnesses reported that the defendant struck the victim shortly before the victim became unresponsive." As written, it provides the reader with materially false and misleading information and omits materially relevant information, misleading the reader to believe that there was more than one witness, all of whom were credible and competent witnesses who saw Appellant physically strike the

decedent causing him to become unresponsive. Further, coupled with the inaccurate and misleading statement regarding the autopsy results in the fifth sentence, it solely implicates Appellant by asserting that it is impossible for anyone other than Appellant to have caused the death of the child. An accurate statement would be, "that the victim's four (4) year old sister was interviewed by Don Elsey of the Lowcountry Children's Center and stated that the victim got popped by Mr. Seabrook on his bottom, but due to her age was unable to order events sequentially, and that the victim's three (3) year old sister was interviewed but was unable to demonstrate any abuse and did not present as an accurate reporter due to her age and inability to order events sequentially." An accurate statement, as written above, informs the reader of the age of the "eyewitnesses", accurately states what they witnessed and when, and does not conclusively implicate Appellant.

In the seventh and final statement, Respondent asserts that the above facts are accurate and true and concludes as a matter of law that all elements of homicide by child abuse have been met to arrest Appellant. Because this final statement is based on the preceding false and misleading information that omits materially relevant and exculpatory information, this final statement should not have been included on the warrant.

The facts revealed in the investigation of Respondent as written in correct form above, which include true and accurate and materially relevant information, by no means establishes probable cause to arrest Appellant for homicide by child abuse, and at a minimum, creates a jury question. Further, the true, accurate and materially relevant information that should have been included in the arrest warrant yields to more than one conclusion as it relates to the cause and manner of death of decedent. This is precisely why our courts have ruled that probable cause is a question of fact for a jury to decide, since if a jury concludes that the affiant's material was

reckless and that the omitted material would defeat probable cause, the warrant must be voided. *State v. Lynch*, 412 S.C. 156, 180, 771 S.E.2d 346, 358-59 (Ct. App. 2015).

In deciding whether the question of probable cause should go to the jury, *Franks v. Delaware* should also be addressed, which held that the Fourth and Fourteenth Amendments gave a defendant the right in certain circumstances to challenge the veracity of a warrant affidavit after the warrant had been issued and executed. *Franks v. Delaware*, 428 US 154 (1978). The *Franks* test consists of, (1) whether the omission was "designed to mislead, or . . . made in reckless disregard of whether it would mislead", and (2) whether "inclusion of the omitted material in the affidavit would defeat probable cause." *Id.*

State v. Missouri, which applies the *Franks* test established in *Franks v. Delaware*, involves both an act of commission and an act of omission by the officer who drafted an arrest warrant. *State v. Missouri*, 337 S.C. 548 (1999); *Franks v. Delaware*, 428 US 154 (1978). The Court found that the officer "at least acted recklessly in making the false statement and in omitting the exculpatory information." *Id.* at 555. Thus, the issue before the Court was whether excluding relevant information and using false and misleading information created a substantial issue upon which the magistrate could have found probable cause to issue the warrant. *Id.*

The Court held that the combination of the police officer's recklessness and his omission of critical facts polluted the affidavit to the extent that a magistrate could not have found that probable cause existed to issue the search warrant. *Id.* at 556. "We realize that police officers routinely leave out facts they believe are immaterial to the probable cause determination. Under *Franks*, our role is not to punish dishonest police officers but, rather, to ensure that a substantial basis exists to find probable cause. *Id.* The depth of the prevarication perpetrated by the officer undermines any legitimacy the affidavit might have possessed." Under these circumstances, the

Court invalidated the warrant because these facts created such a close call on the probable cause determination. *Id.* at 557.

Similarly, the respondent in the instant case at least acted recklessly in making the false and misleading statements and by omitting materially relevant information from the arrest warrant. The combination of Respondent's recklessness, to include the omission of materially relevant information and use of false and misleading information, would have prevented the magistrate from finding probable cause to issue an arrest warrant in the instant case, as was held in *State v. Missouri*. Per *Missouri* and the *Franks* test, the omission of information along with using false and misleading information, would undermine any remaining legitimacy the arrest warrant contained in the instant case, thus rendering the arrest warrant void of facts giving rise to establishing probable cause. In the very least, this issue of probable cause should be an issue of fact, not law, for the jury to decide, thus the trial court erred in granting Respondent's motion for summary judgment.

II. The trial court erred by determining that the statute of limitations had run as to all the Appellants claims.

The respondent asserts that the cause of action filed on July 8, 2016 for false arrest, malicious prosecution and gross negligence was filed outside the statute of limitations, presumably, on the basis that these claims arose when Appellant was arrested on May 9, 2013. SC Code § 15-78-110 reads, in part, that "any action brought pursuant to the SC Tort Claims Act is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered", thus the sole issue before the trial court was to determine the date of loss.

With regards to Appellant's cause of action of false arrest and gross negligence, while South Carolina courts do not appear to have addressed the issue directly, a common-sense

analysis of the facts of the instant case, coupled with the elements that must be proven to constitute a cause of action for these claims, make it clear that a cause of action for false arrest and gross negligence in applying for the arrest warrant in its current form does not arise until the appellant is no longer restrained. Restraint is paramount to each of the three (3) elements of false arrest, thus the date of loss is when the claimant is no longer restrained. In the instant case, Appellant was restrained from the day of his arrest on May 9, 2013 through October 25, 2014, which arguably, would be his earliest possible date of loss. Appellant filed his complaint on July 8, 2016 and amended his complaint on September 8, 2016, well within the two (2) year statute of limitations included in the SCTCA. Further, and much more plausible, is the assertion that his cause of action for false arrest didn't arise until the criminal charge for which he was restrained was dismissed on September 11, 2015, as he was still being restrained through conditions of his bond during the pendency of his criminal charge. The cause of action for false arrest and gross negligence was timely filed.

With regards to Appellant's cause of action for malicious prosecution, the two (2) year statute of limitations to bring an action pursuant to the SCTCA is two (2) years, beginning from the date when the appellant is acquitted or the prosecution is otherwise terminated, which in the instant case was September 11, 2015. Therefore, the claim for malicious prosecution is not barred because the complaint was filed, amended and served within one (1) year from when the appellant's charges were dismissed and is properly filed.

III. The trial court erred by granting summary judgment for the respondent on the grounds that it is immune to suit under the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act ("hereinafter SCTCA") waives sovereign immunity and permits certain government entities to be liable for torts. S.C. Code Ann. § 15-78-40. The

waiver of immunity contained in the SCTCA is subject to thirty-seven express exceptions. S.C. Code Ann. § 15-78-60. These exceptions to the waiver of immunity may be grouped roughly into three general categories: losses resulting from legislative and judicial acts or omissions; losses resulting from the exercise of discretion or the performance of or failure to perform discretionary acts; and losses resulting from specific acts. The burden of establishing an exception to the waiver of immunity or other limitation upon liability under the Act is upon the governmental entity asserting it as an affirmative defense.[2] The trial court erred in ruling that the Respondent is immune from suit by performing the discretionary act of applying for an arrest warrant and serving it upon Appellant.

"Police officers are not granted absolute immunity when they apply for arrest warrants." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 326, 566 S.E.2d 536, 542 (2002). The performance of discretionary duties does not give rise to immunity if the public official acted in a grossly negligent manner. *See Jackson v. South Carolina Dep't of Corr.*, 301 S.C.125, 390 S.E.2d 467 (Ct. App. 1989). Gross negligence can be defined as, the failure to exercise even the slightest care. *Hollins v. Richland County Sch. Dist. One,* 310 S.C. 486, 427 S.E.2d 654 (1993). In *Faile,* the court held that there was enough evidence to overcome the motion for summary judgment on this matter, and even if summary judgment were proper, immunity would not apply if there were gross negligence, which is a determination of fact to be made by the jury. *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002).

Likewise, in *Gist v. Berkeley County Sheriff's Dept.,* 336 S.C. 611, 521 S.E.2d 163 (S.C. App. 1999), the plaintiff was arrested pursuant to a warrant and sued under a theory of false arrest. The trial Court granted summary judgment to the Sheriff's Department because the magistrate issued a warrant for plaintiff's arrest. In reversing the lower court, the court of

[2] *Clark v. SC Dep't of Pub. Safety*, 353 S.C. 281 (Ct. App. 2002).

appeals found the plaintiff, who challenged probable cause for his arrest pursuant to a warrant, could do so under a theory of false arrest pursuant to the South Carolina Torts Claim Act (SCTCA).

In *Gist,* "[T]he trial court also held the Sheriff's Department could not be held liable for damages for false arrest because a magistrate issued a warrant for Gist's arrest. This holding is erroneous." *Id.* at 166. The court held, "[T]he sheriff's department liability did not arise from the execution enforcement or implementation of the magistrate's order. It arises from allegedly securing the warrant without probable cause. Therefore, the Sheriff's department is not shielded from liability by the arrest warrant" *Id.* at 166-167. The gravamen of the tort arose from "securing the warrant without probable cause" and the use of a warrant did not insulate the defendant from a claim of false arrest. The only issue is whether there was probable cause to arrest. If there was probable cause for the arrest, then a person was arrested pursuant to lawful authority and an action for false imprisonment cannot be maintained. *Accord Jones v. Columbia* 301 S.C. 62, 389 S.E. 2d 662 (1990) and *Wortman v. Spartanburg* 310 S.C. 1, 425 S.E. 2d 18 (1992).

In the instant case, the trial court incorrectly ruled that the respondent's actions of applying for an arrest warrant and serving said warrant on Appellant granted it absolute immunity from suit under the SCTCA. While the ministerial act certainly falls into an exception, it is subject to the gross negligence standard of § 15-78-60(25). Appellant asserts gross negligence pursuant to the SCTCA against the respondent not for the performance of a discretionary or ministerial act itself, but for exercising their duty in a grossly negligent manner by omitting relevant material and including false and misleading information in the affidavit to the arrest warrant, as thoroughly discussed above.

CONCLUSION

For the forgoing reasons, the court should reverse the trial court's order granting the respondent's motion for summary judgment.

Respectfully submitted,

August 22, 2018

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
J.C. NICHOLSON, JR., Circuit Court Judge

Case No. 2016-CP-10-03542
Appellate Case No.: 2017-002532

Bryan Okeith Seabrook, Appellant,

v.

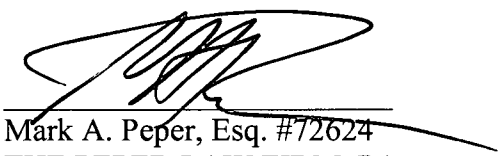
Town of Mount Pleasant and Rae Wooten, in her Official Capacity as Coroner of Charleston County, Defendants,

Of which Town of Mount Pleasant is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

August 22, 2018



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