STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**IN THE COURT OF COMMON PLEAS** **FOR THE FIFTH JUDICIAL CIRCUIT**
Christopher Shimeld, Plaintiff, v. Richland County Sheriff's Office, Defendant.	)	Docket No.: 2019-CP-40-01299 **ORDER**

This matter comes before the Court on a motion for summary judgment on behalf of the Defendant Richland County Sheriff's Office (RCSD).[1] A hearing on this motion was conducted on September 27, 2021, via videoconference in Columbia, South Carolina. Appearing at the time and presenting oral arguments were counsel for Plaintiff, Joshua S. Kendrick, Esq., and for the Defendant, Robert D. Garfield, Esq. For the reasons discussed herein, this Court grants the Defendant's motion.

FACTUAL BACKGROUND

Taking the facts in a light most favorable to Plaintiff, during the early morning hours of Thursday, March 1, 2018, a burglary occurred at Discount Tobacco, a commercial establishment operating on Two Notch Road in Columbia, South Carolina. Pl.'s Ex. 1. Mr. Ismat Ardab, the owner of the business, represented to responding deputies that the suspect cut through an inner drywall to gain entry. Pl.'s Ex. 1. While inside the store, the subject rummaged through the office and stole cash and miscellaneous merchandise, including roughly 162 cartons of cigarettes. Pl.'s Ex. 1. The suspect also cut wires to the alarm box and surveillance camera located in the inner office. Pl.'s Ex. 1. This rendered the alarm system inoperable and as a result, there was no immediate notification to police dispatch. Pl.'s Ex. 1. RCSD deputies collected fingerprints on items in Ardab's office, including the alarm box, which prominently contained an ADS alarm company decal. Rains Dep. 13:9-18; Def's Ex. 1.

[1] Defendant Richland County Sheriff's Office (also referred herein as "Richland County Sheriff's Department" or "RCSD") is not a legal entity of the State. The proper entity is the Sheriff of Richland County in his official capacity. His office constitutes a governmental entity as set forth pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* This Court has been informed that Plaintiff has consented to a substitution to reflect the appropriate party-Defendant.

RCSD Investigator Vicki Rains was assigned this criminal matter. Rains Dep. 8:13-19. She first spoke with Ardab. Rains Dep. 9. Ardab suggested that a person of interest was an individual named Hank Osborne. Rains Dep. 11. According to Ardab, Osborne had initially installed the security system. Rains Dep. 12. Additionally, he returned to the store on several occasions, including Ardab's office area. Rains Dep. 12. Rains' several attempts to locate Osborne were unsuccessful. Rains Dep. 13; *see also* Rains Dep. Ex. 1.

During her investigation, the fingerprint analysis revealed that the alarm box contained fingerprints. Rains Dep. 13. A latent print was tested and positively matched those on file for Plaintiff. Rains Dep. 13. The positive match and identification were shared with Rains at that time. Rains Dep. 13. Thereafter, Rains obtained a Department of Motor Vehicles ("DMV") Report which included Plaintiff's personal identifying information. Rains Dep. 13-14. Specifically, Plaintiff had a valid South Carolina driver's license and resided in a local apartment complex. Rains Dep. 13-14; Rains Dep. Ex. 1.

Rains went to Plaintiff's apartment referenced in the DMV report. Rains Dep. 13-14. According to the apartment management, Plaintiff moved and did not provide contact information, such as a forwarding address or telephone number. *See* Rains Dep. 16.

Rains then re-interviewed Ardab, who advised Rains that the burglary was likely conducted by two individuals. Rains Dep. 23. Rains then prepared photo lineups which included Plaintiff and Osborne. Rains Dep. 21-22. The photo lineups were shown to Ardab and the store clerk, both selected Plaintiff and Osborne as the two males who frequently hung out together. Rains Depo. 14; *see also* Def's Ex. 2.

On March 13, 2018, Rains contacted the manager of ADS to obtain background information regarding the alarm system at Discount Tobacco. Rains Dep. Ex. 1. The manager informed Rains that a new ADS alarm system had been installed at the location. Rains Dep. 45-46. Most critically, the manager advised Rains that Plaintiff had never been employed by ADS. Rains Dep. 22. Rains contacted the manager a second time. Rains Dep. Ex. 1, at 4. Again, the manager insisted that Plaintiff had never worked for ADS and their service technicians are employees of ADS, not contracted by third parties. Rains Dep. Ex. 1, at 4.

On March 16, 2018, Rains applied for an arrest warrant with the Richland/Upper Township Magistrate. Rains Dep. 40-46. In Rains' arrest warrant affidavit, she described the burglary was effectuated by:

> [F]orce(d) entry by cutting through the back of the business and entering through the office where the camera was unplugged & the alarm system was torn from the ceiling & destroyed. There is a fingerprint match for the defendant on the alarm box that was torn from the ceiling. I spoke with the manager of the alarm company who installed the alarm system and he stated he has never heard of the defendant nor has the defendant ever been employed by the alarm company who installed the alarm. The victim stated the defendant has never been in the office with the alarm system and he does not know the defendant. The estimated amount of Theft is $28,000.

Def's Ex. 3. The Magistrate Judge found that probable cause existed and issued a warrant for Plaintiff's arrest for the offense of Burglary (Non-Violent) in the Second Degree. Def's Ex. 3. According to the Complaint, Plaintiff was arrested on April 6, 2018 in the State of Florida and was held in a local detention center for a period of time. Compl. ¶ 13.

Plaintiff brought suit against the Defendant RCSD for false imprisonment[2], malicious prosecution, and negligent training, supervision, and retention.

LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545 (1991). In a case where the burden of proof is a preponderance of the evidence, to survive a motion for summary judgment the non-moving party is required to submit a mere scintilla of evidence. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

[2] Plaintiff has conceded and did not challenge Defendant's argument regarding false imprisonment. Therefore this Court treats the false imprisonment cause of action as withdrawn and/or abandoned. Consequently, this Court grants summary judgment as to the false imprisonment cause of action without further discussion.

DISCUSSION

A. MALICIOUS PROSECUTION CLAIM

The elements of malicious prosecution under state law are: "(1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *See Broyhill v. Resolution Mgmt. Consultants, Inc*., 401 S.C. 466, 736 S.E.2d 867, 870-71 (Ct. App. 2012). The Defendant contends that Plaintiff is unable to demonstrate a lack of probable cause. *See Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656, 665, n. 4 (Ct. App. 2005) ("[A] malicious prosecution action fails if Plaintiff cannot show malice and lack of probable cause.")

In support of his position, Defendant points to Rains' October 22, 2020 deposition testimony in which she was directly examined about probable cause:

> Q: Tell me what your probable cause was for the warrant against Mr. Shimeld.
>
> A: [ ] So I got the fingerprint match. I said, "Mr. Ardab, do you know this person?" And he said, "No, but I believe it's probably going to be the person that hangs out with him all the time because I think two people would have had to have done this job."
>
> And so he described him. And I, at this point, had never showed him a picture or anything. He described what the other person that was always with Mr. Osborne looked like, which was very similar to Mr. Shimeld. And he said that his clerk, Jennifer, would see him even more often and would definitely be able to identify him. That was the point of doing the photo lineups.
>
> So they picked him out of a photo lineup and -- I have to look at -- (Witness examines document).
>
> Q: And just so the record's clear, what you're looking at is the arrest warrant, correct?
>
> A: It is. It's the arrest warrant. So after I talked to Mr. Ardab and the clerk, I called the alarm company that had installed the alarm system and spoke to the manager and asked him if a Mr. Shimeld had ever worked there, thinking that perhaps if he had installed the alarm system (that) would be why his fingerprints would be there.

> So he said no, there was no person ever by the name Shimeld that worked for him. I asked if maybe he was a contractor or something, and he said no, that he was never a contractor there.
>
> So I asked him to reassure me that Mr. Shimeld had never worked for their alarm company, ADS. And he said no, absolutely. [He] gave me the names of the people that did install the system, and Mr. Shimeld was not one of them.
>
> So at that point, I had no reasonable thought of why his fingerprint would be on the alarm box that was ripped from the ceiling.
>
> Q: Is that what you took to the judge, the fingerprint and the photo lineup?
>
> A: The fingerprint match and that I had spoke to the alarm company and they had never had him as an employee there. And they had installed a new system about a year ago and he had never worked there. He had no reason to be there. I asked Mr. Ardab. He didn't know him and said that he would never have a reason to be in his office.
>
> Q: So when you talked to Mr. Ardab, he told you that he thought it would take two people to do this job?
>
> A: Yes.

Rains Dep. 21-23.

As the Supreme Court has held, "the proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, ***viewed from the standpoint of an objectively reasonable police officer***, amount to probable cause." *Mack v. Lott*, 415 S.C. 22, 23, 780 S.E.2d 761, 761 (2015). (Emphasis added). The requirement of an objective test is mandated by United States Supreme Court and South Carolina case law. In *Ornelas v. United States*, the United States Supreme Court explained that "[t]he principal components of a determination of ... probable cause will be the events which occurred leading up to the ... search [or seizure], and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount ... to probable cause." *Ornelas v. United States*, 517 U.S. 690, 698 (1996).

In *State v. Brockman*, the South Carolina Supreme Court cited favorably from *Ornelas* to the "two-step process" for determining probable cause as articulated in that decision. *State v. Brockman*, 339 S.C. 57, 528 S.E.2d 661 (2000). The "two-step process" was explained as follows:

"First, a court must determine the events which occurred leading up to the stop or search. Second, the court must decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." *Brockman*, 528 S.E.2d at 664. Therefore, the first step of the objective test requires the trial court to determine the "historical facts."

As the Supreme Court explained in the landmark case of *Beck v. Ohio*, "[w]hen the constitutional validity of an arrest is challenged, it is the function of a court to determine whether ***the facts available to the officers at the moment of arrest*** would warrant a man of reasonable caution in the belief that an offense has been committed." *Beck v. Ohio*, 379 U.S. 89, 96 (1964)(Emphasis added); *see also Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)(Emphasis added). The United States Supreme Court has described this as a "flexible, common sense standard" which "does not demand any showing that such a belief be correct or more likely true than false." *Texas v. Brown*, 460 U.S. 730, 742 (1983). The appellate courts of this State have cited *Texas v. Brown*, and explained that "[i]n regard to the lawfulness of an arrest, probable cause merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that an offense has been committed and the accused committed it." *In re the Care and Treatment of Brown v, State*, 372 S.C. 611, 619-620, 643 S.E.2d 118, 122 (Ct. App. 2007); *see also State v. Geer*, 391 S.C. 179, 705 S.E.2d 441 (Ct. App. 2010).

Therefore, in determining the "historical facts", the court must look at the facts available to the officer, i.e. the facts within the officer's knowledge. Once those "historical facts" are determined by the factfinder, the court must then proceed to the second prong of the analysis and decide "whether [those] historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854, 859 (2015), *citing Ornelas*, 517 U.S. at 696.

In a light most favorable to Plaintiff, the facts available to Investigator Rains and within her knowledge are cited herein. Rains had a positive fingerprint match for Plaintiff on the alarm unit which had been torn from the ceiling at the incident location. The alarm unit was affixed with an ADS decal and both Ardab, business owner, as well as the ADS manager confirmed that ADS installed the alarm system at that location. The ADS manager unequivocally stated and assured Rains he had never heard of Plaintiff; Plaintiff never worked for ADS; and Plaintiff would not have been in a position as a non-employee to perform an ADS alarm installation. The business

owner similarly represented that Plaintiff had never been in the office with the alarm system. Finally, Ardab and his store clerk identified Plaintiff as a potential suspect. *See* Rains Dep. 14-16, 21-22.

Based upon these historical facts known to the officer at the time, the question presented is would an objectively reasonable police officer in Rains' position have perceived that Plaintiff participated in the burglary. If an objectively reasonable officer could have perceived that there would have been no plausible or reasonable explanation for Plaintiff's fingerprints to be on the alarm box, then probable cause existed for a burglary charge.

Plaintiff's theory of the case primarily centers on the argument that he was innocent. However, the guilt or innocence of Plaintiff is immaterial in a proper assessment of probable cause. *See Carter v. Bryant*, 429 S.C. 298, 318, 838 S.E.2d 523, 534 (Ct. App. 2020), *reh'g denied* (Feb. 20, 2020), *cert. denied* (Oct. 19, 2020)("Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime."). Here, Plaintiff's malicious prosecution argument fails since Rains has satisfied the threshold of probable cause.

Plaintiff additionally asserts that he "was not damaged by the acts of whoever actually burglarized the store at issue; he was damaged by the acts of the Defendant in failing to properly investigate the matter before arresting him." *See* Pl's Mem. in Opp'n 8. Plaintiff argues, "the very evidence relied on by the investigator should have tipped her off that more investigation was needed prior to any arrest -- Had the Defendant done even a basic investigation, Shimeld would not have been a suspect in this crime." Pl's Mem. in Opp'n 10-11.

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

"[A]lthough the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion." *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656, 660 (Ct. App. 2005). Based on the undisputed evidence contained in the record, there was probable cause that Plaintiff participated in a burglary on March 1, 2018. Therefore, summary judgment for the Defendant RCSD is appropriate.

Moreover, under the provisions of the South Carolina Tort Claims Act, the Defendant RCSD enjoys absolute immunity for malicious prosecution. One of the six elements that Plaintiff needs to prove is "the institution or continuation of original judicial proceedings." In virtually identical language, S.C. Code Ann. § 15-78-60(23) provides absolute immunity for the "institution or prosecution of any judicial or administrative proceeding." *See* S.C. Code Ann. § 15-78-60(23). Therefore, because an element of a malicious prosecution cause of action falls squarely within an immunity provision, a governmental entity enjoys absolute immunity for this cause of action. Several United States District Courts have considered the same issue and determined that the Tort Claims Act provides immunity for a governmental entity for malicious prosecution.[3]

For these reasons, Plaintiff's malicious prosecution claim is dismissed.

B. NEGLIGENT TRAINING, SUPERVISION, RETENTION CLAIM

In *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992), the South Carolina Supreme Court described the elements of a negligent supervision claim as follows:

> [A]n employer may be liable for negligent supervision if the employee intentionally harms another when the employee: (1) is upon the premises of the employer, or is using a chattel of the employer, (2) the employer knows or has reason to know that he has

[3] The United States District Court, by and through various District Court judges, has ruled that the governmental entity enjoys immunity for malicious prosecution under the provisions of the Act. *See McCoy v. City of Columbia*, 929 F.Supp.2d 541 (D.S.C. 2013)("The City contends that it is immune from liability for McCoy's malicious prosecution … 'the institution or prosecution of a judicial proceeding."[citation omitted] The Magistrate Judge recommended that the court grant the City's motion …because McCoy's cause of action for malicious prosecution plainly falls within this express exception. The court agrees."); *Terrell v. City of Spartanburg*, No. 7:17-CV-2738-BHH, 2018 WL 4775579 at *4 (D.S.C. Oct. 3, 2018)("[T]he City is immune from liability for malicious prosecution under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-60(23) … "); *see also Thompson v. City of Columbia*, No. CV 3:05-1605-CMC, 2005 WL 8164911, at *4 (D.S.C. July 21, 2005) ("It is fairly clear from the plain language of the statute, particularly § 15-78-60(23), that the legislature intended to exclude claims for malicious prosecution from the waiver of immunity for governmental entities in the Tort Claims Act."); *see also Palmer v. Santanna*, No. 2:16-CV-3350-PMD-MGB, 2018 WL 1477600, at *5 (D.S.C. Mar. 27, 2018)("The Town of Summerville is immune from liability on this claim (as a result of) S.C. Code Ann. § 15-78-60(23); … While the Court recognizes that Plaintiffs experienced significant consequences as a result of Mr. Palmer's arrest and detention, the Defendants are nonetheless immune from suit …"); *see also Brown v. Dorchester Cty. S.C.*, No. 2:16-CV-01311-MBS-MGB, 2017 WL 9673618, at *6 (D.S.C. Nov. 29, 2017)("[T]he crux of Plaintiff's claim against Defendant is that the criminal charges against him were maintained for many months after the Solicitor's Office was made aware that probable cause was lacking. Such a claim falls squarely within § 15-78-60(1) and § 15-78-60(23).").

> the ability to control his employee, and (3) the employer knows or should know of the necessity and opportunity for exercising such control.

Plaintiff has not pled nor produced evidence to support the elements of this claim. In *James v. Kelly Trucking Co.*, 377 S.C. 628; 661 S.E.2d 329, (2008), the Supreme Court held that:

> Just as an employee can act to cause another's injury in a tortious manner, so can an employer be independently liable in tort.
>
> In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.
>
> As this recitation suggests, the employer's liability under such a theory does not rest on the negligence of another, but on the employer's own negligence. Stated differently, the employer's liability under this theory is not derivative, it is direct.

James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330-331 (2008) (Internal citations omitted).

However, our Courts have addressed the type of wrongdoing which would provide suitable notice to the employer. Thus, any prior act must bear key similarities to the consequent ultimate harm, *to wit*:

> Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two fundamental elements -- knowledge of the employer and foreseeability of harm to third parties. These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. ***From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.*** Such factual considerations -- especially questions related to proximate cause inherent in the concept of foreseeability -- will ordinarily be determined by the fact finder, and not as a matter of law. ***Nevertheless, the court should dispose of the matter on a dispositive motion when no reasonable fact finder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard.***

Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) (emphasis added). The Court of Appeals further explained that the applicable standard is "whether the employer knew the offending employee was in the habit of misconducting himself in a manner dangerous to others." 624 S.E.2d at 450-451. Thus, it is necessary that Plaintiff "demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties." 624 S.E.2d at 451.

Defendant argues that Plaintiff has not met his burden of proof. Specifically, Plaintiff has not presented evidence that Sheriff Lott or Rains' supervisors knew or should have known that Rains engaged in previous conduct for which to place the RCSD on notice that Rains effectuated unlawful arrests and, consequently, created an unreasonable or undue risk of harm to the public. For instance, according to Defendant, the record is devoid of any evidence that Rains had been the subject of a disciplinary action or an internal affairs investigation. In short, there is no evidence that Rains had the propensity for this type of alleged improper behavior or had engaged in such a course of conduct in the past sufficient to put the Sheriff or Rains' supervisors on notice of the possible danger to third parties. This Court agrees and finds that Plaintiff's claim for negligent supervision fails for a lack of evidence of foreseeability. In the absence of evidence that the RCSD knew or should have known of the necessity to exercise control over its employee, there can be no liability for negligent supervision. *See Brockington v. Pee Dee Mental Health Center*, 315 S.C. 214, 433 S.E.2d 16 (Ct. App. 1993).

CONCLUSION

Based upon the foregoing reasons, **IT IS THEREFORE ORDERED** that the Defendant's Motion for Summary Judgment is **GRANTED** and that all causes of action against the Defendant RCSD are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

Signature page to follow

Richland Common Pleas

Case Caption: Christopher Shimeld vs Richland County Sheriffs Office

Case Number: 2019CP4001299

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee