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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2020-CP-08-00773
Appellate Case No. 2021-001173

Stephanie Michelle Gardner, ... Appellant,

v.

Berkeley County Sheriff's Office and Town of Moncks Corner......... Respondents.

FINAL BRIEF OF RESPONDENT BERKELEY COUNTY SHERIFF'S OFFICE

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ISSUES ON APPEAL

I. **WHETHER THE AGREEMENT BETWEEN THE SHERIFF'S OFFICE AND POLICE DEPARTMENT IS CONTROLLING.**

II. **WHETHER THE COURT PROPERLY RULED THAT THE SHERIFF'S OFFICE WAS PRIVILEGED TO PUBLISH INFORMATION ABOUT GARDNER'S ARREST AND FURTHER THAT THE IFORMATION PUBLISHED WAS IN FACT TRUE AND THEREFORE NOT DEFAMATORY.**

III. **WHETHER THE COURT PROPERLY CONSIDERED THAT THERE WAS PROBABLE CAUSE FOR THE ARREST.**

IV. **WHETHER THE COURT PROPERLY APPLIED THE IMMUNITIES UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.**

STATEMENT OF THE CASE

The original Summons and Complaint was filed in the U.S. District Court on November 15, 2019, followed by an Amended Summons and Complaint on December 31, 2019. Defendants filed Motions to Dismiss. Appellant thereafter voluntarily dismissed all parties except Sheriff Lewis and Randy Demory. The motion to dismiss on behalf of Lewis and Demory was granted on April 2, 2020. Appellant filed a Notice of Appeal on May 4, 2020. The Fourth Circuit Court of Appeals affirmed the grant of Motion to Dismiss on November 24, 2020.

On March 20, 2020, Appellant filed a Summons and Complaint in Berkeley County Court of Common Pleas. In her Complaint, Appellant alleged three different causes of action. Berkeley County Sheriff's Office filed a motion for summary judgment on February 19, 2021 and the court granted the motion on April 27, 2021. Appellant filed a motion to reconsider on May 6, 2021, which was denied on September 13, 2021.

STATEMENT OF THE FACTS

Stephanie Gardner worked as a stripper at the Trophy Club in Florence. On the night before this incident, she asserts that she got a ride to work from a guy named Chris who she met on Facebook. (R. p.374, lines 3-22). During the ride, she says she left her money bag with her ID in it in his car. (R. p.375, lines 13-24). She then worked that night as a stripper and after work, decided to ride to North Charleston with a man she claims was the manager, Joey, in order to strip the next day at a different club to make more money. (R. p. 376, line 3 through p. 377, line 2). Gardner was aware of the rule amongst strippers that "you cannot work a good night unless you worked a bad night." What this means is that you cannot work on a weekend unless you worked on a less busy week night. Gardner had not worked a week night at the North Charleston club, but

says she believed Joey could get her in because he was the manager there as well. Further, Gardner did not have her identification as she had left it in Chris's car.

When they arrived at Joey's house in Summerville, Gardner claims that is when she discovered that she did not have identification and Joey was unable to allow her to work at the club. Gardner then borrowed clothing from Joey's girlfriend and looked for a place to "sit" until Joey got done with work and could drive her back to Florence. (R. p. 304, lines 16-23)

Gardner used Facebook to hunt down a former friend of hers, Samantha Eason. Although reluctant to agree, Samantha gave her the address for Gardner to go to her house. (R. p. 306, lines 4-15). Gardner got a ride to Samantha's home and arrived while it was still daylight.[1] When she arrived, Samantha, Corey Gethers, Michael Molyneaux and Michael's nephew were at the house. According to Gardner, she and Samantha "got dressed up" and got a ride to the gas station from Corey. (R. 308, lines 9-16). They spent a few minutes inside, picking out snacks and beers. Gardner says she paid for them, but gave Samantha the money since she did not have her identification.

When they returned from the store, Gardner asked Michael for a phone charger, but the house did not have any power. (R. p. 314, line 20 through 315, line 5). He ran a cord from the car battery and Gardner asserts that she was on a "back porch" plugging her phone in while Samantha put the beers in the refrigerator "just keeping them cold" despite the lack of electricity. (R. p. 315, lines 6-12). Gardner asserts that she was on the back porch of the Lodestone residence, but photos of it show the 'porch" is actually an enclosed room with open access to the rest of the residence. (R. p. 425-429). She and Samantha were drinking their beers when Michael ran back into the

[1] According to www.sunrise-and-sunset.com Sunset on April 27, 2018 was at 7:59pm.

house saying “Cops got us surrounded.” (R. p. 316, lines 22-23). This occurred at approximately 9:45pm. According to Gardner, she stayed where she was on the “porch”.

About that time, Michael ran into the bedroom and shut the door behind him. Officers entered the house from the front and the rear asking where Michael had gone. Samantha pointed toward the bedroom and officers entered and placed Michael under arrest. While in the bedroom, officers were able to observe marijuana on the bedside table in plain sight. Samantha acknowledged that it was hers. Officers then asked her for consent to search the home and she signed a consent. During the search, Officer Barlow located a supply of drugs under the couch cushion. He gave each person in the house the opportunity to claim them, but no one did. Therefore, each person who was in the house was placed under arrest and criminally charged with the drugs.

Samantha Eason and Stephanie Gardner were arrested and booked into the Berkeley County Detention center along with Corey Gethers, Nathan Pesek and Michael Molyneaux. While incarcerated, Gardner received a bond hearing, but did not bond out. After the bond hearing, she told her mother on the phone that an attorney had contacted her about representing her in a suit against the detention center. She said that he told her the longer she stayed in jail, the more money she would get in a civil suit, so she did not want anyone to bond her out until she got a bond reduction. While she was in the detention center, she was not involved in any fights and was not assaulted. She made numerous phone calls, ordered canteen and had a relatively uneventful incarceration. Eventually, on June 11, 2018, she bonded out of jail. After all of the testing returned and the investigation was completed, the solicitor’s office dismissed the charges against Gardner, Eason, Pesek and Molyneaux and prosecuted Gethers.

APPELLANT'S TWO ALTERNATE THEORIES OF RECOVERY AGAINST THE SHERIFF'S OFFICE.

Gardner initially alleged that Barlow had falsely arrested her and that the Sheriff's Office had falsely imprisoned her by holding her on an invalid warrant. During discovery, Appellant made new allegations that the Sheriff's Office was also responsible for the arrest, because it controlled the task force that Barlow was a part of. Appellant has no support for this position.

The Sheriff's Office denies that Barlow was an employee of the Sheriff's Office during the time of this arrest. Barlow was employed by Moncks Corner Police Department. The agreement between the agencies sets out the duties and responsibilities for each agency with relation to officers assigned to task forces. (R. p. 454-457). Under the agreement, Moncks Corner was the employer of Barlow at the time of the arrest. (R. p. 454-457). Further, the agreement sets out that each party (agency) "shall be solely responsible for the acts and omissions of their respective employees, officers and officials, and for any claims, lawsuits and payment of damages that arise from activities of its officers." (R. p. 454-457, para. #14). The paperwork was done on Sheriff's Office forms because it was made during the activities of the task force, but that did not make Barlow it's officer. The Sheriff's Office is only responsible for those deputies under its employ, and at the time of this arrest, Barlow was not employed by the Sheriff's Office.

The second theory is that the Sheriff's Office should not have held Gardner in the jail because, in her opinion, the warrants were not valid. She claims the detention center had a duty to review the warrants and independently determine whether there was probable cause. If there was no probable cause, according to Plaintiff, the detention center should have released her. There is no legal support for this position, as it would allow a detention officer to overrule a judge's decision. Appellant did not address the detention center in her brief, and therefore, this claim is not properly preserved for review.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the nonmoving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Curiel v. Hampton County E.M.S.*, 401 S.C. 646, 649, 737 S.E.2d 854, 855 (Ct. App. 2012)(*internal citations and quotations omitted*).

A respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* at 420, 526 S.E.2d at 723; *see also* Rule 220(c), SCACR (" The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

ARGUMENT

I. THE AGREEMENT BETWEEN THE SHERIFF'S OFFICE AND MONCKS CORNER POLICE DEPARTMENT IS CONTROLLING.

Appellant claims that because she was not a party to the agreement between the Sheriff's Office and the Police Department, it is not relevant to her arrest. It is nonsensical to expect or require that an agreement, which provides cooperative law enforcement services between agencies, would need to have the participation of the very citizens it is being used to protect and serve. Additionally, even if Berkeley County residents were party to the agreement, Ms. Gardner was not a resident of Berkeley County. There is no requirement that Ms. Gardner or any citizen be a party to the agreement between law enforcement agencies to provide services.

There is also no dispute between the defendants that the agreement at issue is both relevant and enforceable. Both agencies to this agreement are represented by counsel in this matter and both agencies take the position that Brooks Barlow was acting on behalf of the Moncks Corner Police Department, even as a member of the drug task force that was participating in a warrant sweep for the Sheriff's Office. Moncks Corner acknowledges that Barlow was its officer when he made this arrest. Therefore, there is no evidence to support any argument by appellant that Barlow was acting on behalf of the Sheriff's Office.

Even if this court determines that the Sheriff's Office was somehow responsible for the actions of Barlow, the court properly granted Moncks Corner's motion for summary judgment which was based on the acts of Barlow. While this brief is submitted on behalf of the Sheriff's Office, to the extent that the Court considers Barlow's actions its responsibility, the Sheriff's office incorporates by reference the arguments of Moncks Corner at summary judgment below and in this appeal.

II. THE COURT PROPERLY RULED THAT THE STATEMENTS PUBLISHED BY THE SHERIFF'S OFFICE WERE EITHER NOT DEFAMATORY OR WERE PRIVILEGED.

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, Appellant 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…" (R. p. 34, ¶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. (R. p. 353, line 13 through p. 355, line 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?
>
> 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.

(R. p. 354, line 19 through p. 355, line 15; R. p. 445-9)

The Facebook posting was made two days after the warrants were served on Gardner.

Appellant has failed to establish the proper elements of a defamation claim. Namely, Appellant has failed to allege that the Sheriff's Office made a false statement. Rather, she says that having truthful information about her actual criminal charges listed on the Facebook page resulted in damage to her reputation. (R. p. 34, ¶24). Truth is a complete defense. *Boone v. Sunbelt Newspapers, Inc.*, 556 S.E. 2d 732, 737 (Ct. App. 2001). Appellant has not presented any evidence that anyone she knows even saw and relied on the posting and cannot show that being arrested damaged her reputation, as this is far from her only arrest and further not her first or only incarceration.

Additionally, the publication of the information regarding this crime is privileged. The South Carolina Court of Appeals has addressed the requirements for defamation in the context of privileged communications and has held that in these circumstances, Appellant must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 559-60, 698 S.E.2d 845, 852 (Ct. App. 2010). "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." *Fountain v. First Reliance Bank*, 730 S.E. 2d 305, 310 (S.C. 2012); see also, *Davis v. New Penn Financial, LLC,* 2021 WL 3410790 (May 25, 2021); *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 Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999)).

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)). Moreover, generally, statements are qualifiedly privileged if the communicator has an interest in the subject matter or duty to convey the information and the recipient has a corresponding interest or duty. *McBride*, 389 S.C. at 561, 698 S.E.2d at 853 (Ct. App. 2010). Here, that is clearly the case based on the testimony of Chief Deputy Baker.

> Q: Okay, In this case, you – the Berkeley County Sheriff's Office, published information that Stephanie Gardner was involved with trafficking narcotics?
>
> A: That's what she was charged with.
>
> Q: Okay. Did that have a law enforcement purpose?
>
> A: Yes, sir. This is how we notify our citizens, and also for the media, what incidents occur.
>
> (R. p. 176, lines 3-12)

This is especially true when the communicator reasonably seeks to protect the recipient's interests or common interest between the communicator and the recipient. *Abofreka v. Alston Tobacco Co.*, 341 S.E.2d 622, 624-25 (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).

Appellant then has the burden to prove that the Sheriff's Office abused its privilege, which she cannot do. The only evidence in the case is that the Sheriff's Office released information about all arrests made during this sweep in good faith, it did not go beyond what was reasonable, and the statement was not recklessly made with a disregard for Appellant's rights. *Fountain*, 730 S.E.2d at 310 (SC, 2012). Information about arrests is public. Any citizen can obtain this information as can the media. Information involving criminal charges is published on the internet through the clerk of court and readily available to the public.[2] The Sheriff's Office provided this information based on the interest it received from both its citizenry and the media. (R. p. 176, lines 8-12; p. 177, lines 6-10; p. 184, line 23 through p. 185, line 8). Further, the only people who see this information are people who specifically follow the Sheriff's Office's Facebook page and people who purposefully seek it out in a search. This qualifies the reporting as a privileged statement. *See Abofreka, supra.*

Based on all of the above, there was no defamatory statement made and Appellant cannot establish the requisite elements to prove defamation. Even if she could, the alleged defamatory statements were privileged. Therefore, this court should affirm the grant of summary judgment with regard to defamation.

If the court determines that there was no defamation, or that the statements were privileged and the agency agreement controls that Moncks Corner is responsible for Barlow, the remainder of respondent's brief is not necessary to consider. The remaining arguments in this brief only

[2] https://publicindex.sccourts.org/Berkeley/PublicIndex/PISearch.aspx

address Appellant's position that the Sheriff's Office is responsible for the actions of Barlow in the arrest of Gardner.

III. THE COURT PROPERLY DETERMINED THAT THERE WAS PROBABLE CAUSE FOR THE ARREST.

If the Berkeley County Sheriff's Office is responsible for the arrest, it asserts that there was probable cause for Gardner's arrest and that the court properly found the same. Generally, a police officer who arrests an individual will not be liable for false arrest or false imprisonment if the arrest was supported by probable cause. *See Jones v. City of Columbia,* 301 S.C. 62, 389 S.E.2d 662, 663 (1990). In this case, Appellant claims that the officer lacked probable cause to arrest her, and therefore, the restraint was unlawful. Appellant has the burden of proving lack of probable cause. *Jackson v. City of Abbeville*, 366 S.C. 662, 666, 623 S.E.2d 656, 658 (S.C.App. 2005). When a person is arrested on the strength of a facially valid warrant, there is no false arrest as a matter of law. (R. p. 416-419). Here, though she was initially arrested prior to the warrants being signed, once they were signed, they supported the fact that there was probable cause for the underlying arrest. False arrest and false imprisonment are one in the same with the same elements. *Jones*, 301 S.C. at 64, 389 S.E.2d at 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). Here, the warrants are facially valid. "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 "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 only allegation is that there was a "factual misrepresentation" that Gardner was an occupant. The dictionary defines "occupant" as a person who is present in a place at a given time.[3] Per the Complaint, Gardner was present, having arrived almost an hour prior (R. p. 032, ¶13).

Appellant has argued a number of cases in support of his position regarding "proof" but such cases are misleading as they relate to the burden of proof of the prosecuting authority at trial. In this case, we are only dealing with probable cause, not proof beyond a reasonable doubt. Additionally, Appellant has cited a case, *State v. Stewart*, claiming that it sets the elements or proof for possession crimes. This case is not relevant for two reasons: first, the case at bar does not deal with the elements of proof, and second, the *Stewart* case did not exist at the time of the arrest. The arrest occurred in 2018, and the *Stewart* case was decided in 2021. The initial arrest was supported by probable cause as evidenced by the warrants that were thereafter obtained. The warrants are facially valid, and therefore, summary judgment for false arrest/false imprisonment should be affirmed.

IV. THE COURT PROPERLY APPLIED THE IMMUNITIES UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.

With regard to the Sheriff's Office, there was no false arrest, false imprisonment or malicious prosecution. However, to the extent that Appellant claims that the Sheriff's Office is

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[3] The court should take judicial notice of the definition of "occupant", as it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *See* Rule 201(b), SCRE; *see also Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984). Further it is requested by a party who has supplied the necessary information. Rule 201 (d), SCRE. Additionally, *See, e.g.*, *Papasan v. Allain*, 478 U.S. 265, 268 n. 1 (1986)
https://www.google.com/search?q=dictionary&oq=dictionary&aqs=chrome..69i57j0l4j69i60l2j69i61.1391j0j4&sourceid=chrome&ie=UTF-8#dobs=occupant

responsible for Barlow, the Sheriff's Office is entitled to immunity pursuant to several provisions of the South Carolina Tort Claims Act, §§15-78-10 *et. seq.*

A. The Sheriff's Office is Not Liable for a Loss Resulting from the Institution or Prosecution of a Judicial Proceeding.

In order to recover in an action for malicious prosecution, Appellant 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 prosecution fails if Gardner 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). Without establishing that the Sheriff's Office "instituted or prosecuted" a claim against her, Gardner could not establish the first element of the malicious prosecution or false arrest claim. *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). If Gardner establishes that the Sheriff's office "instituted or prosecuted" a claim against her, then the Sheriff's Office is absolutely immune from liability under the Tort Claims Act's immunity relating to "the institution or prosecution of a judicial proceeding." S.C. Code Ann. § 15–78–60(23).

There is nothing to suggest that any employee of the Berkeley County Sheriff's Office either took part in the decision to arrest Gardner or took part in the actual arrest. Officer Barlow applied for the warrants and received the warrants signed by a judge. (R. p. 416-419). However, if the Berkeley County Sheriff's Office did institute or prosecute Gardner, it is entitled to absolute

immunity under the South Carolina Tort Claims Act. S.C. Code 15-78-60 (23) and the decision to grant summary judgment should be affirmed.

B. The Sheriff's Office is Not Liable for a Loss Resulting from the Exercise of Discretionary Judgment.

"The governmental entity is not liable for a loss resulting from . . . .the exercise of discretionary judgment by a governmental employee or the failure to perform any act or service which is in the discretion or judgment of the employee." § 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).

Officer Barlow is the arresting officer and he was employed by Moncks Corner Police Department.[4] However, to the extent that the court may determine that the Sheriff's Office may have some responsibility for the actions of the task force, the Sheriff's Office asserts that it is clear that Brooks Barlow used discretion in making this arrest. The evidence is that he gave each occupant the opportunity to claim possession of the drugs before making the arrest. While one

[4] In addition to the argument here, the Sheriff's Office also incorporates by reference the positions taken by Moncks Corner with regard to discretionary immunity.

person admitted ownership of a phone located near the drugs, no one admitted ownership of the drugs. 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 is responsible for the arrest, is entitled to discretionary immunity.

C. The Sheriff's Office is Not Liable For a Loss Resulting from the Method of Providing Police Protection.

"The governmental entity is not liable for a loss resulting from . . . . . civil disobedience, riot, insurrections, or rebellion or the failure to provide [or] the method of providing police or fire protection."[5] S.C. Code Ann. § 15-78-60(6). The Act specifically exempts the Police from liability concerning the methods which they choose to utilize to provide police protection. Here, the officers in the joint task force were serving arrest warrants for people who were wanted. The officers arrived at the Lodestone residence as part of their police protection duties and therefore the Sheriff's Office is entitled to immunity. "Even were [this court] to accept all of [Gardner's] assertions as true, it would 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).

D. The Sheriff's Office is Not Liable for a Loss Resulting from the Act or Omission of a Person Other Than an Employee.

"The governmental entity is not liable for a loss resulting from . . . . an act or omission of a person other than an employee including but not limited to the criminal actions of third persons."

[5] 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).

§ 15-78-60 (20). In this case, there are multiple acts/omissions of persons other than employees. Stephanie Gardner's acts in being present in a location where a plethora of drugs were located 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. The omission was from whoever actually owned the drugs that were found, whether it be Ms. Gardner, Mr. Gethers 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 Appellant for which the Sheriff's Office is not liable. The only act of the Sheriff's Office was to hold Gardner in the detention center on facially valid arrest warrants and that has not been appealed.

CONCLUSION

For all of the reasons stated herein, Respondent Berkeley County Sheriff's Office respectfully requests that this Court find that Appellant did not preserve an appeal on whether the Sheriff's Office properly held Gardner in the detention center. Additionally, the Sheriff's Office respectfully requests that this Court affirm the April 27, 2021, grant of summary judgment in favor of the Sheriff's Office on all causes of action; for costs and fees; and for all other measures of relief as this Court deems just and proper.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2020-CP-08-00773
Appellate Case No. 2021-001173

Stephanie Michelle Gardner, ... Appellant,

v.

Berkeley County Sheriff's Office and Town of Moncks Corner......... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final brief complies with Rule 211(b), SCACR.

February 17, 2022

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