

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

Civil Action No. 2020-CP-08-00773

**ORDER GRANTING
TOWN OF MONCK'S CORNER'S MOTION
FOR SUMMARY JUDGMENT**

RECEIVED

Oct 13 2021

SC Court of Appeals

This matter came before the Court on April 5, 2021 on the motion of Defendant Town of Moncks Corner (hereinafter "Defendant") seeking summary judgment pursuant to SCRCF Rule 56(c). Louis D. Nettles of Nettles Law Firm appeared on behalf of Plaintiff, while James E. Haarsgaard of Richardson, Plowden & Robinson, P.A. appeared on behalf of the Defendant. The Court had before it the pleadings and motions filed in the above-captioned litigation, including the Town of Moncks Corner's Motion for Summary Judgment, the accompanying Memorandum of Law in Support, and Plaintiff's Memorandum in Opposition. Based upon this Court's review of the documents filed in this litigation and the testimony and other evidence presented at the hearing, the Court hereby grants the Defendant's Motion for Summary Judgment for the reasons set forth herein.

I. FACTUAL FINDINGS AND PROCEDURAL HISTORY

On the night of April 27, 2018, members of the Berkeley County Sheriff's Office (hereinafter "BCSO") Drug Enforcement Unit and narcotics Detective Brooks Barlow of the Town of Moncks Corner Police Department arrived at 112 Lodestone Court in Moncks Corner to locate an individual with an outstanding arrest warrant. Upon their arrival, law enforcement observed the suspect run into the front door of the residence. Detective Barlow then traveled to the back door

of the home where he encountered a resident named Samantha Eason. Ms. Eason confirmed that the suspect was present inside the home, and Detective Barlow entered through the back door where he encountered several other individuals, including the Plaintiff, who was sitting on a couch.

During the course of arresting the suspect, Detective Barlow observed what was later confirmed to be marijuana in plain view as well as the strong odor of marijuana in the home. He also observed that the home was without power or running water. Additionally, law enforcement observed Ms. Eason smoke marijuana in their presence and drug paraphernalia lying in plain view. Based upon his observation of the marijuana in plain view, Detective Barlow received both verbal and written consent from Ms. Eason to search the residence. The search uncovered a large quantity of illegal drugs under a living room couch cushion roughly ten (10) feet away from the location where Detective Barlow observed Plaintiff at the time he made entry into the residence. None of the occupants claimed ownership of the drugs following Detective Barlow's inquiry as to the same.

Based on the foregoing facts, Detective Barlow determined that he had probable cause to place all individuals inside the home, including Plaintiff, under arrest for constructive possession of the drugs found in the living room couch. Following the arrests, Detective Barlow appeared in front of a local magistrate judge who signed warrants charging each occupant of the home, including Plaintiff, with Trafficking Cocaine and Trafficking Methamphetamine as well as Possession of Heroin and Cocaine Base. Following her arrest, Plaintiff did not post her bond for forty-five (45) days.

Plaintiff's charges were subsequently dismissed on October 24, 2018 following a determination by the Solicitor's Office that it was unable to prove the charges beyond a reasonable doubt. Plaintiff then filed this lawsuit on March 20, 2020 through which she alleges false arrest, malicious prosecution and a violation of the South Carolina Constitution against both the Town of Moncks Corner and BCSO as well as defamation against BCSO only.

II. STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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.” See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). “In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment.” Id.; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013). “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted).

III. DISCUSSION

A. **DEFENDANT’S SOUTH CAROLINA TORT CLAIMS ACT, S.C. CODE ANN. § 15-78-10, ET. SEQ. DEFENSES.**

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et. seq.* (Supp. 2004), which provides the exclusive remedy in tort against the Defendant, is a limited waiver of governmental immunity. Under the Act, a governmental entity is not liable for a loss resulting from the enforcement of any law. S.C. Code. Ann. § 15-78-60(4). Additionally, a governmental entity is not liable for a loss resulting from “the performance of any act or service which is in the discretion or judgment of a governmental employee.” S.C. Code. Ann. § 15-78-60(5). “To establish discretionary immunity, the governmental entity must prove its employees, faced with alternatives, actually weighed competing considerations and made a conscious choice” while utilizing “accepted professional standards appropriate to resolve the issues before them.” Clark v.

S.C. Dep't of Pub. Safety, 362 S.C. 377, 386, 608 S.E.2d 573, 578 (2005).

Plaintiff did not address Defendant's assertion of the Act's immunities and protections in his Memorandum in Opposition or during the oral arguments on Defendant's Motion. Defendant, however, produced evidence in the form of Detective Barlow's deposition testimony that he used his discretion when he made the decision to arrest all of the occupants in the home rather than any one individual. The Court finds that this decision was made during Detective Barlow's efforts to enforce S.C. Code Sections 44-53-370 and 44-53-375 which make it illegal to possess the illegal drugs recovered from the home. Therefore, the Court finds that the Defendant is entitled to the immunities and protections it has asserted under the South Carolina Tort Claims Act, and Plaintiff's claims are dismissed with prejudice. Notwithstanding these immunities and protections, the Court will address the merits of Plaintiff's causes of action against Defendant.

B. PLAINTIFF'S FALSE ARREST CAUSE OF ACTION.

Plaintiff's first cause of action against Defendant is for false arrest. She alleges that she was arrested without probable cause and that the warrants at issue were facially invalid. The elements of false arrest in South Carolina are "intentional restraint of another without lawful justification." Carter v. Bryant, 429 S.C. 298, 306, 838 S.E.2d 523, 527 (Ct. App. 2020). "[W]hether an arrest warrant was supported by probable cause is a different question than whether the warrant was facially valid." Carter, 429 S.C. 309, 838 S.E.2d 529.

(1) Plaintiff's Probable Cause Claim.

In an action for false arrest or malicious prosecution, the plaintiff has the burden of demonstrating lack of probable cause. Jackson v. City of Abbeville, 366 S.C. 662, 666, 623 S.E.2d 656, 658 (Ct. App. 2005). Probable cause does not turn on an individual's guilt or innocence, but rather "a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinary prudent and cautious person, under

the circumstances, to believe likewise.” Id. at 366 S.C. 666, 623 S.E.2d 658; Gist v. Berkeley Cty. Sheriff's Dep't, 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct. App. 1999). “The determination of probable cause is not an academic exercise in hindsight,” and it can be “decided as a matter of law when the evidence yields but one conclusion.” Jackson, 366 S.C. 667, 670, 623 S.E.2d 659, 660. Furthermore, “the determination of ‘probable cause to arrest’ for the purpose of [a plaintiff’s] tort claims may properly include consideration of an uncharged offense” such that a finding of probable cause on the uncharged offense will defeat the plaintiff’s claims. Id. at 366 S.C. 666, 623 S.E.2d 658.

Defendant presented evidence that Detective Barlow based his probable cause analysis on the theory of constructive possession. A conviction for the offense of constructive possession of illegal drugs requires a showing, either by direct or circumstantial evidence, that an individual “had dominion and control, or the right to exercise dominion and control” over the drugs. State v. Muhammed, 338 S.C. 22, 26, 524 S.E.2d 637, 639 (Ct. App. 1999). Muhammed decided an appeal from a conviction for constructive possession which requires proof beyond a reasonable doubt and is therefore instructive only to the extent that it defines the criminal offense. In contrast, this case deals with the probable cause standard which only required Detective Barlow to show a good faith belief that Plaintiff constructively possessed the drugs under the circumstances he observed prior to her arrest.

The Court notes that the circumstances in this case include the undisputed fact that Plaintiff was present in a home with marijuana laying in plain view in close proximity as well as the smell of marijuana throughout the home. The Court finds that these circumstances alone would have supported probable cause to arrest Plaintiff for constructive possession of marijuana. However, Detective Barlow testified that he chose

not to charge the occupants of the home with possession of marijuana because “[t]here were other serious drugs there.” As to those “other serious drugs,” it is also undisputed¹ that the Plaintiff was positioned just feet from the location where significant amounts of cocaine, methamphetamine, and heroin were recovered when Detective Barlow entered the home. Moreover, none of the individuals present in the home claimed ownership of the drugs. Given the totality of the foregoing circumstances, the Court finds that Detective Barlow had probable cause to arrest the Plaintiff.

In addition to the above circumstances, Defendant’s evidence included Plaintiff’s admission during her deposition that she walked throughout the home, including the living room, prior to the arrival of law enforcement. Moreover, Plaintiff agreed that a judge signed the warrants and determined that there was probable cause for her arrest. See Carter, 429 S.C. 310, 838 S.E.2d 530 (adopting in a civil case the finding of State v. Dill, 423 S.C. 534, 544-545, 816 S.E.2d 557, 563 (2018) that the court may determine whether probable cause existed for the issuance of a criminal arrest warrant and must give great deference to the magistrate judge’s probable cause conclusion). In contrast, Plaintiff provided no admissible evidence to support her claim that she was arrested without probable cause despite the burden being on her to do so. Additionally, Plaintiff did not address through her Memorandum in Opposition or during oral arguments the applicable probable cause standard and instead cited to case law discussing the inapplicable beyond a reasonable doubt standard.

(2) Plaintiff’s Facially Invalid Warrant Claim.

South Carolina courts have held that “a warrant is ‘facially valid’ if (1) it is regular

¹ While Officer Barlow testified that he observed Plaintiff to be located ten (10) feet from the location where the drugs were recovered, Plaintiff testified that she was a “car length” from where the drugs were recovered.

in form, (2) it is issued by a court official having authority to issue the warrant for the conduct it describes and jurisdiction over the person charged, and (3) all proceedings required for the proper issuance of the warrant have duly taken place.” Carter, 429 S.C. 308, S.E.2d 529. In this case, Plaintiff has provided no admissible evidence to support her claim that the warrants were invalid. Plaintiff did not address or cite any evidence relating to these elements in her Memorandum in Opposition or during oral arguments. Nonetheless, the Court finds that the warrants in this case satisfy the requirements and are therefore facially valid under South Carolina law.

In sum, the Court finds that Detective Barlow arrested Plaintiff pursuant to probable cause developed while at the residence and the warrants for her arrest were facially valid. Therefore, the Court dismisses Plaintiff’s false arrest claim against the Town of Moncks Corner with prejudice.

(C) PLAINTIFF’S MALICIOUS PROSECUTION CAUSE OF ACTION.

“To maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff’s favor; (4) malice in instituting the proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” Pallares v. Seinar, 407 S.C. 359, 366, 756 S.E.2d 128, 131 (2014) (internal citation omitted). Furthermore, “[a]n action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause.” *Id.*

As discussed above, the Court finds that Plaintiff was arrested pursuant to probable cause. This finding precludes Plaintiff from prevailing on her malicious prosecution action as she cannot satisfy the fifth requirement of the test. However, Defendant argues, and the Court agrees, that Plaintiff also failed to provide evidence to satisfy the fourth and sixth requirements of the test.

As to the fourth requirement, “[m]alice is defined as ‘the deliberate[,] intentional doing of

an act without cause or excuse.” Pallares, 407 S.C. 366, 756 S.E.2d 131. In support of its argument that Plaintiff has failed to satisfy the malice requirement of the test, Defendant cites to Plaintiff’s deposition testimony wherein she acknowledged that law enforcement believed that they were arresting five drug traffickers. Defendant also cites to the contrast between the allegation in Plaintiff’s Complaint that she was arrested “to coerce her to give false testimony” and her testimony that she was asked to testify and declined but was never threatened. The Court finds that the Defendant has shown that Plaintiff’s testimony undermines her claim for malice.

As to the sixth requirement of damages, Defendant cites to Plaintiff’s testimony wherein she admitted to making telephone calls while incarcerated and instructing family members to not post her bond. Defendant provided evidence that, during these telephone calls, Plaintiff expressed her intention to remain incarcerated because she was informed by multiple individuals, including a “lawyer friend of the family,” that she would receive \$2,000 per day if she remained in the detention center. The Court finds that this evidence undermines Plaintiff’s claim for damages. Additionally, Plaintiff did not address or provide evidence of damages in her Memorandum of Opposition or at oral argument, and therefore no genuine issue of material fact exists as to this requirement.

Ultimately, the Court finds that Plaintiff cannot satisfy the test for malicious prosecution because she was arrested pursuant to probable cause. The Court further finds that Plaintiff failed to address and/or offer evidence sufficient to satisfy elements (4) and (6) of the malicious prosecution test. Therefore, the Court finds that no genuine issue of material fact exists as to this cause of action and it is dismissed with prejudice.

(D) PLAINTIFF’S STATE CONSTITUTIONAL VIOLATION CLAIM.

Plaintiff’s Complaint alleges that Defendants “deprived her of her liberty by arresting her without probable cause and keeping her in their custody on a warrant that on its face did not show

a violation of law in violation of her rights under the Constitution of the State of South Carolina and of the Constitution of the United States.” However, as stated above, this Court finds that Plaintiff was arrested pursuant to probable cause and her warrants were facially valid. Moreover, “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” Palmer v. State, 427 S.C. 36, 46, 829 S.E.2d 255, 261 (Ct. App. 2019). Therefore, there is no constitutional right to damages for an individual who suffers a state constitutional tort. Id. For these reasons, Plaintiff’s claim fails as a matter of law and is dismissed with prejudice.

IV. CONCLUSION

For the reasons set forth herein, the Court finds that there exists no genuine issue of material fact in this case as to any of Plaintiff’s claims against the Town of Moncks Corner. Accordingly, it is hereby **ORDERED** that the Town of Moncks Corner’s Motion for Summary Judgment is granted as to all of Plaintiff’s claims against it, and this action is dismissed with prejudice as to the Town of Moncks Corner.

AND IT IS SO ORDERED.

The Honorable Edgar W. Dickson
Presiding Judge

April____, 2021
Berkeley, South Carolina



Berkeley Common Pleas

Case Caption: Stephanie Michelle Gardner VS Berkeley County Sheriff'S Office ,
defendant, et al
Case Number: 2020CP0800773
Type: Order/Summary Judgment

So Ordered

s/ Edgar W. Dickson #2153