STATE OF FLORIDA
DISTRICT COURT OF APPEAL
FIRST DISTRICT

CASE NO. 1D23-0242
L.T. NO. 2020-CA-0936

STEVEN SHANE CLOUD AND WILLIAM JEFFREY DAVIS,

***Plaintiffs/Appellants*,**

v.

FLORIDA DEPARTMENT OF CORRECTIONS, RICHARD JOHNSON, individually, ARVEL COPELAND, individually, and JOSEPH VARNUM, individually,

***Defendants/Appellees*.**

APPELLANTS' AMENDED INITIAL BRIEF

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STATEMENT OF THE CASE

Plaintiffs/Appellants, Steven Cloud and William Davis, filed their original Complaint below against Appellee, the Florida Department of Corrections, and individual Defendants Richard Johnson, Arvel Copeland, and Joseph Varnum, on May 18, 2020. [R. 9-25]. That original complaint set forth eleven causes of action, not all of which are at issue here.

Following several amendments to the Complaint, the trial court then examined the Third Amended Complaint, which set forth the following causes of action that are at issue before this Court: false imprisonment/arrest (Count I) and negligent supervision (Count VIII). [R. 179- 202]. Appellee and the individual Defendants then each moved to dismiss portions of the Third Amended Complaint. [R. 231-254, 279-281].

On August 8, 2022, the trial court granted the Motions to Dismiss the Third Amended Complaint filed by DOC, Johnson, and Varnum. [R. 292-294]. The trial court granted the motions to dismiss the false arrest/imprisonment claims, brought by Johnson, Varnum, and DOC, with prejudice. [R. 293, 346; A. 46-49]. The trial court granted the motions to dismiss the civil conspiracy claims, brought by Johnson and Varnum, without prejudice. [R. 294].

Appellants thereafter filed the Fourth Amended Complaint, which is the operative complaint for the remaining claims on appeal. [R. 295-315]. In the Fourth Amended Complaint, Appellants set forth causes of action against DOC for negligent supervision (Count V). [Id.]. Following a hearing on January 4, 2023 [A1], the trial court granted DOC's motion with prejudice as to the negligent supervision claim on January 23, 2023. [R. 336-339]. Appellants filed their Notice of Appeal on January 24, 2023, based on the causes of action asserted against DOC and the Motions to Dismiss filed thereafter. [R. 340-346].

STATEMENT OF THE FACTS

The operative facts, which must be taken as true at this stage, come from the Fourth Amended Complaint. Appellant Steven "Shane" Cloud was originally employed with DOC in 1999. [R. 296]. Prior to working under Appellee Johnson, Cloud had no discipline and had been promoted up the ranks to the position of Captain on or about August 28, 2014. [Id.]. Appellant William Davis was originally employed with DOC on March 11, 2005, and held the position of Sergeant as of 2016. [Id.]. He had also worked as an acting lieutenant. [Id.].

In approximately October 2016, while Cloud was employed as a Captain at the Jackson Correctional Institution ("Jackson CI"), Appellee

Richard Johnson, a Warden, was transferred to Jackson CI from the Liberty Correctional Institution. [R. 297]. Johnson has had a long history of service working for DOC. [Id.]. He retired twice from DOC, serving as a Warden on both occasions. [Id.]. Upon coming out of retirement for the second time, Cloud was aware that Johnson returned as a Prison Inspector for the DOC, with the Office of Inspector General ("OIG"). [Id.]. Johnson has well-established relations with staff members and leadership within DOC and the OIG. [Id.].

Johnson had a personal issue with Cloud that spilled over into the workplace. [R. 297]. Although he had a personal issue with Cloud, Johnson was able to, and did, use his supervisory position with DOC to abuse and take actions against Cloud that were within the authority of his position. [Id.]. Specifically, as soon as Johnson was transferred to Jackson CI as the Warden, he used his authority to promote and demote employees, and demoted Cloud to the position of Lieutenant. [Id.]. This action was approved by DOC, notwithstanding Cloud's objections to his demotion which were known to his upper managers and supervisors within DOC. [Id.]. Cloud advised supervisors and others within DOC that Johnson improperly demoted him, and he challenged his improper demotion at the Public Employees Relations Commission (PERC). [Id.].

Through PERC, Cloud successfully challenged his demotion and was returned to his Captain position. [R. 298]. DOC was well aware of Johnson's improper demotion of Cloud and the fact that Johnson targeted Cloud as it defended Johnson's actions before PERC, and these were issues were discussed during the PERC proceeding. [Id.]. Regardless of that knowledge, DOC allowed Johnson to continue targeting Cloud and both allowed or ratified his conduct and actions. [Id.].

Demoting Cloud was an act of official misconduct committed against Cloud by Johnson in his position of authority within DOC. [R. 298]. Regardless, following the PERC determination, DOC determined that Cloud could no longer work at Jackson CI under Johnson. [Id.]. Pursuant to DOC's transfer policy, transferees must be sent to facilities within fifty miles of their prior post. [Id.].

However, DOC selected Liberty CI, which Cloud vehemently opposed through his Attorney Gary Printy, who represented him during his PERC hearing. [R. 298]. Attorney Printy attempted to change DOC's transfer decision to a different location several times, because transferring Cloud to Liberty CI, where Johnson has just served as Warden, would be just as detrimental to Cloud as remaining at Jackson CI. [Id.]. Johnson had significant connections to and power at Liberty CI. [Id.]. Attorney Printy, on

behalf of Cloud, made it clear in his requests that DOC relocate Cloud to a facility other than Liberty CI that the decision to move Cloud to Liberty CI would be horrific for Cloud. [R. 298-299].

Despite these requests and concerns, expressed more than once to DOC, DOC transferred Cloud to Liberty CI. [R. 299]. There was no legitimate reason that Cloud could not have been transferred to another nearby institution. [Id.]. Apalachee CI, Calhoun CI, Gadsden Reentry, and Holmes CI, were all closer to Cloud's home and required less travel. [Id.]. Liberty CI was actually close to or just outside the fifty-mile radius. [Id.].

Cloud later learned that Johnson had placed Appellee Copeland in an administrative position at Liberty CI and assisted Appellee Varnum in securing the Inspector position at Liberty CI. [R. 299]. Both were friends with Johnson and owed their jobs with DOC at that time to Johnson. [Id.]. Cloud again made requests to DOC that he be transferred to any institution other than Jackson or Liberty because of the influence Johnson had over both institutions. [Id.]. He was nonetheless transferred to Liberty CI.

On April 8, 2017, Cloud, working at Liberty CI, was assigned the role of shift supervisor. [R. 299]. At approximately 11:45 a.m., Davis, a Sergeant assigned to Cloud's shift, was involved in a use of force where chemical agents were properly administered to an inmate, John Daniels, at the center

gate area. [Id.]. Davis and the inmate were the only two individuals in the area during that time. [Id.]. Cloud and Copeland were then alerted to the incident. [Id.]. Copeland was stationed at the center gate and would have been in the vicinity of the incident prior to Cloud. [Id.].

After he became aware of the incident and while it was still ongoing, specifically while that the inmate was still being disruptive and not following Davis' orders to get on the ground, Copeland broke the seal on his chemical agent container and attempted to spray the chemical towards the disruptive inmate. [R. 300]. During the incident, Davis stepped around the center gate area to advise Cloud, who was the Officer in Charge, that force had been used. [Id.]. Cloud, who had arrived on the scene by that time, immediately instructed Copeland not to spray the inmate, but to place him in handcuffs and take him to confinement, which Copeland ultimately did. [Id.]. All proper protocol was followed, and the inmate was placed in confinement. [Id.].

Cloud then interviewed all staff and the inmate, and Davis submitted all of the necessary and required paperwork associated with a use of force. [R. 300]. On or around April 11, 2017, two days after reports were due to be submitted, Copeland filed an incident report falsely alleging the following: that Inmate Daniels had not been disruptive, and that Inmate Daniels was locked in a closet and sprayed by Davis. [Id.].

This incident report was untimely as it was submitted after the deadline for filing incident reports and contained false allegations, known to be false by DOC, as Copeland would not have broken the seal on his chemical spray if he had not seen and/or been involved in an incident involving a disruptive inmate. [R. 300]. In the incident report, Copeland also falsely alleged that Cloud was involved and was aware of these actions involving Inmate Daniels and Davis. [Id.]. Importantly, the preparation of incident reports is part of Copeland's job duties with DOC and the reports are subject to review by a prison inspector when they involve actions undertaken by correctional officers. [R. 300-301].

Based on Copeland's false report, Cloud and Davis were placed on "no inmate contact." [R. 301]. Davis was assigned to roving patrol and Cloud was assigned to the administrative building. [Id.].

Copeland prepared this false report at the request and behest of Johnson who had a well-established relationship with Copeland from his time as the Warden of Liberty CI. [R. 301]. Johnson was previously Copeland's supervisor when he was the Warden at Liberty and had promoted and/or transferred Copeland to work the favored administrative shift. [Id.]. Johnson sought to use the administrative processes within DOC to initiate an investigation against Cloud, with Davis being the collateral damage. [Id.].

Appellee Varnum, the DOC Office of Inspector General's Prison Inspector at Liberty CI, was assigned to the investigation into Copeland's report. [R. 301]. Johnson, as the Warden at Jackson CI and in his capacity as a Warden, instructed Varnum to "expedite" the case to get rid of Cloud. [R. 301-302]. Johnson was on duty at the time he gave this directive, as was Varnum, and used avenues available to them within DOC to actively target Cloud and then Davis. [Id.]. DOC did nothing to protect Cloud from Johnson and in fact, heightened the harm against him by transferring him to Liberty CI, essentially creating the ideal environment for abuse and mistreatment of Cloud. [Id.]. DOC's transfer of Cloud from Jackson CI to Liberty CI created a combination of events and circumstances leading to harm to Cloud which was easily foreseen by DOC and preventable. [Id.]. DOC, thus, created the perfect storm. [Id.].

Johnson and Varnum were in communication during the period during which Appellants were under investigation. [R. 302]. Johnson instructed Varnum to move the investigation in directions that would provide opportunities for more evidence to be elicited against Appellants. [Id.].

However, a simple review of the facts alleged in the initial incident reports submitted by Cloud and Davis would have indicated their innocence. [R. 302]. In fact, Varnum's investigation should have led to the conclusion

that Cloud and Davis were innocent, and that Copeland was untruthful in his incident report. [Id.]. However, the investigation and testimony elicited therein was manipulated and twisted to make it appear that they did something wrong. [Id.].

Moreover, DOC should have known that the allegations against Cloud and Davis were false based on their testimony, Inmate Daniels testimony, which was inconsistent with Copeland's description of the incident, and the fact that the seal on Copeland's chemical spray was broken. [R. 302].

Most importantly, in the taped interview of Inmate Daniels, he stated that he was promised that he would get "off the compound" for giving testimony against Appellants. [R. 302-303]. This fact, by itself, should and would have alerted DOC to the fact that something was amiss and that Appellants were being targeted with false accusations. [Id.]. During Varnum's interview of Daniels, when Varnum asked if he was promised anything to give his testimony, Daniels said "yes, I was promised . . ." or "you promised . . ." and the tape abruptly was terminated by Varnum. [Id.].

DOC, through its supervisors, knew or should have known about this promise as it was recorded on a DOC tape recording of inmate Daniels' testimony during a DOC OIG investigation in which Daniels testified about this promise during the Plaintiffs' criminal trial. [R. 303]. Further, at the time

of this investigation, DOC already knew that Cloud was concerned about being set up and targeted at Liberty CI as both he and his attorney told managers and supervisors within DOC that he should not be transferred to Liberty CI because of the influence of Johnson there. [Id.]. Based on this knowledge of the likelihood of hard to Cloud, DOC failed entirely to have any mechanism in place to ensure that Cloud was not set up or targeted while at Liberty. [Id.]. Varnum's sham investigation should have ended before it started to prevent the clear abuse of DOC's investigative process which was predictable based on knowledge that DOC had before it ever transferred Cloud to Liberty. [Id.].

Further, employees from the DOC's IG's office and DOC's attorney were present during the criminal trial, discussed below, and would have heard the testimony of inmate Daniels and others. [R. 303]. Other audio and video footage similarly refuted the claims against Appellants. [Id.]. Instead, Copeland, Johnson, and Varnum conferred about the charges to be brought against Appellants, and conspired to achieve the designed outcome of the IG investigation and other actions taken against Appellants. [Id.].

On or around May 18, 2017, Cloud and Davis were terminated and each charged by DOC with one felony (malicious battery on an inmate), and one misdemeanor (falsifying state documents). [R. 303].

DOC was complicit with Johnson, Copeland, and Varnum in procuring the charges against Appellants in that DOC failed to ensure that their own administrative processes were not being abused and that the investigation was conducted under proper protocols and without interference from other parties with ulterior motives, like Johnson. [R. 304]. DOC was advised, prior to Appellants' arrests, that they were innocent and that they should never have been charged to begin with. [Id.]. Further, DOC was on notice that such an abuse of their administrative processes was likely and imminent per the warnings made by Attorney Printy in his requests that Cloud not be sent to Liberty CI. [Id.].

Appellants were arrested and placed in the Liberty County Jail, based on information provided by DOC. [R. 304]. They were arrested based on the report prepared by Varnum which contained false information about Appellants' involvement in the use of force incident with Inmate Daniels. [Id.]. Soon after their arrest, Appellants posted bond and their felony charges were reduced to misdemeanors. [Id.].

Varnum, in tandem with Johnson and Copeland, prepared the false and misleading investigative report that resulted in Appellants' arrests. [R. 304]. The power and authority of DOC, through its employees Copeland, Johnson, and Varnum, procured the arrests of Appellants based on false and

misleading information, and the omission of information. [Id.]. Appellees omitted the broken seal, as well as the natural conclusions drawn from that fact, as well as the fact that Inmate Daniels was promised that he would get "off the compound" for giving testimony against Appellants. [Id.]. Had the omitted information been known to the judge signing the warrants for Appellants' arrests, the warrants would not have been signed for lack of probable case. [Id.]. These material omissions make the warrants void and/or voidable. [Id.].

Following trial on February 26 and 27, 2018, the jury found Cloud and Davis not guilty on all charges. [R. 305]. It is worth noting that during the trial, Copeland took the stand as a witness and contradicted himself to the point that it was clear that he was untruthful. [Id.]. Records indicate that Copeland's testimony was demonstrably false, yet somehow he was not deemed to have perjured himself on the stand. [Id.]. This is but further evidence of a cover up by DOC and its refusal to take action against employees that support its agenda, regardless of how bad or illegal their actions are. [Id.].

Here, the agenda was to target and set Cloud up, which was initiated by Johnson, in which he acted in tandem with Copeland and Varnum and which was known to DOC, ultimately providing both the vehicle and opportunities for harm to Appellants, including their terminations and false

arrests. [R. 305]. Varnum actually told Davis after their acquittal that he wished that this incident never happened. [Id.].

After their acquittals, both Cloud and Davis attempted to get their jobs back at DOC but were prevented from doing so in large part based on the ratification by DOC of the actions of Copeland, Johnson, and Varnum, who all remain employed. [R. 305]. Other employees who were accused of beating or using excessive force against inmates and who were charged criminally but acquitted have been able to get their jobs back or were never terminated to begin with. [Id.].

DOC's complicity in Appellants' false arrests and promulgation of legal proceedings against them amounts to nothing short of abuse of process which was cemented by their refusal to reinstate Appellants. [R. 305]. DOC refused to reinstate Appellants notwithstanding the fact that other employees of DOC, both high and low ranking, have committed far more serious violations of Inmate rights and yet are still employed by DOC or have been reemployed after being acquitted of criminal charges. [R. 305-306].

Cloud and Davis have been humiliated and shamed by the false charges. [R. 306].

Johnson, Copeland, and Varnum conspired to ruin Cloud's reputation and career through facially legitimate administrative processes with DOC

ratification and approval. [R. 306]. Johnson utilized contacts and personnel within DOC to ensure the false allegations of Copeland and the sham investigation of Varnum would culminate with the false arrest and unlawful prosecution of Cloud. [Id.]. Unfortunately, Davis was collateral damage to their plan. [Id.].

DOC's own administrative processes facilitated the actions against Appellants and DOC ratified the conduct of Copeland, Varnum, and Johnson by failing to reprimand, discipline, or terminate any employee of DOC following the acquittal of both Appellants. [R. 306]. It is worth noting that attorneys and staff members of DOC were present during Appellants' trial. [Id.]. As such, they were privy to the evidence presented during the proceedings, namely the clear perjury of Copeland, and the contradictions contained within his incident report which were unsubstantiated, yet somehow given credence to such a degree by Varnum and DOC that it led to criminal charges against Appellants. [Id.]. This failure turned the actions of Copeland, Varnum, and Johnson into the actions of DOC, after it had knowledge of the sinister motives as the evidence did not support the claims against Appellants and in fact exonerated them. [Id.]. Simply put, this was a cover up of wrongdoing and/or the known allowance of a plan to take action

against Appellants by DOC under the veil of facially legitimate investigative processes. [R. 307].

STANDARD OF REVIEW

The standard of review of a trial court's denial of a motion to dismiss is *de novo*. Locker v. United Pharm. Group, Inc., 46 So. 3d 1126, 1128 (Fla. 1st DCA 2010).

SUMMARY OF ARGUMENT

Although the Third and Fourth Amended Complaints contained substantial factual allegations supporting each of Appellants' causes of action, the trial court dismissed Appellants' actions for false arrest/imprisonment, civil conspiracy, and negligent supervision. As to his claims of false arrest/imprisonment and malicious prosecution, there was no probable cause to arrest Appellants and the warrant at issue was void. Neither DOC nor the individual Appellees are entitled to sovereign or statutory immunity. The trial court thus erred by dismissing these claims with prejudice.

The trial court further erred by dismissing Appellants' claim of civil conspiracy, as they set forth an underlying tort and facts supporting the requisite elements. Moreover, the "intra-corporate conspiracy" doctrine does not bar Appellants' claim.

Finally, the trial court erred by dismissing Appellants' claim for negligent supervision against DOC. Appellants' alleged that DOC was aware of Johnson's propensity to engage in hostile and targeting conduct, particularly towards Cloud, and that such conduct was likely to recur if Cloud was transferred to Liberty CI. Regardless, DOC transferred Cloud to Liberty and took no further action against Johnson. Having sufficiently pled a cause of action for negligent supervision, the trial court erred by dismissing it with prejudice.

Thus, for the reasons set forth fully herein, this Court should reverse the trial court's order dismissing Appellants' claims with prejudice, and remand for further proceedings.

ARGUMENT

The trial court erred by dismissing portions of Appellants' Third and Fourth Amended Complaint against DOC with prejudice. As this Court held in Brewer v. Clerk of Circuit Court, Gadsden County:

> When ruling on a motion to dismiss for failure to state a cause of action, the trial court must accept the allegations of the complaint as true. Likewise, the appellate court must accept the facts alleged in a complaint as true when reviewing an order that determines the sufficiency of the complaint. Whether a complaint is sufficient to state a cause of action is an issue of law. Consequently, a ruling on a motion to dismiss for failure to state a cause of action is

> reviewable on appeal by the *de novo* standard of review.

720 So. 2d 602, 603 (Fla. 1st DCA 1998) (citing Sarkis v. Pafford Oil Co., Inc., 697 So. 2d 524, 526 (Fla. 1st DCA 1997) (citations omitted)); Locker, 46 So. 3d at 1128.

Here, the trial court erred by dismissing portions of Appellants' Third and Fourth Amended Complaints with prejudice, and as shown below, this Court should reverse the trial court's order and reinstate Appellants' claims against DOC.

I. THE TRIAL COURT ERRED BY DISMISSING APPELLANTS' CLAIMS FOR FALSE ARREST/IMPRISONMENT AGAINST DOC.

As to each claim for false arrest/imprisonment brought against DOC, found in the Third Amended Complaint, the trial court ultimately concluded that the claim was due to be dismissed with prejudice because the arrests were made pursuant to a warrant issued by a judge, and therefore the arrests were made pursuant to valid legal authority. [R. 292-294; A. 43-44]. As argued below and shown herein, however, there was no probable cause to arrest Appellants and the warrant at issue was void.

A. There was no probable cause to arrest Appellants and the warrant at issue was void.

The threshold inquiry for Appellants' claims of false arrest/imprisonment against Appellees is whether there was probable cause

to arrest them. See generally, Miami–Dade Cty. v. Asad, 78 So. 3d 660, 669 (Fla. 3d DCA 2012); Mailly v. Jenne, 867 So.2d 1250, 1251 (Fla. 4th DCA 2004). Probable cause exists when "the totality of the facts and circumstances within an officer's knowledge sufficiently warrant a reasonable person to believe that, more likely than not a crime has been committed." State v. Blaylock, 76 So. 3d 13, 14 (Fla. 4th DCA 2011) (quoting League v. State, 778 So. 2d 1086, 1087 (Fla. 4th DCA 2001)). Further, probable cause has been defined as "a reasonable ground of suspicion, supported by the circumstances, that the person accused is guilty of the offense charged." Harris v. Lewis State Bank, 482 So. 2d 1378, 1382 (Fla. 1st DCA 1986). Where it would appear to a "cautious man" that further investigation is justified before instituting a proceeding, liability may attach for failure to do so, especially where the information is readily obtainable, or where the accused points out the sources of the information. Id. A lack of probable cause may be established by proof that a criminal proceeding was instituted on facts that could as well be explained innocently. Id. (citing Silvia v. Zayre Corporation, 233 So. 2d 856 (Fla. 3d DCA 1970), cert. den., 238 So. 2d 112 (Fla. 1970)). Stated another way, "[a] police officer may not close her or his eyes to facts that would help clarify the circumstances of an arrest." City of St. Petersburg v. Austrino, 898 So. 2d 955, 959 (Fla. 2d DCA 2005).

Moreover, this Court must review the basis for the alleged probable cause by focusing on the facts known at the time of the arrest, along with any exigencies that affected the ability to undertake a thorough investigation, keeping in mind that a reasonable amount of investigation is *always* warranted. Austrino, 898 So. 2d at 959 (Fla. 2d DCA 2005). "Reasonable avenues of investigation must be pursued especially when, as here, it is unclear whether a crime had even taken place." Id. (citation omitted, emphasis added). This Court must judge "with a common sense view to the realities of normal life." Austrino, 898 So. 2d 955, 961 (Fla. 2d DCA 2005) (quoting Wilson v. Attaway, 757 F.2d 1227, 1235 (11th Cir. 1985)).

Here, the Third and Fourth Amended Complaints allege that DOC and the individual Defendants knew that Johnson had previously targeted Cloud and that Cloud's allegations were confirmed during his appeal to PERC. DOC and the individual Defendants knew that Cloud had repeatedly requested to be reassigned to any *other* facility within a fifty-mile radius, instead of Liberty CI, where Johnson retained powerful and loyal connections that made Liberty CI essentially "just as bad" as Jackson CI. They knew that Cloud was not present for the use of force, that Inmate Daniels said during his taped interview that he was essentially bribed for his testimony against Appellants, and that Copeland himself had removed the seal from his own

can of chemical agent, contradicting the information contained in his incident report. Also as alleged in the complaints, there was no probable cause to arrest Appellants, yet a warrant was prepared containing false or misleading information, which also omitted critical information, and submitted it to a judge for review.

In addition, reliance on the issuance of the warrant by a judge is immaterial here, where a warrant is procured based on an officer's false sworn testimony. In such circumstance, the warrant is not "facially valid." Andrew Nguyen MD PA v. Estate of Carlisle, 2007 WL 1560149 (N.D. Fla. May 23, 2007) (citing Willingham v. City of Orlando, 929 So. 2d 43, 49 (Fla. 5th DCA 2006)). The Florida Supreme Court held that "all those who, by direct act or indirect procurement, personally participate in or proximately cause the false imprisonment and unlawful detention are liable therefor." Johnson v. Weiner, 19 So. 2d 699, 701 (Fla. 1944); see also Pagan v. State, 830 So. 2d 792, 807 (Fla. 2002) (if omitted facts had been added to affidavit, it would defeat probable cause, or if the affidavit would fail to establish probable cause if the false facts are deleted, the warrant must be voided), cert. denied, 539 U.S. 919 (2003); U.S. v. Morris, 477 F.2d 657, 662 (5th Cir. 1973) ("when an affidavit contains inaccurate statements which materially affect its showing of probable cause, any warrant based upon it is rendered

invalid."). The warrant in this matter was not facially valid and as shown above, it was issued based on false sworn testimony. Accordingly, there was discretion as to whether or not Appellants should be arrested. Where there is discretion, there is liability. See generally, Lester v. City of Tavares, 603 So. 2d 18 (Fla. 5th DCA 1992).

The Fourth District Court of Appeal analyzed a similar factual scenario, where a detective included false information in a warrant affidavit. Although the court ultimately found the false imprisonment verdict against the detective could not stand, it did so because it concluded that "after false information is jettisoned from the warrant affidavit, the warrant in that case still was supported by probable cause." Harder v. Edwards, 174 So. 3d 524, 532–33 (Fla. 4th DCA 2015). Such is not the case here, and a thorough review of the Harder opinion shows why:

> The general rule is that arrest and imprisonment, if based upon a facially valid process, cannot be false. See Jackson, 665 So.2d at 341; Fisher v. Payne, 93 Fla. 1085, 113 So. 378, 380 (1927) ("Arrest under a warrant, valid in form, issued by competent authority on a sufficient complaint, is not false imprisonment, though the indictment under which the warrant was issued was procured maliciously...."). This is so because any arrest based on a facially valid warrant is "under legal authority," so the resulting imprisonment cannot be false. See, e.g., Dodson v. Solomon, 134 Fla. 284, 183 So. 825, 826 (1938).

It is an arrest based on a void warrant that falls outside of the general rule because a void warrant does not constitute "legal authority" for an arrest and detention. Johnson, 19 So. 2d at 700 (stating that "[v]oid process will not constitute legal authority within" the rule that imprisonment under legal authority cannot be false).

Edwards attacks Harder's misrepresentations in his affidavit in support of the warrant. We do not condone the detective's misrepresentations in securing the warrant. However, after removing the falsehoods from Harder's affidavit and analyzing what remains under the Fourth Amendment, we hold that there was probable cause to support Edwards's arrest. Therefore, even though Harder knowingly provided some false information, he nonetheless can rely upon the warrant to avoid liability for false imprisonment.

Under the constitutional framework of Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), if a criminal defendant establishes by a preponderance of the evidence that the affiant seeking a search warrant knowingly and intentionally, or with reckless disregard for the truth, included a false statement in the affidavit, then the reviewing court

> must excise the erroneous material and determine whether the remaining allegations in the affidavit support probable cause. If the remaining statements are sufficient to establish probable cause, the false statement will not invalidate the resulting search warrant. See Terry v. State, 668 So. 2d 954 (Fla. 1996). If, however, the false statement is necessary to establish probable cause, the search warrant must

> be voided, and the evidence seized as a result of the search must be excluded. See id. (citing Franks, 438 U.S. at 156, 98 S.Ct. 2674); see also Thorp v. State, 777 So. 2d 385 (Fla. 2000).
>
> Murray v. State, 155 So. 3d 1210, 1217 (Fla. 4th DCA 2015) (quoting Garcia v. State, 872 So. 2d 326, 330 (Fla. 2d DCA 2004)).

Harder, 174 So. 3d at 532–33. Here, as explained above, if the false statements specifically stating that Cloud was present, that Inmate Daniels was not combative or disruptive, and that Davis locked Daniels in a closet and sprayed him with pepper spray, were "jettisoned" from the reports that supported the affidavit, there would be no probable cause to arrest Appellants. This renders the warrant facially void.

The trial court thus erred by dismissing Appellants' claim with prejudice against DOC, and this Court should reverse the trial court's order and remand for further proceedings

B. The trial court erred by dismissing Appellants' claim for false arrest/imprisonment against DOC.

False arrest is "the unlawful restraint of a person against that person's will." Willingham, 929 So. 2d at 48. The existence of probable cause to arrest is an affirmative defense to a false arrest claim. Asad, 78 So. 3d at 669. However, as shown above, there was no probable cause to arrest Appellants and the warrant was void or voidable.

Below, in several of its Motions to Dismiss, DOC argued that even if the warrant was void, Appellants' claim is barred by sovereign immunity. [R. 161]. Relevant here, § 768.28(9)(a), Fla. Stat., states in pertinent part:

> The state or its subdivisions are not liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Id. At this stage, Appellant's' claims for false arrest/imprisonment against Appellees are pled in the alternative. Thus, the Third Amended Complaint alleges that Appellees acted within the course and scope of their employment such that sovereign immunity does not bar Appellants' claims. [R. 191].

Where the conduct is of the type which the employee was hired to perform, the conduct occurred within the time and space authorized for the work to be performed in, and if the conduct was done in an effort to serve the employer, courts find that the employee, like the individual Appellees, were acting within the course and scope of their employment. See Craft, 575 So. 2d at 796; Hennagan v. Dept. of Highway Safety and Motor Vehicles, 467 So. 2d 748, 751 (Fla. 1st DCA 1985); Petty, 157 So. 2d at 194. Moreover, even if an employee commits an intentional act within the scope of

employment, the employing agency may be liable. See McGhee v. Volusia County, 679 So. 2d 729, 733 (Fla. 1996) (finding that the fact that a deputy "may have intentionally abused his office does not in itself shield the sheriff from liability"); Hennagan, 467 So. 2d 748; Richardson v. City of Pompano Beach, 511 So. 2d 1121 (Fla. 1st DCA 1987) (reversing trial court's determination that a municipality cannot ever be liable under section 768.28(9)(a) for intentional torts committed by its police officers, including false arrest).

The Florida Supreme Court's decision in McGhee offers a particularly relevant analysis of applicable law to the present action, and is worth reviewing in depth:

> In Hennagan v. Department of Highway Safety & Motor Vehicles, 467 So. 2d 748 (Fla. 1st DCA 1985), the court confronted a situation in which a Highway Patrol officer allegedly had "arrested" a minor child pretextually so that he later could sexually molest her. The trial court dismissed the complaint against the department on grounds the officer had exceeded the scope of his employment, thereby rendering the department immune. The district court reversed on the following rationale:
>
> > Conduct is within the scope of employment if it occurs substantially within authorized time and space limits, and it is activated at least in part by a purpose to serve the master. The purpose of the employee's act, rather

> than the method of performance thereof, is said to be the important consideration.
>
> Id. at 751. We agree that this analysis would be equally true under the law as it exists today. The officer's misconduct, though illegal, clearly was accomplished through an abuse of power lawfully vested in the officer, not an unlawful usurpation of power the officer did not rightfully possess.
>
> A second case is Richardson v. City of Pompano Beach, 511 So. 2d 1121 (Fla. 4th DCA 1987), review denied, 519 So. 2d 986 (Fla.1988). There the court confronted a situation in which a city police officer allegedly used excessive force in committing a false arrest. Like Hennagan, the court concluded that earlier principles defining the "scope of employment" test remained good law. Applying them to the case, the Richardson court concluded that acts did not fall beyond the scope of the officer's employment merely because they were intentional. Instead, the employing agency could assume liability in that situation, and summary dismissal was not proper. Id. at 1123–24. Once again this showed a case of lawful power abused, not of an unlawful usurpation of authority.

679 So. 2d at 731-32. The McGhee analysis supports a finding that for the purpose of this action, the individual Appellees acted within the course and scope of their employment. The purpose of the acts, investigating a use of force and preparing arrest documents, was to serve DOC. they he may have abused power lawfully vested in them, they did not "unlawful[ly] usurp[]" a power they did not rightfully possess.

Finally, these courts also held that the of whether the conduct was committed within the course and scope of employment was a matter for the jury where it was conceivable that the employee acted in furtherance of his employer's interests. Columbia by the Sea, Inc. v. Petty, 157 So. 2d 190, 194 (Fla. 2d DCA 1963); see also, Gold Coast Parking, Inc. v. Brownlow, 362 So. 2d 288, 291-292 (Fla. 3d DCA 1978), cert. dismissed, 368 So. 2d 1367 (Fla. 1979); Lay v. Roux Labs., Inc., 379 So. 2d 451, 453 (Fla. 1st DCA 1980).

Ultimately, because there was no probable cause to arrest Appellants and because the arrests were not made pursuant to valid legal authority, the trial court erred, and the dismissal with prejudice must be reversed.

II. THE TRIAL COURT ERRED BY DISMISSING APPELLANTS' CLAIM OF NEGLIGENT SUPERVISION AGAINST DOC.

Negligent supervision occurs when during the course of employment, the employer became aware or should have become aware of problems with an employee that indicated his unfitness but fails to take action. Liability arises when an employer has a legal duty arising out of the relationship between the employment in question and the particular plaintiff, which is owed to the plaintiff if he or she is in the zone of foreseeable risks created by the employment. See Russ v. Jacksonville, 734 So. 2d 508 (Fla. 1st DCA 1999); Farabee v. Rider, 995 F.Supp. 1398 (M.D. Fla. 1998); Johnson v. Cannon, 947 F.Supp. 1567 (M.D. Fla.1996).

To establish liability, the plaintiff must show both a connection and foreseeability between the employee's employment history and the current tort committed. Dickinson v. Gonzalez, 839 So. 2d 709, 713-714 (Fla. 3d DCA 2003). The trial court, relying on Dickinson, found that Appellants did not plead a connection between Johnson's employment history and the allegations of tortious conduct set forth against him. [R. 337-338; A. 41, citing Island City Flying Serv. v. Gen. Elec. Credit Corp., 585 So. 2d 274, 277 (Fla. 1991)].

Importantly, however, the situation in Dickinson is distinguishable, and the differences are instructive. There, the trooper at issue arrested a citizen, allegedly without probable cause, for driving under the influence. Id. The Third DCA thus held that to establish a connection between the arrest and the trooper's work history, the plaintiff would need to show that there was some event in the trooper's past employment history that would indicate an issue with handling roadside stops or the determination of probable cause to make an arrest. Id. Here, however, the allegations are that Johnson had previously taken unwarranted action against Cloud, the full details of which DOC was made aware during the PERC hearing.

The facts of Storm v. Town of Ponce Inlet, 866 So. 2d 713, 717–18 (Fla. 5th DCA 2004), are far more instructive here. There, the Fifth DCA

found that, based on the allegations of the complaint at issue there, the plaintiff sufficiently pleaded a common law tort. There, Storm alleged the Town's employee, the chief building inspector, knowingly gave false information to Storm, that he systematically maladministered his department and caused injury to Storm and others who had to deal with him, and that the Town well knew of the damage the inspector was causing but allowed it to continue. Id. Persons like Storm who had to deal with the inspector, obtain permits from him, and build in compliance therewith, who were misled as to the required building elevations levels and suffered damage as a consequence, were within the "foreseeable zone of risk" of the inspector's alleged misfeasance, express false assurances, and incompetence. Id. (citing McCain v. Florida Power Corp., 593 So. 2d 500 (Fla. 1992) and Kaisner v. Kolb, 543 So. 2d 732, 736-738 (Fla. 1989)).

Similarly, in Slonin v. City Of W. Palm Beach, Fla., 896 So. 2d 882, 884 (Fla. 4th DCA 2005), the Fourth DCA noted that there, the plaintiff alleged the City knew of: (1) the assault and battery by Leighton, (2) the plaintiffs previous complaints against Leighton, and (3) Leightons abusive conduct toward other members of the public. Id. He also alleged the City took no action to ensure public safety, and due to the City's negligent retention, training and supervision, he suffered damages. Id. The court found that these

allegations were sufficient to state a claim against the City for negligent supervision and that the trial court erred in dismissing this claim. Id.

Like Storm and Slonin, Appellants alleged that Johnson had engaged in targeting and retaliation prior to this incident, and that DOC was well aware of both the accusations and the PERC findings. In fact, those findings prompted Cloud's transfer. Cloud then put DOC on additional notice that transferring him to Johnson's former post, Liberty CI, would not alleviate the issues DOC alleged sought to remedy, as Johnson has numerous close and loyal contacts working at Liberty CI who would likely engage in targeting and retaliation, which is precisely what occurred. Appellants further argued that instead of taking corrective action, DOC transferred Cloud to Liberty. Appellants then alleged that Cloud was again Johnson's victim, and that Davis was the unfortunate collateral damage of his ongoing campaign against Cloud. Following Storm and Slonin, Appellants clearly set forth sufficient allegations to plead a cause of action for negligent supervision.

Finally, DOC argued below that the decision to conduct and investigation was a discretionary duty for which no duty is owed, and thus sovereign immunity bars Appellants' claim. [A. 17]. However, "there is no sovereign immunity barrier to making a claim against a governmental agency

for negligent retention or supervision." Slonin, 896 So. 2d at 884 (quoting Dickinson, 839 So. 2d at 713.

The court in Storm addressed this issue head on, and analyzed whether sovereign immunity barred a claim for negligent supervision under similar circumstances. The court explained that following Kaisner, the sovereign immunity test contains two parts: after determining that a common law duty exists, then the court must consider whether the doctrine of governmental immunity bars the claim under principles stated in Commercial Carrier and Avallone v. Board of County Commissioners, 493 So. 2d 1002, 1005 (Fla. 1986). Storm, 866 So. 2d at 716 (citing Kaisner, 543 So. 2d at 732).

First, the Storm court held that based on considerable prior case law, a common law duty existed. Storm, 866 So. 2d at 716-717 (citing Metropolitan Dade County v. Martino, 710 So.2d 20 (Fla. 3d DCA 1998) and Watson v. City of Hialeah, 552 So.2d 1146 (Fla. 3d DCA 1989)).

The second consideration for the court is whether or not the actions which give rise to the tort claim against the governmental body involve discretionary as opposed to operational matters. Storm, 866 So. 2d at 718. Here, Appellants challenge the decision to allow Johnson to coerce the deviation from proper investigation procedures and exert undue influence,

resulting in Appellants' termination and arrest. Cf., Lewis v. City of St. Petersburg, 260 F.3d 1260, 1266 (11th Cir. 2011) (holding that where the plaintiff did not challenge the implementation or operation of the police training program, but the reasonableness of basic policy decisions, the "discretionary" function exception to the waiver of sovereign immunity applied and her claim was barred); see Williams v. City of Daytona Beach, 2005 WL 1421293, at *5 (M.D. Fla. June 16, 2005) (distinguishing Lewis, finding that the plaintiff's claims were related to operational functions and thus not barred by sovereign immunity, because "[u]nlike the plaintiffs in Lewis and Mercado, Plaintiff specifically challenges the training of the officers and their actions specifically as it relates to his cause of action and not in general terms. Plaintiff also contends that his injuries resulted from the improper implementation of policies and procedures by the Defendant.").

Although the trial court did not rule on the issue of sovereign immunity, should this Court reverse the trial court's order dismissing Appellants' negligent supervision claim with prejudice, it should nonetheless remand the matter for further proceedings and decline to bar the action based on sovereign immunity.

CONCLUSION

The trial court erred by dismissing the claims against DOC found in the Third and Fourth Amended Complaints with prejudice. Based on the allegations contained within the four corners of the complaint, which must be taken as true at this stage, Appellants fully pled facts to establish each of their claims for false arrest/imprisonment and negligent supervision. Thus, as set forth herein, this Court should reverse the trial court's orders and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic filing and email to all parties of record on this 6th day of October 2023.

/s/ Ashley N. Richardson
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