Hart v. Santee, City of et al Doc. 22

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

Ann P. Hart, *as administrator of the Estate of Guy William Hart*,	)	Civil Action No.: 5:16-cv-03338-JMC
Plaintiff,	)	
v.	)	**ORDER AND OPINION**
City of Santee, Santee Police Department, SPD Chief of Police Dennis "Bing" Jones, and SPD Officer Shawn Hollingquest,	)	
Defendants.	)	

Plaintiff Ann P. Hart ("Plaintiff"), as administrator of the estate of Guy William Hart ("Hart"), brought this action asserting claims pursuant to 42 U.S.C. § 1983 against Defendants City of Santee (the "City"),[1] Santee Police Department ("SPD"),[2] SPD Chief of Police Dennis "Bing" Jones ("Jones"), and SPD Officer Shawn Hollingquest ("Hollingquest")[3] (collectively, except for Hollingquest, "Defendants") after Hart was struck and killed by a vehicle as he crossed

[1] Defendants have explained that the party identified in the complaint as "City of Santee" should instead be named as "Town of Santee." (ECF No. 10 at 1; ECF No. 16 at 1.)

[2] Defendants assert that SPD "is a department of the Town of Santee," that it "is not a separate legal entity capable of being sued," as "[t]he Town of Santee is the proper juridical entity for an action involving [SPD],"and thus that SPD "should be dismissed from this action." (ECF No. 10 at 1 n.1; ECF No. 16 at 1 n.1.) Because the court concludes that the complaint should be dismissed for other reasons, the court declines to decide in this order whether SPD should be dismissed from this action for this reason offered by Defendants.

[3] Defendants have explained that the party identified in the complaint by the surname "Hollingquest" should instead be named as "Hallingquest." (ECF No. 10-1 at 2.) Because this party has not appeared in this matter and because this matter will be dismissed regardless, the court sees no need to clarify this party's surname and will use the surname as it appears in the complaint.

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a highway in Santee, South Carolina. (*See* ECF No. 1.) Three Defendants[4] have filed a motion to dismiss the complaint, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim for which the court could grant relief. (ECF No. 10.) For the reasons that follow, the court **GRANTS** Defendants' motion to dismiss (ECF No. 10) and **DISMISSES** Plaintiff's complaint (ECF No. 1).

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

In her complaint, Plaintiff alleges that on November 16, 2013, Hart, while crossing a highway in Santee, was struck by a vehicle driven by Otha Green Vincent, III ("Vincent"), and sustained mortal injuries. (*See* ECF No. 1 at 1-3.) Plaintiff alleges on information and belief that, at the time of the incident, Vincent was impaired by the use of alcohol, driving at an excessive speed, and otherwise violating traffic laws. (*Id.* at 3.) Shortly after the collision occurred, Hollingquest arrived on the scene, and Plaintiff alleges that Hollingquest could see that Hart had sustained serious injuries and knew that he would likely die. (*Id.* at 4.) Hollingquest requested emergency medical technicians, but Hart died while technicians attempted to stabilize him and before he could be transported to a hospital. (*Id.*) Plaintiff alleges that neither Hollingquest nor other SPD officers took any actions to determine Vincent's capacity to safely operate his vehicle; the incident report does not mention any attempt to inspect Vincent for any sign of intoxication or to conduct field sobriety tests or blood-alcohol tests. (*Id.*) Plaintiff alleges that the on-scene investigation lasted approximately one and a half hours; that Hollingquest's report focuses on the

[4] The motion is brought by counsel for the City, SPD, and Jones, who do not represent Hollingquest, apparently because he is no longer employed by SPD. (*See* ECF No. 10; ECF No. 10-1 at 2.) Although Hollingquest has not joined the motion filed by his co-defendants, this order will refer to the moving parties as "Defendants" for ease of understanding.

The motion also asserts that Hollingquest has not been served with process. (ECF No. 10-1 at 2.) It appears that Plaintiff's service of process on Hollingquest might be deficient and that his dismissal from the action on this basis might be warranted. (*See* ECF No. 5); Fed. R. Civ. P. 4(c), (e), (m); S.C.R. Civ. P. (d)(1). However, because the court concludes that the complaint should be dismissed, the court declines to pursue this line of inquiry any further in this order.

condition of the vehicle and not on the condition of Vincent, the driver; and that an available specialized accident investigation team was not asked to assist in the investigation. (*Id.* at 5.) Vincent was not charged with a crime. (*Id.* at 4.)

Plaintiff alleges that SPD had a duty under South Carolina law to investigate the collision that killed Hart. (*Id.* at 5.) Plaintiff asserts that a South Carolina statutory provision "requires an officer to administer" sobriety tests under certain circumstances. (*Id.*) The provision to which Plaintiff points, in relevant part, states:

> Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945.

S.C. Code. Ann. § 56-5-2946(A) (2016). The provision to which § 56-5-2946(A) refers makes a person guilty of a felony if, while driving a motor vehicle under the influence of alcohol, he violates the law or a duty imposed by the law, which proximately causes another person's death. S.C. Code Ann. § 56-5-2945. Plaintiff alleges that, if Hollingquest had properly ascertained Vincent's capacity to drive, he would have been required under § 56-5-2946(A) to administer one of the sobriety tests mentioned in the statute. (*Id.* at 6.) Thus, Plaintiff alleges, SPD failed "to fulfill its duty to properly investigate and preserve evidence." (*Id.*) Plaintiff alleges that SPD's failure to adequately investigate the collision resulted in the loss of "virtually all of the critical evidence of Vincent's culpability." (*Id.* at 5; *see id.* at 6.) Plaintiff further alleges that SPD's failure to investigate the collision reduces the likelihood that Vincent will be held criminally liable and diminishes the likelihood of Plaintiff's success in any civil action she brings against Vincent as well as the value of any such action. (*Id.* at 7.)

Based on these allegations, Plaintiff asserts four claims in her complaint. First, Plaintiff asserts a claim for *respondeat superior* liability against the City. (*Id.* at 8.) Plaintiff explains that Jones' and Hollingquest's actions were performed in the course and scope of their employment with the City and that the City, as an employer, is vicariously liable for the injuries she sustained. (*Id.*)

Second, Plaintiff asserts a § 1983 claim for violation of her procedural Due Process rights under the Fourteenth Amendment to the United States Constitution. (*Id.* at 8-9.) Plaintiff asserts that she had a right to an adequate investigation of the collision, that she was deprived of this right when SPD failed to provide a reasonably diligent investigation, and that the deprivation resulted in elimination or impairment of her property interests, namely the reduced value of her potential recovery from a civil action. (*Id.*) Plaintiff further asserts that this deprivation of her right occurred without a pre-deprivation opportunity to challenge SPD's decision to not adequately investigate, that there are no post-deprivation remedies, and that Defendants deprived her of her property interests under color of law. (*Id.*)

Third, Plaintiff asserts a § 1983 claim for infringement of her right of access to courts under Article IV of, and the First and Fourteenth Amendments to, the United States Constitution. (*Id.* at 9-11.) Plaintiff again asserts that SPD had a duty to adequately investigate the collision that killed Hart and that SPD failed to meet this duty. (*Id.*) She asserts that SPD's failure to investigate was done under color of law and with deliberate indifference to her rights, namely her right to bring a civil action against Vincent, which was impaired by the lack of evidence resulting from the failure to adequately investigate. (*Id.*) Plaintiff asserts that the impairment of these rights infringed on her constitutional right of access to the courts. (*Id.*)

Fourth, Plaintiff asserts a § 1983 claim, pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), against the City. (ECF No. 1 at 11.) Plaintiff alleges that SPD "has a policy of failing to meaningfully investigate crashes" and "systematically misclassifies vehicular crimes as 'accidents,' creating a false appearance of declining crime rates while motorists like Vincent escape consequences." (*Id.* at 1.) Plaintiff asserts that the City, acting through SPD, Jones, and Hollingquest, had policies or practices in effect that proximately resulted in constitutional violations, namely the deprivation of her property interests in a civil action against Vincent without due process and the infringement of her access to the courts. (*Id.* at 11.)

On February 2, 2017, Defendants filed the instant motion to dismiss, pursuant to Rule 12(b)(6), arguing that all of the claims asserted in Plaintiffs complaint fail to state a claim for which the court could grant relief. (ECF No. 10.) The gist of Defendants' motion is that, with respect to the three § 1983 claims, Plaintiff's complaint fails to identify a cognizable duty that they owed to her that they are alleged to have violated and that, with respect to the *respondeat superior* claim, the City cannot be held vicariously liable under § 1983 for the actions of its employees via a theory of *respondeat superior*. (*See id.*) After being fully briefed and argued (*see* ECF Nos. 10-1, 17, 18, 21), the motion is ready for disposition.

II. LEGAL STANDARD

A motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted "challenges the legal sufficiency of a complaint." *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009) (citations omitted); *see also Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) . . . does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses."). To be legally

sufficient a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This means that a complainant's factual allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555–56 (citations omitted). When considering a motion to dismiss, the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the complainant. *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (4th Cir. 1999); *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). Dismissal is appropriate if, even accepting well-pled allegations and viewing the complaint in the complainant's favor, the complaint could not state a legally cognizable claim for which the court could grant relief. *See Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999) ("[A] Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief."); *c.f. Johnson v. City of Shelby*, ___ U.S. ___, 135 S. Ct. 346, 347 (2014) (per curiam) (explaining that *Iqbal* and *Twombly* plausibility standards are not always at issue).

III. ANALYSIS

A. Section 1983 claims

As the complaint evinces (*see* ECF No. 1) and as Plaintiff conceded in her briefing (*see* ECF No. 17 at 5-6) and at the hearing on the motion, her three claims aside from the *respondeat*

superior claim are brought pursuant to § 1983. "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Adkins*, 487 U.S. 42, 48 (1988); *see Crosby v. City of Gastonia*, 635 F.3d 634, 639 (4th Cir. 2011) ("A federal civil rights claim based upon § 1983 has [these] two essential elements . . . ."). If a complaint asserts a § 1983 claim that fails to allege a violation of a cognizable federal right, it is subject to dismissal under Rule 12(b)(6). *See Stack v. Greenville Cnty. Detention Ctr.*, No. 4:08-1756-HFF-TER, 2008 WL 2368086, at *4 (D.S.C. June 10, 2008).

Defendants argue that Plaintiff's complaint does not identify a cognizable federal right and that her § 1983 claims should be dismissed on this basis. The court agrees. The purported right which Plaintiff's complaint asserts is the right to an adequate investigation of the collision that killed Hart. This purported right underlies each of the three § 1983 claims. With respect to the Due Process claim, the complaint alleges that Plaintiff was deprived of her property interest in her potential civil claims against Vincent specifically because Defendants failed in their duty to conduct an adequate investigation of the collision. Likewise, with respect to the access-to-courts claim, the complaint alleges that Plaintiff's right to access the courts was infringed specifically because Defendants failure to conduct an adequate investigation resulted in the loss of evidence. The complaint's *Monell* claim alleges that the City's policy or practice of failing to adequately investigate collisions like the one that killed Hart harmed her by depriving her of her property interests without due process and by infringing her access to the courts. Thus, Plaintiff's complaint may only be maintained if it alleges a cognizable right to an adequate investigation that is protected by the Constitution or federal law. Because, as discussed below, no such cognizable right exists, the § 1983 claims must be dismissed.

Plaintiff's complaint fails to allege a state-law right to an adequate investigation. In support of her right to an adequate investigation, Plaintiff's complaint points to § 56-5-2946(A), asserting that the statute imposes a duty on officers to conduct sobriety tests in certain circumstances and specifically asserting that it imposed a duty on Hollingquest to conduct a sobriety test on Vincent. However, on its face, § 56-5-2946(A) imposes a duty only on individuals who have been arrested for violating § 56-5-2945 or for whom there is probable cause to believe they have violated § 56-5-2945 to comply with a law enforcement officer's administration of a sobriety test. *See* S.C. Code Ann. § 56-5-2946(A). By its terms, the statute imposes no duty on law enforcement officers to conduct sobriety tests, nor does it impose a more general duty on officers to conduct an adequate investigation of vehicular collisions of any sort. Thus, as Defendants correctly point out, the very statute on which Plaintiff relies to establish the right which she claims was violated, imposes no duty on any Defendant and thus confers no right upon Plaintiff that is enforceable against Defendants. Furthermore, Plaintiff points to no other authority for the proposition that, under South Carolina law, law enforcement officers have a duty to adequately investigate vehicular collisions for the purpose of preserving evidence for potential civil litigants, and the court has unearthed no such authority. Under South Carolina law, there is no right to an adequate investigation like the one asserted by Plaintiff.[5]

[5] The parties advance some arguments about South Carolina's public duty rule, which, with some exceptions, presumes that a statute that creates or defines the duty of a public official is not to be construed to create a duty owed by the public official to any individual member of the general public or to create a right of action for an individual who is injured by the public official's failure to perform the duty. *See generally Edwards v. Lexington Cnty. Sheriff's Dep't*, 688 S.E.2d 125, 128-29 (S.C. 2010); *Arthurs ex rel. Estate of Munn v. Aiken Cnty.*, 551 S.E.2d 579, 582-84 (S.C. 2001); *Parker v. Brown*, 10 S.E.2d 625 (S.C. 1940). Because the court concludes that § 56-5-2946(A) does not define or create a duty for law enforcement officers, there is no need to determine whether the public duty rule, or exceptions thereto, apply to the statute.

Even if Plaintiff could point to a state-law right to an adequate investigation, violation of that right, alone, could not support a cognizable § 1983 claim. As the Supreme Court has explained, "section [1983] is not itself a source of substantive rights, but a method for vindicating *federal* rights elsewhere conferred by those parts of the *United States Constitution* and *federal statutes* that it describes." *Baker v. McCollan*, 433 U.S. 137, 144 n.3 (1979) (emphasis added). As a result, it is well-settled that "violations of state law are not cognizable under § 1983," *Love v. Pepersack*, 47 F.3d 120, 124 n.5 (4th Cir. 1995), such that "[c]onduct violating state law without violating federal law will not give rise to a § 1983 claim." *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 145 (4th Cir. 2014) (citing *United States v. Van Metre*, 150 F.3d 339, 347 (4th Cir. 1998)); *see also Gantt v. Whitaker*, 57 F. App'x 141, 146 (4th Cir. 2003) (citing *White ex rel. White v. Chambliss*, 112 F.3d 731, 738 (4th Cir. 1997)). Accordingly, to the extent Plaintiff's complaint alleges a violation of a state law duty to conduct an adequate investigation, the court concludes such a duty, alone, provides no basis for any of Plaintiff's § 1983 claims.

Aside from asserting that Defendants violated her right to an adequate investigation of the collision, Plaintiff's complaint also asserts that Defendants violated her constitutional due process rights.[6] In the court's view, the complaint's allegation of a due process violation is dependent on its allegation that Defendants violated Plaintiff's right under state law to an adequate investigation, which the court has already determined is non-existent. Further, to the extent Plaintiff asserts that she has a right to an adequate investigation protected by the Constitution's Due Process Clauses,

[6] As an initial matter, to whatever extent Plaintiff's § 1983 claims are premised on the right to have Vincent investigated or prosecuted on criminal charges, it is well-settled that civil litigants have no cognizable right to enforce the prosecution of another. *See Lopez v. Richardson*, 914 F.2d 486, 494 (4th Cir. 1990) (citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)); *see also Harris v. Salley*, 339 F. App'x 281, 283 (4th Cir. 2009). Thus, to the extent Plaintiff premises her § 1983 claims on a constitutional right to have Vincent prosecuted, she has failed to state a cognizable right that has been violated. *See Sattler v. Johnson*, 857 F.2d 224, 226-27 (4th Cir. 1988).

the court must disagree. As a general matter, a victim of a crime "does not have a constitutional right to have the police investigate his case at all, still less to do so to his level of satisfaction." *Rossi v. City of Chi.*, 790 F.3d 729, 735 (7th Cir. 2015) (citing *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989)); *see Smith v. McCarthy*, 349 F. App'x 851, 859 (4th Cir. 2009) (citing *Sattler*, 857 F.2d at 227). Thus, a § 1983 claim by the victim of a crime premised on the failure of police to conduct an investigation necessary to provide evidence in support of the victim's civil action against the perpetrator does not allege the violation of a right protected by the Due Process Clauses of the Constitution. Here, Plaintiff's § 1983 claims are premised on SPD's failure to adequately investigate the collision in a manner necessary to preserve and marshal the evidence needed in her anticipated civil action against Vincent and, therefore, fail to allege the violation of a right protected by the Due Process Clauses.

Even assuming such a right was protected by the Due Process clauses, Plaintiff's complaint fails to allege the intent necessary to maintain her § 1983 claims. In the context of a criminal defendant asserting that his due process rights were violated when the police investigating the underlying crime failed to disclose potentially exculpatory evidence, the failure to disclose such evidence does not amount to a due process violation when the police have not acted in bad faith, meaning that they have not intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of the evidence during his criminal trial. *See Jean v. Collins*, 221 F.3d 656, 658-63 (4th Cir. 2000) (en banc) (per curiam) (Wilkinson, C.J., concurring in the judgment).[7] Assuming that this type of analysis could be applied in the context of a victim asserting her due process rights

[7] Judge (then Chief Judge) Wilkinson wrote for six circuit judges to concur in the affirmance of the underlying district court decision in *Jean*, but an equal number of circuit judges dissented. "[A]n affirmance by an equally divided court is not entitled to precedential weight." *Ark. Writers Project, Inc. v. Radland*, 481 U.S. 221, 234 n.7 (1987). Nevertheless, the court finds Judge Wilkinson's opinion persuasive.

were violated in a § 1983 action (and, in the court's view, it cannot be so applied), the court believes that the plaintiff-victim must, at a minimum, allege that the police who failed to disclose (or, here, failed to preserve) evidence necessary to an anticipated civil action against the perpetrator acted in bad faith, meaning that they acted with the purpose of depriving the plaintiff of the use of the evidence in pursuing her civil claims. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986) ("[T]he Due Process Clause is simply not implicated by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property."); *id.* at 665 ("Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property.").

Here, Plaintiff has failed to allege that Defendants acted with the requisite intent, a bad faith choice to deprive Plaintiff of the evidence needed to pursue her civil claims. At most, Plaintiff alleges that Defendants acted with deliberate indifference, knowing that evidence of the collision would be impossible to obtain if it was not recovered during the on-scene investigation immediately following the incident. Deliberate indifference, like that pled by Plaintiff, simply does not rise to the level of bad faith required for even a potential § 1983 claim founded on a due process violation. *See deliberate indifference*, Black's Law Dictionary (10th ed. 2014) (defining "deliberate indifference" as "[c]onscious disregard of the harm that one's actions could do to the interests or rights of another").

Plaintiff's complaint also asserts that Defendants violated her constitutional rights to access to the courts. Again, in the court's view, the complaint's allegation of an access-to-courts violation is dependent on its allegation that Defendants violated Plaintiff's state-law right to an adequate investigation of the collision, a purported right the court has already rejected for purposes of §

1983. To the extent Plaintiff asserts that the constitutional provisions protecting her rights to access to the courts also protect her rights to an adequate investigation, the court must again disagree.

As aptly explained by Judge Seymour,

> It is well established that citizens have a right of access to the courts. *See Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002). There are two types of lawsuits for denial of access that emerge from the case law. In the first type of lawsuit, a prisoner plaintiff endeavors to demonstrate denial of access by establishing that the failure to provide access to law materials and books, mail, notary services, and so forth deprived him of meaningful access to the courts. In the other type of lawsuit, a plaintiff, not necessarily a prisoner, may state a claim by establishing that a public official's actions in covering-up evidence hindered the plaintiff's effort to vindicate a legal right. *See, e.g.*, *Christopher v. Harbury*, 536 U.S. 403 (2002); *Swekel v. River Rouge*, 119 F.3d 1259, 1262 (6th Cir. 1997); *Foster v. Lake Jackson*, 28 F.3d 425, 429 (5th Cir. 1994); *Bell v. Milwaukee*, 746 F.2d 1205 (7th Cir. 1984).

Barnes v. Seigler, No. 5:11-0156-MBS, 2012 WL 4478966, at *4 (D.S.C. Sept. 27, 2012) (citations omitted). In a case of the latter type, such as the instant case, there is a "crucial distinction" between complaints alleging that a cover-up by officials prevented the would-be plaintiff from discovering the identity of the defendant or the facts necessary to file a civil suit against the defendant and complaints alleging that the officials' cover-up activity made it more difficult for the plaintiff to successfully litigate the civil action. *Swekel*, 119 F.3d at 1263. An allegation that the cover-up activity made successful litigation more difficult, as by interfering with potential sources of evidence, is not enough; to state a claim of unconstitutional denial of access to the courts of this type, the complaint must allege that the cover-up activity prevented the plaintiff from filing the civil suit at issue. *See Rossi*, 790 F.3d at 736-37 ("[Plaintiff] was not denied judicial access because he knew all of the relevant facts of his case and was free to pursue legal redress at all times."); *Thompson*, 33 F.3d at 852-53 (upholding dismissal of denial-of-access-to-courts claim where plaintiff "had firsthand knowledge of all the facts and circumstances surrounding" the underlying incident, knew of facts that "were sufficient to enable him to promptly file the . . . lawsuit," and

"was not prohibited from seeking effective and meaningful redress in court"); *Foster*, 28 F.3d at 430 ("[T]he right of access is 'a facilitative right designed to ensure that a citizen has the opportunity to exercise his or her legal rights to present a cognizable claim to the appropriate court and, if that claim is meritorious, to have the court make a determination to that effect and order the appropriate relief.'" (ellipsis omitted) (quoting *Crowder v. Sinyard*, 884 F.2d 804, 814 (5th Cir. 1989))); *Spencer v. Town of Chapel Hill*, 290 F. Supp. 2d 655, 663 (M.D.N.C. 2003) ("[T]he right of access to the courts is violated only when the defendant's actions inhibit the plaintiff from filing a case or obtaining legal redress, not merely when the defendant's actions interfere with potential sources of evidence."); *Barnes*, 2012 WL 4478966, at *5 ("The distinction to observe is that unlike in [other cases], where the facts surrounding the underlying incident had been concealed, the plaintiff . . . knew the identity of the defendants and, based on her first-hand knowledge, had all the facts necessary to commence a lawsuit.").

Here, Plaintiff's complaint does not allege that Defendant's actions prevented her from identifying the driver of the vehicle that struck Hart, from ascertaining the facts necessary to bring a civil action against the driver, or from filing the civil action in a court of competent jurisdiction. In fact, her complaint demonstrates that she knew Vincent's identity, that she was aware of all the facts necessary to bring an action against Vincent, and that she was able to do so notwithstanding Defendants' allegedly inadequate investigation of the collision. Because Plaintiff's complaint does not allege that Defendants' conduct prevented her from filing a civil action against Vincent, she has failed to allege that a cognizable right of access to the courts has been violated.

In sum, the putative rights that Plaintiff asserts Defendants violated are not cognizable federal rights that can be enforced in a § 1983 action. Plaintiff has failed to point to a state-law right to adequate investigation, and such a state-law right, by itself, would not be enforceable under

§ 1983. To the extent Plaintiff's due process claim is not dependent on the state-law right she asserts, the Due Process Clauses do not protect a victim's rights to adequate police investigation and, even if they did, Plaintiff's complaint fails to allege the bad faith intent that would be required for such a claim. Similarly, to the extent Plaintiff's right-of-access claim is not dependent on the state-law right she asserts, the constitutional provisions giving rise to such claims do not protect a civil litigant's rights to adequate police investigation when the litigant, as Plaintiff here, has not alleged that she was prevented from filing the underlying civil action. Because Plaintiff has failed to allege a cognizable right was violated, the three § 1983 claims in her complaint should be dismissed for failure to state a claim for which the court could grant relief.

B. *Respondeat superior* claim

Plaintiff asserts that the City is vicariously liable, under the theory of *respondeat superior*, for the conduct of Jones and Hollingquest as described in the allegations in the complaint. (ECF No. 1.) Defendants argue that *respondeat superior* liability is inapplicable when the underlying claim against the employee or agent is brought under § 1983 and that therefore Plaintiff's claim asserting *respondeat superior* liability against the City should be dismissed. (ECF No. 10-1 at 10-11.) In response, Plaintiff argues that the rule preventing *respondeat superior* liability in § 1983 actions applies only to municipalities and that therefore, although it cannot maintain a claim for *respondeat superior* liability against the City, it can maintain such a claim against Jones. (ECF No. 17 at 6.) In reply, Defendant re-asserts that *respondeat superior* liability is inapplicable to § 1983 claims and further argues that the claim should be dismissed because there is no underlying cause of action for which Plaintiff can assert liability against the City. (ECF No. 18 at 1-2.)

Defendants' arguments are well-taken. First, *respondeat superior* is a doctrine that makes a principal or employer vicariously liable for the acts of his agent or employee under certain

circumstances; it is not an independent cause of action but, instead, is only a means to impute liability for a separate cause of action. *See Pulte Home Corp. v. S & ME, Inc.*, No. 0:13-1746-CMC, 2013 WL 4875077, at *2 (D.S.C. Sept. 11, 2013); *Joy v. Countrywide Fin. Corp.*, No. 5:10-cv-218-FL, 2011 WL 741597, at *1 n.1 (E.D.N.C. Feb. 23, 2011); *De Phillips v. United States*, No. 8:09-cv-00905, 2009 WL 4505882, at *1 (D. Md. Nov. 24, 2009); *Buchanan v. Fairfield Resorts, Inc.*, No. 1:04cv725, 2005 WL 3157580, at *3 (M.D.N.C. Nov. 25, 2005). Here, *respondeat superior* is only a means of imposing liability on an employer, the City, for the actions of its employees, SPD officers. The City is already alleged to be liable under the three other causes of action in the complaint; thus, it appears that the complaint alleges no separate cause of action for which the City is liable under *respondeat superior* and for which it is not already alleged to be liable. Moreover, even if the other claims in the complaint—the three § 1983 claims—constituted separate causes of action for which the City could be found vicariously liable under *respondeat superior*, the court has already determined that they should be dismissed, leaving the claim for *respondeat superior* liability with no underlying viable cause of action. Because there appears no separate cause of action for which the City may be held liable under *respondeat superior*, the claim should be dismissed for failure to state a claim for which the court could grant relief.

Second, the Supreme Court has held that *respondeat superior* liability is inapplicable not only in § 1983 actions proceeding against municipalities under *Monell* but also in § 1983 actions against supervising government officials. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) ("Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*. Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." (internal citations omitted)).

Moreover, even if *respondeat superior* liability could be asserted against Jones, Plaintiff's complaint has only asserted such a claim against the City and not against Jones. (*See* ECF No. 1 at 8 (specifying that claim for *respondeat superior* liability is "against the City only").) Because the City cannot be found vicariously liable under *respondeat superior* for the § 1983 claims alleged in Plaintiff's complaint, the claim for *respondeat superior* liability should be dismissed for failure to state a claim for which the court could grant relief.

IV. CONCLUSION

For the foregoing reasons, Defendants' Rule 12(b)(6) motion to dismiss the complaint (ECF No. 10) is **GRANTED**, and Plaintiff's complaint (ECF No. 1) is **DISMISSED**.

IT IS SO ORDERED.

United States District Court Judge

July 25, 2017
Columbia, South Carolina