ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY STEPHANIE MICHELLE GARDNER, Plaintiff, v. BERKELEY COUNTY SHERIFF'S OFFICE and TOWN OF MONCKS CORNER, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-08-00773 **ORDER**

RECEIVED
Oct 13 2021
SC Court of Appeals

This matter came before the court on Berkeley County Sheriff's Office's Motion for Summary Judgment. A hearing was held on April 5, 2021. The plaintiff was represented by Louis Nettles and the defendant Berkeley County Sheriff's Office (the "Sheriff's Office") was represented by Robin L. Jackson. Both parties submitted written briefs and counsel presented oral argument. For the reasons set forth herein, Defendant Berkeley County Sheriff's Office's Motion for Summary Judgment is Granted.

Plaintiff has brought the following claims against the Berkeley County Sheriff's Office: (1) False Arrest, (2) Malicious Prosecution, and (3) Defamation. However, during the course of discovery, Plaintiff asserted a theory that the Sheriff's Office should be responsible for the actions of the co-defendant Town of Moncks Corner's officer. The Court finds no merit in Plaintiff's alternate theory and will address this first.

The defendants have jointly provided a copy of the agreement between their law enforcement agencies that clearly sets out that the home agency is responsible for the actions of the officers employed by it. Specifically, the agreement sets out that each party (agency) "shall be solely responsible for the acts and omissions of their respective employees, officers and officials,

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

and for any claims, lawsuits and payment of damages that arise from activities of its officers." (Ex. B #14). Therefore, it is the ruling of this court that the Sheriff's Office is not liable for the acts or omissions of Barlow.

Returning to the three causes of action pled by Plaintiff in her Complaint, the Court makes the following findings of fact and law in granting BCSO's Motion for Summary Judgment.[1]

I. FALSE ARREST/FALSE IMPRISONMENT

Plaintiff alleges that the Sheriff's Office falsely imprisoned Gardner by "keeping her in their custody on a warrant that on its face did not show a violation of law in violation of her rights…" (Compl. ¶20). The heart of Plaintiff's claim is that the detention officers employed by the Sheriff's Office should have known the warrant was invalid and released her. Essentially, Plaintiff is asking this Court to rule that detention officers should have the ability to override a facially valid warrant signed by a judge.

When a person is arrested on the strength of a facially valid warrant, there is no false arrest as a matter of law. False arrest and false imprisonment are one in the same with the same elements. *Jones v. City of Columbia*, 301 S.C. 62 64, 389 S.E.2d 662, 663 (1990); *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995). "It has been definitely decided in this jurisdiction that where one is 'properly arrested by lawful authority,' 'an action for false imprisonment cannot be maintained against the party causing the arrest.'" *Bushardt v. United Inv. Co.* 121 S.C. 324 330, 113 S.E.637, 639 (1922); *see also Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998)(accord). "The facially valid inquiry is not an invitation to look beyond the language of the warrant, which need only contain information given under oath that

[1] Even if the Court had determined that the Sheriff's Office was responsible for the acts of Barlow, the same analysis of the facts and law supporting the grant of summary judgment herein would apply to Barlow.

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

"plainly and substantially" sets forth the offense charged." S.C. Code Ann. §22-3-710; *Carter v. Bryant*, Op. 5710, S.C. Ct. App. 2020.

The Plaintiff, who has the burden of proof, has not set forth any genuine question of material fact as to the validity of the warrants at issue. The Court has reviewed the warrants for Plaintiff's arrest and has found them to be facially valid, which is fatal to Plaintiff's False Arrest/False Imprisonment cause of action. Further, even if the warrants were facially invalid, Plaintiff's argument that the detention officers should have simply released her is without merit. Detention officers do not have the power or authority to release any inmate, under any circumstances, without a court order.

Therefore, the court finds that Plaintiff has not established and cannot establish a genuine question of material fact concerning her False Arrest/False Imprisonment claim, and Summary Judgment should be granted.

II. MALICIOUS PROSECUTION

Plaintiff's Second Cause of Action for Malicious Prosecution should be dismissed as Plaintiff cannot prove that the Sheriff's Office instituted the criminal proceedings or that there was a lack of probable cause for the institution of such proceedings. Further, the Sheriff's Office is immune from a malicious prosecution claims pursuant to the South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.* (the "Tort Claims Act").

In order to recover in an action for malicious prosecution, the plaintiff must show (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of, the defendant; (3) termination of such proceeding in the plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage. *Ruff v. Eckerds Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975). An action for malicious

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice, termination in his favor and lack of probable cause. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

Here, the arrest was made by Barlow, an employee of Moncks Corner Police Department. Therefore, Plaintiff cannot meet her burden of proving that the Berkeley County Sheriff's Office "instituted" judicial proceedings or "prosecuted" the plaintiff. Further, and as discussed above, Plaintiff cannot meet her burden of proving a lack of probable cause for her arrest. However, even if Plaintiff were able to prove the necessary elements of a malicious prosecution claims, the Sheriff's Office is entitled to absolute immunity under the Tort Claims Act. S.C. Code 15-78-60 (23) set forth more fully below.

III. DEFAMATION

Plaintiff's defamation claim is dismissed as the Sheriff's Office did not publish false statements and because the alleged defamatory statements are privileged and not subject to claims of defamation.

The elements of defamation are 1) defamatory language; 2) of or concerning the plaintiff; 3) publication by defendant to a third party; and 4) damage to the plaintiffs reputation. In this case, the plaintiff alleges that through a Facebook posting the Sheriff's Office "falsely accused Gardner of criminal acts" "without a reasonable basis for believing the charges to be true…" Compl. ¶24. The "accusation" was a statement that Ms. Gardner was arrested and charged with several drug related crimes. During her deposition, Ms. Gardner admitted that the statements in the Facebook posting were, in fact, true. Depo. Gardner, 87/13-89/15.

> Q. Okay. And then on the second page it has, about halfway down, Gardner, comma, Stephanie, colon, Lester Road, comma, Dillon, comma, 32-year-old. Is that true, or was it true as of May 1 of 2018?

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

A. It was.

Q. And were you charged with trafficking and cocaine, 10 grams or more but less than 28 grams, 1st offense?

A. Yeah. My family saw this.

Q. And were you charged with trafficking in meth or cocaine base, 10 grams or more but less than 28 grams, 1st offense?

A. I was.

Q. And were you charged with possession of less than one gram of meth or cocaine base, 1st offense?

A. I was.

Q. And were you charged with MDP, narcotic drugs in Schedule I, LSD, and Schedule II, 1st offense?

A. I was.

Q. So those are all true statements?

A. Yes.

(Gardner 88/19 to 89/15, Ex. A)

(Facebook Post, Exhibit D)

The Plaintiff has failed to establish the proper elements of a defamation claim. Importantly, Plaintiff has failed to allege that the defendant made a defamatory statement. Rather, she says that having truthful information about her actual criminal charges listed on the Facebook page resulted in damage to her reputation. (Compl. ¶24).

In addition, if the publication of the information regarding this arrest was defamatory, it is privileged. "In a defamation action, the defendant may assert 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." *Williams v. Wright*, No. 6:10-cv-2844-TMC-JDA, 2011 WL 6700373, at *8 n.12 (D.S.C. Nov. 2, 2011) (quoting *Swinton Creek*

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999)). To determine whether a communication was qualifiedly privileged,

> regard must be had to the occasion and to the relationship of the parties. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interests, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.

Bell v. Bank of Abbeville, 208 S.C. 490, 493-94, 38 S.E.2d 641, 643 (1946). South Carolina courts have recognized a qualified privilege for communications protecting or promoting law enforcement interests. 20 S.C. Jur. *Libel and Slander* § 55 (1993) (citing *Switzer v. Am. Ry. Express Co.*, 119 S.C. 237, 112 S.E. 110 (1922)). As a general rule, a defamatory statement is qualifiedly privileged if made by one who "reasonably believes that some important interest of his own or a third party is threatened." *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 125, 341 S.E.2d 622, 624 (1986). Further, a communication is privileged where it is published in the discharge of a legal, social, or moral duty. *Montgomery Ward & Co. v. Watson*, 55 F.2d 184, 187 (4th Cir. 1932); *Flowers v. Zayre Corp.*, 286 F. Supp. 119, 121 (D.S.C. 1968); *Conwell v. Spur Oil Co.*, 240 S.C. 170, 178-79, 125 S.E.2d 270, 274-75 (1962).

Here, the Sheriff's Office has asserted such privilege and presented testimony that the information was communicated in the discharge of a legal duty to enforce the law. Information about arrests is a matter of public record. Any citizen can obtain this information as can the media. The Sheriff's Office provided this information based on the interest it received from both its citizenry and the media. (Deposition Jeremy Baker, 7/8-12; 8/6-10; 15/23-16/8, Exhibit E). This qualifies the reports as privileged statements. *See Abofreka, supra.*

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

Plaintiff has not established the requisite elements to prove defamation. The Sheriff's Office has presented evidence that the statements made were (1) true and (2) privileged. Therefore, the motion for summary judgment with regard to the cause of action for defamation is granted.

IV. TORT CLAIMS ACT IMMUNITIES

In addition to the grounds for granting the Sheriff's Office's Motion for Summary Judgment discussed above, this Court finds that Summary Judgment is proper as the Sheriff's Office is entitled to several immunities included in the Tort Claims Act.

The Tort Claims Act, which provides the exclusive remedy in tort against the Sheriff's Office, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994). *See also* S.C. Code Ann. 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. 15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein."). The Tort Claims Act also spells out that the exceptions to the waiver of immunity "must be **liberally construed in favor of limiting the liability of the state**." S.C. Code Ann. § 15-78-20(f) (emphasis added). Defendant Berkeley County has asserted several immunities that are applicable. The court will address each immunity in turn.

A. Act or Omission by a Third Party

The Sheriff's Office is entitled to immunity as this case involves "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." §15-78-60(5). The record is replete with evidence of acts/omissions of persons other than

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

employees. Stephanie Gardner's act in being present in a location with drugs, where at least the marijuana was open and obvious, at the same time law enforcement was present to arrest Mr. Molyneaux is one act. The act of Moncks Corner Officer Brooks Barlow in arresting Ms. Gardner is a second act. One omission was from whomever actually owned the drugs that were found, whether it be Ms. Gardner, or someone else who refused to acknowledge ownership when asked by law enforcement. These are all acts and omissions which may have resulted in the alleged losses of the plaintiff for which the Sheriff's Office is not liable and has immunity.

B. Discretion

The Sheriff's Office is entitled to discretionary immunity pursuant to S.C. Code §15-78-60(5). To establish "discretionary immunity," the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice; furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. *Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 781 S.E.2d 534 (2015); *Steinke v. S.C. Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999); *Clark v. S.C. Dep't of Public Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002), *aff'd*, 362 S.C. 377, 608 S.E.2d 573. A governmental entity is not liable for losses resulting from an exercise of discretion by its employees. *Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (S.C. 2002).

It is clear that Brooks Barlow used discretion in making this arrest. The only evidence is that he gave each occupant the opportunity to claim possession of the drugs before making the arrest. While one person admitted ownership of a phone located near the drugs, and one person admitted ownership of an amount of marijuana no one admitted ownership of the drugs located in

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

the couch. Therefore under the law, based on the location of the drugs in the couch and the proximity of all persons to that couch, all persons had constructive possession of the drugs and were subject to arrest by Officer Barlow. Because of this, the Sheriff's Office, to the extent it could be considered responsible for the arrest, is entitled to discretionary immunity.

C. Institution or Prosecution of a Judicial Proceeding

The Sheriff's Office is immune from liability under the Act's immunity relating to "the institution or prosecution of a judicial proceeding." S.C. Code Ann. §15-78-60(23). The Court has found that Barlow instituted the criminal proceeding against Plaintiff and that the Sheriff's Office is not responsible for the acts of Barlow. For that reason, Plaintiff cannot establish the first element of her malicious prosecution or false arrest claim against the Sheriff's Office. *See McCoy v. City of Columbia*, No. CA 5:10-132-JFA-KDW, 2013 WL 936607, at *27 (D.S.C. Jan. 16, 2013), *report and recommendation adopted in part, rejected in part*, 929 F. Supp. 2d 541 (D.S.C. 2013). However, even if Barlow were considered an agent of the Sheriff's Office, then Plaintiff's claim that Barlow maliciously *instituted criminal prosecution* falls squarely within this immunity.

D. Method of Providing Police Protection

Finally, the Sheriff's Office is entitled to immunity in so far as Plaintiff's claims relate to the method of providing police protection. S.C. Code Ann. § 15-78-60(6)[2]. The Act specifically exempts law enforcement from liability concerning the methods which they choose to utilize to provide police protection. Here, the officers participated in the joint task force and were serving arrest warrants for people who were wanted by law enforcement for criminal activity. The officers arrived at the Lodestone residence, met with the occupants and searched the home as part of their

[2] The Court of Appeals has previously held this statute contains a scrivener's error. The conjunctive "or" is missing. Therefore, the statute is properly read as the governmental entity is not liable for the failure to provide **or** the method of providing police or fire protection. *Wells v. City of Lynchburg*, 331 S.C. 296, 304, 501 S.E.2d 746, 750 (Ct.App.1998).

police protection duties and therefore the Sheriff's Office is entitled to immunity. Even were the court accepts all of Gardner's assertions as true, it does not remove the immunity which the legislature has bestowed on the Police in this situation. *Huggins v. Metts*, 371 S.C. 621, 624–25, 640 S.E.2d 465, 467 (Ct. App. 2006).

CONCLUSION

Therefore, it is hereby ordered that summary judgment is granted to the Sheriff's Office on all causes of action and this case as against the Sheriff's Office is hereby dismissed.

AND IT IS SO ORDERED!

_____
Judge Edgar W. Dickson

_____, 2021

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

ELECTRONICALLY FILED - 2021 Apr 27 4:12 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800773

Berkeley Common Pleas

Case Caption: Stephanie Michelle Gardner VS Berkeley County Sheriff'S Office , defendant, et al

Case Number: 2020CP0800773

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153