

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Terrell J. Woodley, Sr.,)
)
 Plaintiff,)
)
 v.)
)
 City of Charleston Police Department *and*)
 Jory Bradshaw, Police Officer, *City of*)
 Charleston PD,)
)
 Defendants.)
 _____)

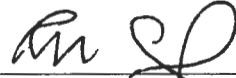
Civil Action No. 2:17-1467-RMG

ORDER AND OPINION

This matter is before the Court on the Report and Recommendation of the Magistrate Judge (Dkt. No. 13), recommending summary dismissal of the City of Charleston Police Department from this action brought under 42 U.S.C. § 1983. Plaintiff proceeds *in forma pauperis* so this matter is subject to initial review under 28 U.S.C. § 1915.

To state a claim under § 1983, a plaintiff must allege that a person acting under color of state law violated a right secured by the Constitution or laws of the United States. Because a police department is not a person under § 1983, the Magistrate Judge recommends summary dismissal of the City of Charleston Police Department from this action. The Court agrees that the City of Charleston Police Department is a department of the municipality of the City of Charleston and not a legal entity capable under South Carolina law of suing or being sued in its own name. *See* S.C. Code ch. 5-7. It therefore is not a person under § 1983. *See Smith v. Munday*, 848 F.3d 248, 256 (4th Cir. 2017). The Court therefore **ADOPTS** the Report and Recommendation of the Magistrate Judge (Dkt. No. 13) as the Order of the Court and **DISMISSES WITHOUT PREJUDICE** the City of Charleston Police Department from this action.

AND IT IS SO ORDERED.



Richard Mark Bergel
United States District Court Judge

July 18, 2017
Charleston, South Carolina