IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Kelvin Sharod Addison, #309917, Plaintiff, vs. Investigator Danny Catoe and South Carolina Department of Corrections, Defendants.	)	C.A. No. 1:16-1137-HMH-SVH **OPINION & ORDER**

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Shiva V. Hodges made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.[1] Kelvin Sharod Addison ("Addison"), a state prisoner proceeding pro se, pursuant to 42 U.S.C. § 1983, alleges defamation, negligence, and violations of his constitutional rights. In her Report and Recommendation, Magistrate Judge Hodges recommends granting the Defendants' motion for summary judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Addison is currently incarcerated at the Kershaw Correctional Institution ("KCI"), a South Carolina Department of Corrections ("SCDC") facility. This matter arises out of an investigation and subsequent prosecution of Addison for allegedly throwing urine on Officer Steven Moore ("Moore") at KCI. (Mem. Supp. Mot. Summ. J. 2, ECF No. 25-1.) Moore filed

[1] The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

an incident report, wherein he stated that Addison had thrown a liquid onto him, which Moore believed to be urine. (Id., ECF No. 25-1.) Defendant Danny Catoe ("Catoe") investigated the incident. (Id., ECF No. 25-1.) On August 28, 2013, Catoe interviewed Moore and Sgt. Brenda Lippe ("Lippe"), who was also present during the incident. (Id., ECF No. 25-1; Not. of Removal Ex. 1 (State Ct. Docs 2), ECF No. 1-1.) Catoe reported that Moore and Lippe separately told him that they believed Addison had thrown urine during the incident because of the liquid's smell and color. (Mem. Supp. Mot. Summ. J. 2, ECF No. 25-1.) Addison alleges that Catoe did not personally interview him. (Not. of Removal Ex. 1 (State Ct. Docs 2), ECF No. 1-1.) Instead, Addison states that another investigator interviewed him about the incident. (Id. (State Ct. Docs 2), ECF No. 1-1.) On September 4, 2013, Catoe obtained an arrest warrant for Addison for throwing bodily fluids on a correctional employee. (Mem. Supp. Mot. Summ. J. 2, ECF No. 25-1.) After a trial, Addison was found not guilty on November 5, 2014. (Not. of Removal Ex. 1 (State Ct. Docs 2), ECF No. 1-1.)

Addison alleges that Moore testified at Addison's SCDC disciplinary hearing on September 10, 2013, and that Moore stated "he wasn't lookin[g] to smell urine . . . he was very upset." (Id. Ex. 1 (State Ct. Docs 2), ECF No. 1-1.) Addison alleges that Lippe also testified at the disciplinary hearing that she was five feet behind Moore and "by the time she got anywhere close to smell anything all she could smell was mace." (Id. Ex. 1 (State Ct. Docs. 2), ECF No. 1-1.)

Addison filed a lawsuit against Catoe on February 2, 2015. See Addison v. Catoe, Civil Action No. 1:15-572-SB ("Addison I"). On May 14, 2015, Addison I was summarily dismissed because Addison failed to sufficiently plead his claim. Id. (May 14, 2015 Order, ECF No. 15).

Addison filed the instant case in the Court of Common Pleas for Richland County, South Carolina, on December 17, 2015, alleging defamation, negligence, and constitutional rights violations based on malicious prosecution and false arrest. (Not. of Removal (State Ct. Docs), ECF No. 1-1.) On April 12, 2016, Defendants removed the case to this court. (Not. of Removal, ECF No. 1). Defendants filed a motion for summary judgment on November 7, 2016. (Mot. Summ. J., ECF No. 25.) On December 6, 2016, Addison filed a response in opposition. (Resp. Opp'n Mot. Summ. J., ECF No. 28.) On December 13, 2016, Defendants replied. (Reply, ECF No. 29.) On March 3, 2017, Magistrate Judge Hodges issued her Report and Recommendation, recommending granting Defendants' motion for summary judgment. (R&R, ECF No. 37.) On March 16, 2017, Addison timely filed objections. (Objs., ECF No. 39.) Catoe filed a response on March 28, 2017. (Response Opp'n Objs., ECF No. 41.) This matter is now ripe for consideration.

II. DISCUSSION OF THE LAW

A. Summary Judgment Standard

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In deciding whether a genuine issue of material fact exists, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in his favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248.

A litigant "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." Monahan v. Cty. of Chesterfield, 95 F.3d 1263, 1265 (4th Cir. 1996). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Ballenger v. N.C. Agric. Extension Serv., 815 F.2d 1001, 1005 (4th Cir. 1987).

B. Objections

Addison filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). Upon review, the court finds that many of Addison's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. However, the court was able to glean three specific objections.

First, Addison objects that the magistrate judge erred in finding that he failed to provide sufficient facts to demonstrate that Catoe intentionally lied or recklessly made material omissions to obtain the arrest warrant, or that Catoe believed he lacked probable cause for the arrest

warrant. (Objs. 2, ECF No. 39.) Addison argues that Moore and Lippe's testimony and statements demonstrate that probable cause did not exist for the September 4, 2013, arrest warrant. (Id., ECF No. 39.)

"To state a claim for false arrest or imprisonment under § 1983, a plaintiff must demonstrate that he was arrested without probable cause." Sower v. City of Charlotte, 659 Fed. App'x 738, 739 (4th Cir. 2016) (per curiam). Specifically, Addison must allege that the defendants: "(1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in plaintiff's favor." Id. (quoting Evans v. Chalmers, 703 F.3d 636, 646 (4th Cir. 2012). The existence of probable cause is determined at the time of arrest. Id. When Catoe sought the arrest warrant, there was a reasonable basis to believe probable cause existed because both Moore and Lippe had stated that they were sure Addison had thrown urine on Moore. (Mot. Summ. J. Ex 2 (Lippe Aff. ¶ 4), ECF No. 25-3; Ex. 7, (Moore Aff. ¶ 4), ECF No. 25-8.) Addison argues the court should consider Lippe and Moore's subsequent statements. (Objs. 2, ECF No. 39.) However, the statements have no bearing on whether Catoe knowingly lied, omitted material information, or believed probable cause did not exist at the time he sought the arrest warrant. Moreover, a Lancaster County, South Carolina magistrate judge reviewed the information Catoe presented and found that probable cause existed. As Addison provides no evidence which demonstrates Catoe believed these statements were false, his objection is without merit.

Second, Addison objects that the magistrate judge failed to consider his claim for malicious prosecution. (Objs. 2, ECF No. 39.) A "malicious prosecution claim under § 1983 is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates

certain elements of the common law tort." Lambert v. Williams, 223 F.3d 257, 261 (4th Cir. 2000). To state a claim for malicious prosecution, the plaintiff must show he was "seized pursuant to legal process that was not supported by probable cause and . . . the criminal proceedings [must have] terminated in [plaintiff's] favor." Brooks v. City of Winston-Salem, 85 F.3d 178, 183-84 (4th Cir. 1996). Under South Carolina law, malicious prosecution requires proof of: "(1) the institution or continuation of original judicial proceedings . . . ; (2) by, or at the [insistence] of, the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage." Ruff v. Eckerds Drugs, Inc., 220 S.E.2d 649, 651 (S.C. 1975). A police officer or correction officer may be held liable for malicious prosecution if, for instance, the officer misled or lied to the prosecutor. Evans v. Chalmers, 703 F.3d 636, 647 (4th Cir. 2012). However, an officer is "not liable for a plaintiff's unlawful seizure following indictment in the absence of evidence that [the officer] misled or pressured the prosecution." Id. (internal quotation marks omitted). Addison has failed to provide any evidence that Catoe misled or pressured the prosecution, or that he lied or made a material omission in his application for the arrest warrant. Therefore, the magistrate judge did not err and Addison's objection is without merit.

Lastly, Addison objects that the magistrate judge erred in finding that Catoe was not negligent in his investigatory duties for allowing another investigator to interview Addison. (Objs. 3, ECF No. 39.) Under the collective knowledge doctrine, "probable cause can rest upon the collective knowledge of the police, rather than solely on that of the officer who actually makes the arrest." United States v. Gaither, 527 F.2d 456, 458 (4th Cir. 1975) (internal quotation marks omitted). Therefore, the magistrate judge did not err in finding that Addison had failed to

demonstrate that Catoe was negligent in his investigatory duties for not personally interviewing Addison. Based on the foregoing, Addison's objection is without merit.

Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Hodge's Report and Recommendation and incorporates it herein by reference.

It is therefore

ORDERED that the Defendants' motion for summary judgment, docket number 25, is granted. It is further

ORDERED that the Defendants' motion to strike, docket number 34, is denied as moot.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
April 3, 2017

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.