

In an effort to provide clarity as to the facts of this alleged incident, Defendant Summerville Police Department referred in its Motion and at the hearing to a two-page internal document that provides additional details. The sum total of those additional details are as follows: on November 20, 2018, the Summerville Police Department escorted DHEC employee Erika Edwards to Plaintiff's residence at 104 Lily Place in Summerville, South Carolina for the service of a search warrant.

Defendant filed its Motion to Dismiss in Lieu of Answer on January 21, 2021. While a hearing on the Motion was originally scheduled for May 26, 2021, the matter was continued until November 4, 2021. Based on the evidence presented and for the reasons set forth below, the Court grants the Defendant's Motion to Dismiss.

II. DISCUSSION

A. The Court finds that the Plaintiff has failed to allege any recognizable cause of action against the Summerville Police Department.

"A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Williams v. Condon, 347 S.C. 227, 533 S.E.2d 496 (Ct. App. 2001); Rule 12(b)(6), SCRPC. A 12(b)(6) motion "should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case.'" Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (internal citation omitted). "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." Williams, at 233, 533 S.E.2d at 500 (internal citation omitted).

The Court finds that the Plaintiff's Complaint fails to specifically allege a cause of action or state facts sufficient to constitute any cause of action against Defendant Summerville Police Department. Moreover, Plaintiff's Complaint lacks sufficient facts to inform the Court as to the

details of the alleged incident. Most notably, the Plaintiff's Complaint fails to state the identity of the entity executing the warrant referenced therein or if it was even executed at all. Therefore, because the Plaintiff has alleged no recognized cause of action against the Defendant within the four corners of his Complaint and his factual allegations are insufficient to constitute any recognizable cause of action, the Court grants the Defendant's Motion to Dismiss.

B. The Court finds that the Summerville Police Department is not an entity capable of being sued .

It is well-settled that only "persons" may act under color of state law. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 n. 55 (1978). Courts have routinely held that a police department is "an instrumentality of a municipality—not an independent entity—and thus not a 'person'". Hunt v. West Columbia Police Dept., Case No. 3:14-70-MGL-PJG, 2015 WL 4274827, *2 (D.S.C. July 14, 2015) (holding that the "Defendant West Columbia Police Department is not a 'person' amenable to suit"). See also Spellman v. City of Columbia Police Dept., Case No. 9:12-2376-TMC-BM, 2012 WL 5409626, *2 (D.S.C. Sept. 28, 2012) ("Police Department is a group of officers in a building and, as such, is not subject to suit . . . police departments, usually are not considered legal entities subject to suit."); Milligan v. D.E.A., Case No. 3:13-2757-TLW-PJG, 2014 WL 897144, *5 (D.S.C. Mar. 6, 2014) (citing Terrell v. City of Harrisburg Police Dept., 549 F.Supp.2d 671, 686 (M.D. Pa. 2008)) ("It is well-settled that police departments operated by municipalities are not 'persons' amenable to suit").

In this case, it appears that the Plaintiff is attempting to bring state law claims against the Summerville Police Department. However, as set forth above, the proper party for claims against the Summerville Police Department is the Town of Summerville. Because the Summerville Police Department is an improper party incapable of being sued, the Court grants the Defendant's Motion to Dismiss.

C. The Court finds that the Plaintiff's claims are barred by the statute of limitations.

Notwithstanding the grounds for dismissal cited above, the Court finds that the Plaintiff's Complaint is barred by the South Carolina Tort Claims Act's two-year statute of limitations. The South Carolina Tort Claims Act (SCTCA) governs all tort claims in South Carolina against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See *Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998); S.C. Code Ann. § 15-78-20(b) (Supp. 2006) ("The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)."); S.C. Code Ann. § 15-78-70(a) (Supp. 2006) ("[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity."). "The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f) (Supp. 2006). The statute of limitations period under the SCTCA is two years. S.C. Code Ann. § 15-78-110 (Supp. 2006).

Moreover, "if on a motion under 12(b)(6) matters outside the pleadings are presented and not excluded, the motion shall be treated as one for summary judgment." *McDonnell v. Consolidated Sch. Dist.*, 315 S.C. 487, 489 n. 2, 445 S.E. 2d 638, 639 n.2 (1994) (converting defendant's motion to dismiss to a motion for summary judgment and dismissing the plaintiff's claims as barred by the statute of limitations). Rule 56, SCRCPP, specifically provides for such a conversion "provided that the parties, upon compliance with the notice provisions of [the rule], are afforded opportunity to introduce evidentiary matters. *Johnson v. Dailey*, 318 S.C. 318, 321, 457

S.E. 2d 613, 615 (1995) (holding that express notice of conversion of motion to dismiss to one for summary judgment is not required where outside materials were specifically referred to by the movants both in the motion and at the hearing).

As an initial matter, the Court finds that the Defendant's reference to its internal records in its January 21, 2021 Motion, more than nine months prior to the hearing on November 4, 2021, provided sufficient notice to the Plaintiff. Thus, the Court may properly consider the Defendant's Motion to Dismiss as one for summary judgment.

Next, the Court finds that the SCTCA governs the Plaintiff's claims because the Defendant is a governmental entity. Additionally, while the Plaintiff's Complaint did not provide the date of the alleged incident on which he bases his claims, the Defendant's internal records reveal that it occurred on November 20, 2018. Therefore, the Court finds that the Plaintiff's November 23, 2020 Complaint was filed outside of the SCTCA's two-year statute of limitations. For this reason, the Court grants the Defendant's Motion for Summary Judgment.

III. CONCLUSION

For the reasons set forth herein, it is hereby **ORDERED** that the Defendant's Motion to Dismiss is granted and this action is dismissed with prejudice as to Defendant Summerville Police Department.

AND IT IS SO ORDERED.

April_____, 2022
St. George, South Carolina

The Honorable Edgar W. Dickson
Presiding Judge



Dorchester Common Pleas

Case Caption: Randy Moore VS DHEC , defendant, et al

Case Number: 2020CP1801893

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153