UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6791

SHANNON LANCASTER, a/k/a Shannon Miles Lancaster,

Plaintiff - Appellant,

v.

JAMES RUANE, 0890,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Timothy M. Cain, District Judge. (7:17-cv-02302-TMC)

Submitted: October 23, 2018 Decided: October 26, 2018

Before NIEMEYER, KING, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Shannon Miles Lancaster, Appellant Pro Se. Stephanie Holmes Burton, GIBBES & BURTON, LLC, Spartanburg, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shannon Miles Lancaster appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his 42 U.S.C. § 1983 (2012) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Lancaster v. Ruane*, No. 7:17-cv-02302-TMC (D.S.C. June 18, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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

Shannon Miles Lancaster, Plaintiff, v. James Ruane, Defendant.	)	Civil Action No. 7:17-CV-02302-TMC **ORDER**

Plaintiff, a prisoner proceeding pro se and *in forma pauperis*, filed this civil action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. On October 20, 2017, and October 26, 2017, Plaintiff filed two Motions to Amend his Complaint. (ECF Nos. 14, 15). The magistrate judge granted Plaintiff's Motions to Amend. (ECF No. 16). On November 13, 2017, Defendant filed a Motion to Dismiss Plaintiff's Complaint. (ECF No. 21). The court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the potential consequences if he did not respond adequately to Defendant's motion. (ECF No. 22). Plaintiff subsequently filed a third Motion to Amend his Complaint (ECF No. 25) and filed a Response in Opposition to the Defendant's Motion to Dismiss (ECF No. 20). Thereafter, Plaintiff filed a Motion for Summary Judgment. (ECF No. 34). The magistrate judge granted Plaintiff's third Motion to Amend, noting that based on Plaintiff's amendments, the court would "treat the Complaint as filed against Defendant only in his individual capacity." (ECF No. 36). Defendant then filed a Response in Opposition to the Motion for Summary Judgment (ECF

No. 38) and a Reply to Plaintiff's Response in Opposition of the Motion to Dismiss (ECF No. 40).

Before the court is the magistrate judge's Report and Recommendation ("Report") (ECF No. 42), recommending that the court grant Defendant's Motion to Dismiss (ECF No. 21). Plaintiff was advised of his right to file objections to the Report. (ECF No. 42-1). After the Report had been mailed to Plaintiff, Plaintiff filed a fourth Motion to Amend his Complaint.[1] (ECF No. 44). Plaintiff subsequently filed objections to the Report (ECF No. 45) and later supplemented those objections (ECF No. 47). Defendant filed a Response in Opposition to the Motion to Amend. (ECF No. 48). On May 7, 2018, Plaintiff filed a fifth Motion to Amend his Complaint.[2] (ECF No. 51). Defendant responded, opposing the amendments (ECF No. 56), and Plaintiff replied to Defendant's response. (ECF No. 58). Finally, on May 10, 2018, Plaintiff filed a Motion for Copies stating that he has lost his copy of the Complaint due to a "shakedown" of the prison and needs another copy. (ECF No. 54).

The recommendations set forth in the Report have no presumptive weight, and this court remains responsible for making a final determination in this matter. *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 to which a specific objection is made, and the court may accept, reject, modify, in whole or in part, the recommendation of the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a *de novo* review when a party makes only "general and conclusory objections that do not direct the court to a

[1] In his fourth Motion to Amend the Complaint, Plaintiff seeks to do the following: (1) withdraw the false arrest claim; (2) add a claim alleging violation of the fourth amendment right to privacy; (3) amend the fourth amendment violation of privacy claim with a violation of S.C. Code Ann. § 17-30-20 –145 claim, due to "unlawful audio and video recordings, or unlawful wiretap." (ECF No. 44).

[2] In his fifth Motion to Amend, Plaintiff seeks to add the same information provided in his previous Motion to Amend (ECF No. 44) along with (1) adding a claim alleging violation of the Fourteenth Amendment for violation of due process, and (2) adding a claim to subject Defendant to criminal prosecution for violating the South Carolina Wiretap Act. (ECF No. 51).

specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the magistrate judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

I. BACKGROUND

In his Complaint, Plaintiff alleges that on April 11, 2016, Defendant, a narcotics investigator, along with an informant, contacted Plaintiff and asked him to get drugs for Defendant and the informant. (ECF No. 1 at 4). Plaintiff asserts that Defendant and the informant told Plaintiff that if he got them the drugs, they could get Plaintiff a job with their construction business. *Id.* Plaintiff claims that Defendant then met with Plaintiff and conducted a controlled buy "without using the informant at the scene," by personally giving Plaintiff $650 in exchange for drugs." *Id.* Plaintiff states that Defendant's actions were wrongful because "no one authorized" Defendant to make the controlled buy. *Id.* at 5.

Plaintiff further asserted that Defendant's actions amounted to a "4th Amendment Violation by virtue of 14th Amendment." *Id.* Plaintiff later clarified this, stating that Defendant caused "a deprivation of the Plaintiff's 14th Amendment right of due process of law from which flowed an illegal invasion of a constitutionally protected 4th Amendment right to privacy." (ECF No. 28-1 at 3). In relation to the violation of due process, Plaintiff alleges that Defendant violated South Carolina law, specifically South Carolina Code Sections 17-30-20 through 17-30-145, in not obtaining authorization from the South Carolina Law Enforcement Division ("SLED"), the Attorney General, or a judge before conducting a controlled buy. (ECF No. 1 at 5). Plaintiff, therefore, asserts that he was "illegally arrested" on April 20, 2016." *Id.* at 8.

Plaintiff notes that all charges based on the controlled buy were *nolle prossed* on March 14, 2017.[3] *Id.* at 12.

II. APPLICABLE LAW

Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss for failure to state a claim should not be granted unless it appears certain that the plaintiff can prove no set of facts which would support his claim and entitle him to relief. Fed. R. Civ. P. 12(b)(6). 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 plaintiff." *Mylan Labs., Inc. v. Matkari,* 7 F.3d 1130, 1134 (4th Cir. 1993). However, the court "need not accept the legal conclusions drawn from the facts" nor "accept as true unwarranted inferences, unreasonable conclusions, or arguments." *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship,* 213 F.3d 175, 180 (4th Cir. 2000). While "a plaintiff is not required to plead facts that constitute a prima facie case in order to survive a motion to dismiss . . ., factual allegations must be enough to raise a right to relief above the speculative level." *Coleman v. Md. Court of Appeals,* 626 F.3d 187, 190 (4th Cir. 2010) (citations omitted).

Therefore, a plaintiff's complaint only needs to include "a short and plain statement of the claim showing that [he] is entitled to relief." Fed. R. Civ. P. 8(a)(2). Additionally, when "evaluating a civil rights complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6)," the court must be "especially solicitous of the wrongs alleged." *Harrison v. U.S. Postal Serv.*, 840 F.2d 1149, 1152 (4th Cir. 1988) (internal citations omitted). Furthermore, when the plaintiff proceeds pro se, the court is charged with liberally construing the factual allegations of the complaint in order to allow potentially meritorious claims to go forward. *See Erickson v. Pardus*,

[3] Plaintiff asserts that the only charges resulting from the controlled buy were included in indictment 2016A4210101490. (ECF No. 1 at 8).

551 U.S. 89, 94 (2007). Still, this requirement of liberal construction does not mean that this court may ignore a clear failure in the pleading to allege facts that set forth a cognizable claim for relief. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

III. DISCUSSION

The magistrate judge provided a thorough report that addressed the sufficiency of Plaintiff's claims and recommended that this court grant the Defendant's Motion to Dismiss. (ECF No. 42). Plaintiff filed timely objections to this Report, (ECF No. 45), and later supplemented those objections, (ECF No. 47). The vast majority of Plaintiff's objections simply restate his claims or object generally to the magistrate judge's determinations on issues of law without providing a specific basis for why Plaintiff objects.[4] However, the court does find that Plaintiff has made the following specific objections to the Report: (1) that the magistrate judge failed to address Plaintiff's claims for invasion of privacy and unreasonable search; (2) that the magistrate judge erred in not ruling on Defendant's alleged violation of various policies when determining whether or not Plaintiff alleged a sufficient claim for violation of due process under the Fourteenth Amendment; (3) that the magistrate judge erred in ruling that Plaintiff's claims were frivolous due to the claims hinging on a meritless false arrest claim; [5] and (4) that the

[4] As to the objections regarding Plaintiff's claims for false arrest and entrapment, Plaintiff simply objects to the ultimate decision of the magistrate judge and, as a basis for his disagreement, cites facts already in the record, which were considered and addressed by the magistrate judge. Furthermore, per Plaintiff's motions to amend (ECF Nos. 44 & 51), Plaintiff now seeks to withdraw his false arrest claim. Additionally, the magistrate judge correctly found that entrapment is an affirmative defense that would have been raised at Plaintiff's criminal proceedings before the state, and that entrapment, by itself, does not give rise to a constitutional violation under the Fourth Amendment. *See U.S. v. Russell*, 411 U.S. 423, 430 (1973) (in a criminal context, stating that entrapment did not violate an "independent constitutional right" of a defendant); *Stevenson v. Bales*, 986 F.2d 1429 (10th Cir. 1993) (dismissing § 1983 claim brought on the basis of entrapment); *Jones v. Bombeck*, 375 F.2d 737 (3rd Cir. 1967) (determining that there was no cause of action under the Civil Rights Act for entrapment); *Poole v. Carteret Cnty. Sheriff's Dept.*, No. 5-10-CT-3215-BO, 2011 WL 10653675 at *2 (E.D.N.C. May 10, 2011) (stating that "entrapment is not a constitutional violation which extends to civil cases"), *aff'd*, 458 Fed. App'x 232, 233 (4th Cir. 2011).

[5] Plaintiff contends that the crux of his § 1983 claims are for unlawful wiretap and violation of rights of privacy, not false arrest. (ECF No. 47 at 3).

magistrate judge erred in not addressing Plaintiff's request for production. These specific objections are discussed below.

A. Invasion of Right of Privacy and Unreasonable Search

Plaintiff states that the magistrate judge did not rule on his Fourth Amendment claims for an unreasonable search that invaded his right of privacy. (ECF No. 47 at 3). The magistrate judge did discuss the Plaintiff's Fourth Amendment claims within the context of his claim for false arrest. (ECF No. 42 at 9 – 11). However, to the extent that Plaintiff's Complaint and objections can also be liberally construed as asserting a claim for unreasonable search under the Fourth Amendment regarding the audio and video recording of the controlled buy, which the magistrate judge did not address, the court finds this claim to be without merit.

The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const. amend. IV. However, as the Supreme Court has routinely held, "the application of the Fourth Amendment depends on whether the person invoking its protection can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy' that has been invaded by government action." *Smith v. Maryland*, 442 U.S. 442 U.S. 735, 740 (1979). In answering this question, the court must look at (1) whether the individual "exhibited an actual (subjective) expectation of privacy" and (2) whether "the individual's subjective expectation of privacy is 'one that society is prepared to recognize as 'reasonable,'" or, in other words, whether the individual's expectation was objectively "justifiable under the circumstances." *Id.*

The Supreme Court has specifically rejected the notion that "the Fourth Amendment protects a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it." *Hoffa v. United States*, 385 U.S. 293, 302–303 (1966). In *Hoffa v. United States*, the court noted that "no interest legitimately protected by the Fourth Amendment"

was involved where the claimant invited the government official into his hotel room and the conversation was either directed at or in the presence of the government official. *Id.* at 302. The court stated that the claimant "was not relying on the security of [his] hotel room; he was relying upon the misplaced confidence that [the official] would not reveal his wrongdoing." *Id.* As such, the claimant had no reasonable expectation of privacy as to those communications. *See id.* Furthermore, the Supreme Court has determined that where the law "gives no protection to the wrongdoer whose trusted accomplice is or becomes a police agent, neither should it protect him when the same agent has recorded or transmitted the conversations" with the wrongdoer and those conversations are "offered in evidence to prove the State's case." *United States v. White*, 401 U.S. 745, 752 (1971).

Here, Plaintiff arguably had a subjective expectation that his conversations with Defendant and with the confidential informant were private conversations that were not being recorded. However, this misplaced belief does not entitle him to a reasonable, justifiable expectation of privacy as to those communications. *Id.* Plaintiff voluntarily agreed to meet with Defendant and the informant in order to exchange drugs. (ECF No. 1 at 7–8). While meeting, all conversations and the exchange were within the presence of Defendant and the informant, both of whom were working to reveal Plaintiff's wrongdoing. *Id.* Plaintiff's "misplaced confidence" that Defendant and the informant would not record his actions do not amount to a reasonable expectation of privacy.[6] Therefore, Plaintiff's claim for an unreasonable search under the Fourth Amendment fails.

[6] Additionally, to the extent that Plaintiff is claiming a violation of either the state or federal acts regarding wiretaps, found in S.C. Code Ann. § 17-30-10 *et seq.* and 18 U.S.C. § 2510 *et seq.*, based on the same transactions or occurrences of the controlled buy and arrest, these claims fail. Both the state and federal acts provide that that it is lawful for "a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent" to the interception. 18 U.S.C. § 2511 (2)(c); S.C. Code Ann. § 17-30-30(C). Here, Defendant was undoubtedly acting "under color of law" during the commission of his undercover investigation. He was a party to the communications

B. Violation of Due Process

Plaintiff further asserts that the magistrate judge erred in determining that he had not pled sufficient factual basis to establish a claim for violation of due process under the Fourteenth Amendment. The Fourteenth Amendment provides that no person shall be deprived "of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The Supreme Court has acknowledged that "there may be a substantive due process violation where 'the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.'" *Stokes v. Gann*, 498 F.3d 483, 485 (5th Cir. 2007) (quoting *United States v. Russell*, 411 U.S. 423, 431–32 (1973)). However, to establish a substantive due process violation, Plaintiff must demonstrate that Defendant's "conduct was 'so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'" *Manion v. North Carolina Med. Bd.*, 693 Fed. App'x 178, 181 (4th Cir. 2017) (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998), *abrogated on other grounds, Saucier v. Katz*, 533 U.S. 194 (2001)). Furthermore, any "conduct intended to injure in some way [that is] unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Cty. of Sacramento*, 523 U.S. at 849.

Here, the state undoubtedly has a significant interest in enforcing its drug trafficking laws and getting drug dealers off the streets. To the extent that this claim for violation of due process is based on Plaintiff's assertion that he was entrapped by Defendant, this claim fails. The court offers no opinion as to whether or not Plaintiff was entrapped. However, even if Plaintiff was entrapped, given the state's significant interest in enforcing its drug laws, the court finds that

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that were recorded. While the court makes no finding as to whether or not the recording of the controlled buy was an "interception" of "oral communications" under these provisions, as Plaintiff asserts, even if it was, Defendant's actions were lawful.

setting up a controlled buy with the help of a confidential informant and recording that transaction does not "shock the conscience." Plaintiff agreed to meet with Defendant and the informant and exchanged drugs for money. (ECF No. 1 at 7–8). Therefore, even if Defendant tricked Plaintiff into thinking Defendant was a legitimate buyer, Defendant's conduct cannot be said to be "so brutal and so offensive to human dignity" that it "shocks the conscience." *See Stokes*, 498 F.3d at 485 (holding there was no Fourteenth Amendment violation even though an undercover government official entrapped plaintiff by persuading him to hunt for deer at night using a spotlight and provided the transportation, gun, and weapon because plaintiff still voluntarily broke the law). Furthermore, as discussed above, Plaintiff's claim for a Fourth Amendment violation fails, so, to the extent that his claim for violation of the Fourteenth Amendment stems from his claims for an unreasonable search based on the recording of the controlled buy, this claim must also fail.

C. Frivolousness of Claims and Designation as a "Strike" Pursuant to 28 U.S.C. § 1915(g)

Plaintiff objects to the magistrate judge's recommendation that this case be counted as a "strike" under 29 U.S.C. § 1915(g). (ECF No. 47 at 3). While the magistrate judge correctly found that Plaitniff has been continuously warned about the lack of viability of a false arrest claim when there is a valid grand jury indictment (ECF No. 42 at 12–13), in liberally construing the Complaint, the court does find that Plaintiff may have asserted additional claims beyond just a claim for false arrest. While the court has liberally construed Plaintiff's Complaint as asserting these claims, Plaintiff has, nonetheless, failed to state a claim upon which relief can be granted, and his action is subject to dismissal accordingly. However, the court declines to designate this matter as a "strike."

D. Request for Production

Plaintiff further objects to the magistrate judge not addressing his requests for production of evidence that Defendant had authorization to conduct the controlled buy. (ECF No. 47 at 4). Plaintiff states that the request had been previously filed with the court and was dated October 27, 2017. *Id.* The court has thoroughly reviewed the record, and the only request for production that the court could find was the one attached to Plaintiff's objections, which were filed April 26, 2018. (ECF No. 47-1). Plaintiff, however, dated the request as being made on November 27, 2017. *Id.*

Regardless of when the requests for production were filed, the magistrate judge did not err in not addressing those requests at this stage in the litigation. Requests for production are a discovery mechanism. At this time, Defendant has not answered the Complaint, and no discovery has taken place. Furthermore, because the court is granting Defendant's Motion to Dismiss, Plaintiff's request for production is now moot.

IV. Motions to Amend Plaintiff's Complaint

After the Report had been mailed to Plaintiff, Plaintiff filed two separate motions to Amend his Complaint. (ECF Nos. 44 & 51). His fifth Motion to Amend, found at docket entry 51, encompasses all proposed amendments from docket entry 44 and adds additional proposed amendments. As such, Plaintiff's fourth Motion to Amend (ECF No. 44), is denied as moot. In regards to Plaintiff's fifth Motion to Amend, Defendant responded, opposing the amendments. (ECF Nos. 56). Plaintiff replied to Defendant's responses. (ECF Nos. 58).

First, Plaintiff seeks to withdraw his false arrest claim. (ECF Nos. 51 at 1). Defendant has previously stated that he does not object to the withdrawal of this claim. (ECF No. 52 at 4). However, the court finds that the remaining proposed amendments do not cure the deficiencies of Plaintiff's Complaint and would be futile. *See* Fed. R. Civ. P. 15; *Johnson v. Oroweat Foods,*

Co., 785 F.2d 503, 509 (4th Cir. 1986) ("leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile"). First, Plaintiff seeks to amend his Complaint to subject Defendant to criminal prosecution for breaking South Carolina law. (ECF No. 51 at 2). However, Plaintiff has no authority to prosecute Defendant in a criminal context or bring any criminal claims against Defendant within his §1983 civil action. Finally, the remainder of Plaintiff's proposed amendments include only reiterations of his prior claims – which have been discussed by both the magistrate judge and this court. Therefore, the court finds that none of Plaintiff's proposed amendments would cure the deficiencies of Plaintiff's Complaint. Accordingly, Plaintiff's Motion to Amend (ECF No. 51) is granted in part *only* to the extent that it withdraws Plaintiff's claim for false arrest, and is denied in part as to all other proposed amendments.

V. CONCLUSION

For the reasons stated above, Plaintiff's fifth Motion to Amend (ECF No. 51) is **GRANTED IN PART** to the extent that Plaintiff wishes to withdraw his claim for false arrest and **DENIED IN PART** as to all other proposed amendments because they would not cure the deficiencies of the Complaint. Furthermore, because Plaintiff's fifth Motion to Amend (ECF No. 51) encompassed all proposed amendments in his fourth Motion to Amend, Plaintiff's fourth Motion to Amend (ECF No. 44) is **DENIED AS MOOT.**

Additionally, after a thorough review of the Report and the entire record in this case in accordance with the standard set forth above, the court adopts the magistrate judge's Report (ECF No. 42) to the extent that it is consistent with this Order and incorporates it herein. As such, Defendant's Motion to Dismiss (ECF No. 21) is **GRANTED.** Furthermore, because this

order is dispositive of the lawsuit as a whole, the Plaintiff's Motion for Summary Judgment (ECF No. 34) is **DENIED AS MOOT.** Accordingly, this case is **DISMISSED**.

IT IS SO ORDERED.

s/ Timothy M. Cain
United States District Judge

June 18, 2018
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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

Shannon Lancaster, Plaintiff, v. James Ruane, Defendant.	)	Case No. 7:17-cv-02302-TMC-JDA **REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

This matter is before the Court on Defendant's motion to dismiss [Doc. 21] and Plaintiff's motion for summary judgment [Doc. 34]. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this magistrate judge is authorized to review all pretrial matters in this case and to submit findings and recommendations to the District Court.

Plaintiff, proceeding pro se, filed this action on August 24, 2017,[1] alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. [Doc. 1.] On October 31, 2017, the Court granted two motions to amend the Complaint and directed the Clerk to file the documents as attachments to the Complaint. [Doc. 16.] On November 13, 2017, Defendant filed a motion to dismiss Plaintiff's Complaint. [Doc. 21.] The next day, the Court issued an Order in accordance with *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment/dismissal procedure and of the possible consequences if he failed to adequately respond to the motion. [Doc. 22.] Plaintiff filed a

[1] A prisoner's pleading is considered filed at the moment it is delivered to prison authorities for forwarding to the court. *See Houston v. Lack*, 487 U.S. 266, 270 (1988). Accordingly, this action was filed on August 24, 2017. [Doc. 1-1 at 1 (envelope stamped as received by prison mailroom on August 24, 2017.]

response in opposition to the motion to dismiss on December 7, 2017. [Doc. 28.] On December 27, 2017, Plaintiff's motion for summary judgment was entered on the docket. [Doc. 34.] Defendant filed a response in opposition to the motion for summary judgment [Doc. 38], and Plaintiff filed a reply [Doc. 40]. Additionally, on January 3, 2018, the Court granted a third motion to amend the Complaint stating it would treat the Complaint as filed against Defendant only in his individual capacity.[2] [Doc. 36.] The motions are now ripe for review.

BACKGROUND[3]

Plaintiff alleges that on April 11, 2016, he was contacted by a criminal informant named David Brent Goode ("Goode") and Defendant, James Ruane, a narcotics investigator. [Doc. 1 at 4.] Plaintiff contends that they told Plaintiff that if Plaintiff could help Goode and Defendant find drugs that he could get a job with them at their construction business remodeling houses. [*Id.*] Plaintiff alleges that on April 11, 2016, he exchanged $650.00 with Defendant as part of an illegal controlled buy. [*Id.* at 4–6.] Plaintiff contends

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[2]The Court granted Plaintiff's third motion to amend after the pending motion to dismiss was filed. Although "an amended pleading ordinarily supersedes the original and renders it of no legal effect," *Young v. City of Mount Ranier*, 238 F.3d 567, 573 (4th Cir. 2001), "if some defects raised in the original motion remain in the amended pleading, the Court simply may consider the motion as being addressed to the amended pleading [because to] hold otherwise would be to exalt "form over substance." 6 Charles Alan Wright *et al.*, Federal Practice and Procedure § 1476 (3d ed. 2011). In this case, the Plaintiff amended the Complaint only to clarify that he is seeking recovery from Defendant in his individual capacity. [Docs. 25, 36.] The pending motion to dismiss argues that Plaintiff has failed to allege the necessary facts to support a claim for relief. Plaintiff's clarification as to his claims does not affect the deficiencies alleged by Defendant. Thus, the Court considers the motion as addressed to the Complaint as amended.

[3]The facts included in this Background section are taken directly from Plaintiff's Complaint and the amendments to the Complaint. [Docs 1, 1-2, 1-3.]

that he only participated in the controlled buy in order to help his future boss and in exchange for a job. [*Id.* at 7.] He alleges that Defendant's actions during the controlled buy were improper because Defendant was not authorized to make the controlled buy. [*Id.* at 4–6.] Plaintiff also contends that Defendant's actions were entrapment as Defendant convinced Plaintiff to find him drugs. [*Id.* at 7.] Plaintiff alleges that Defendant's actions violated South Carolina Law Enforcement Division ("SLED") protocol set out in S.C. Code § 17-30-70 and SLED Policy 13.30 when he completed the controlled buy with Plaintiff on April 11, 2016, as it took place outside of the supervision of a SLED agent and did not use a criminal informant. [*Id.* at 5–6; Doc. 1-2 at 1.] Plaintiff also alleges that Defendant's actions were a violation of the Interception of Wire, Electronic, or Oral Communications Act. [Doc. 1-3 at 1.] Plaintiff alleges violations of his Fourth and Fourteenth Amendment rights and a breach of proper procedure because Defendant caused him to be illegally arrested for an illegal charge and Defendant's actions caused Plaintiff to suffer emotional distress and wrongful incarceration. [Doc. 1 at 8; Doc. 1-3 at 1.] Additionally, Plaintiff contends that the charges from the controlled buy with Defendant, bearing warrant number 2016A4210101490, were nolle prossed on March 14, 2017. [Doc. 1 at 12.] In the instant matter, Plaintiff seeks to recover $650,000 in damages from Defendant for the violation of his constitutional rights, entrapment, emotional distress, incarceration time, and Defendant's intentional wrongful act. [*Id.* at 8.]

APPLICABLE LAW

Liberal Construction of Pro Se Complaint

Plaintiff brought this action pro se, which requires the Court to liberally construe his pleadings. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir. 1978); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Pro se pleadings are held to a less stringent standard than those drafted by attorneys. *Haines*, 404 U.S. at 520. The mandated liberal construction means only that if the Court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999). A court may not construct the plaintiff's legal arguments for him. *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993). Nor should a court "conjure up questions never squarely presented." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

Requirements for a Cause of Action Under § 1983

This action is filed pursuant to 42 U.S.C. § 1983, which provides a private cause of action for constitutional violations by persons acting under color of state law. Section 1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). Accordingly, a civil action under § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999).

Section 1983 provides, in relevant part,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

42 U.S.C. § 1983. To establish a claim under § 1983, a plaintiff must prove two elements: (1) that the defendant "deprived [the plaintiff] of a right secured by the Constitution and laws of the United States" and (2) that the defendant "deprived [the plaintiff] of this constitutional right under color of [State] statute, ordinance, regulation, custom, or usage." *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir. 2001) (third alteration in original) (citation and internal quotation marks omitted).

The under-color-of-state-law element, which is equivalent to the "state action" requirement under the Fourteenth Amendment,

> reflects judicial recognition of the fact that most rights secured by the Constitution are protected only against infringement by governments. This fundamental limitation on the scope of constitutional guarantees preserves an area of individual freedom by limiting the reach of federal law and avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed.

Id. (quoting *Dowe v. Total Action Against Poverty in Roanoke Valley,* 145 F.3d 653, 658 (4th Cir. 1998)) (internal citations and quotation marks omitted). Nevertheless, "the deed of an ostensibly private organization or individual" may at times be treated "as if a State has caused it to be performed." *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001). Specifically, "state action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Id.* (quoting *Jackson v. Metro.*

Edison Co., 419 U.S. 345, 351 (1974)). State action requires both an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State . . . or by a person for whom the State is responsible" and that "the party charged with the deprivation [is] a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). A determination of whether a private party's allegedly unconstitutional conduct is fairly attributable to the State requires the court to "begin[ ] by identifying 'the specific conduct of which the plaintiff complains.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999) (quoting *Blum* v. *Yaretsky*, 457 U.S. 991, 1004 (1982)).

Motion to Dismiss Standard

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a claim should be dismissed if it fails to state a claim upon which relief can be granted. 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 plaintiff." *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). However, the court "need not accept the legal conclusions drawn from the facts" nor "accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). Further, for purposes of a Rule 12(b)(6) motion, a court may rely on only the complaint's allegations and those documents attached as exhibits or incorporated by reference. *See Simons v. Montgomery Cty. Police Officers*, 762 F.2d 30, 31 (4th Cir. 1985). If matters outside the pleadings are presented to and not excluded by the court, the motion is treated as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 12(d).

With respect to well-pleaded allegations, the United States Supreme Court explained the interplay between Rule 8(a) and Rule 12(b)(6) in *Bell Atlantic Corp. v. Twombly*:

> Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. 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).

550 U.S. 544, 555 (2007) (footnote and citations omitted); *see also* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than a bare averment that the pleader wants compensation and is entitled to it or a statement of facts that merely creates a suspicion that the pleader might have a legally cognizable right of action.").

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). The plausibility standard reflects the threshold requirement of Rule 8(a)(2)—the pleader must plead sufficient facts to show he is entitled to relief, not merely facts consistent with the defendant's liability. *Twombly*, 550 U.S. at 557 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Iqbal*, 556 U.S. at 678 ("Where a complaint pleads facts that are

'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'" (quoting *Twombly*, 550 U.S. at 557)). Accordingly, the plausibility standard requires a plaintiff to articulate facts that, when accepted as true, demonstrate that the plaintiff has stated a claim that makes it plausible the plaintiff is entitled to relief. *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678).

DISCUSSION

Defendant argues: (1) Plaintiff's claims against Defendant in his official capacity are barred by the Eleventh Amendment [Doc. 21-1 at 3–4]; (2) Plaintiff's claims are barred by *Heck* [*id.* at 4–5]; (3) Plaintiff has failed to state a claim for relief under § 1983 because a grand jury indicted Plaintiff on the charges underlying his false arrest claim [*id.* at 6–7]; (4) entrapment does not provide the basis for a § 1983 action [*id.* at 7]; and (5) there is no factual basis for Plaintiff's Fourteenth Amendment violation claim [*id.* at 7–8].[4] Additionally,

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[4]As an initial matter, Plaintiff has amended his Complaint to indicate that Plaintiff is suing Defendant only in his individual capacity. [Docs. 25, 36.] As such, the undersigned finds Defendant's Eleventh Amendment immunity argument moot. Additionally, Defendant argues that Plaintiff's claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). [Doc. 21-1 at 4–5.] In *Heck*, the Supreme Court held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must

Defendant requests the instant matter be dismissed and designated as a strike pursuant to 28 U.S.C. § 1915(g). [*Id.* at 8–9.] The Court will address each claim in turn.

False Arrest Claim

Section 1983 actions premised on malicious prosecution, false arrest, and/or false imprisonment are analyzed as actions claiming unreasonable seizures in violation of the Fourth Amendment. *See, e. g.*, *Brown v. Gilmore*, 278 F.3d 362, 367–68 (4th Cir. 2002) (recognizing that a plaintiff alleging a § 1983 false arrest claim needs to show that the officer decided to arrest him without probable cause to establish an unreasonable seizure under the Fourth Amendment); *Rogers v. Pendleton*, 249 F.3d 279, 294 (4th Cir. 2001) (stating claims of false arrest and false imprisonment "are essentially claims alleging a seizure of the person in violation of the Fourth Amendment"); *Lambert v. Williams*, 223 F.3d 257, 262 (4th Cir. 2000) ("[T]here is no such thing as a '§ 1983 malicious prosecution' claim. What we termed a 'malicious prosecution' claim . . . is simply a claim founded on a Fourth Amendment seizure that incorporates elements of the analogous common law tort of malicious prosecution-specifically, the requirement that the prior proceeding terminate

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> consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

512 U.S. at 486–87 (footnotes omitted). This is known as the "favorable termination" requirement. *See Wilson v. Johnson*, 535 F.3d 262, 263 (4th Cir. 2008). Though Plaintiff asserts that the complained of charge, bearing warrant number 2016A4210101490, was nolle prossed on March 14, 2017, at this time the undersigned cannot determine whether Plaintiff actually received a truly "favorable termination" when the above charge was nolle prossed. Accordingly, out of an abundance of caution, the undersigned will address the merits of Plaintiff's claims.

favorably to the plaintiff"). "The Fourth Amendment is not violated by an arrest based on probable cause." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Under § 1983, "a public official cannot be charged with false arrest when he arrests a defendant pursuant to a facially valid warrant." *Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998) ("[A] claim for false arrest may be considered only when no arrest warrant has been obtained."); *see also Brooks v. City of Winston-Salem*, 85 F.3d 178, 181–82 (4th Cir. 1996) (determining that when the arresting official makes the arrest with a facially valid warrant, it is not false arrest). Moreover, "an indictment, 'fair upon its face,' returned by a 'properly constituted grand jury,' conclusively determines the existence of probable cause." *Durham v. Horner*, 690 F.3d 183, 189 (4th Cir. 2012) (quoting *Gerstein v. Pugh*, 420 U.S. 103, 117 n.19 (1975)); *see also Provet v. S.C.*, C.A. No. 6:07-1094-GRA-WMC, 2007 WL 1847849, at *5 (D.S.C. June 25, 2007) (§ 1983 claims of false arrest and malicious prosecution were precluded because of indictment). This Court takes judicial notice that a grand jury indicted Plaintiff on September 30, 2016, for the state drug charge complained of in the present action. [Doc. 21-2 at 9–10]; *see also Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record"); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'") Additionally, Plaintiff admits that his charges were indicted by a grand jury.[5] [Doc. 28 at 1.]

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[5]In his response in opposition, Plaintiff appears to suggest that Defendant's wrongful act—engaging in the illegal controlled buy—"tainted" the grand jury indictment because without the taint of the illegal action "there would have been a lack of probable cause." [Doc. 28-1 at 2.] Plaintiff's argument, however, does not negate the probable cause established by the indictment. *See United States v. Brewer*, 1 F.3d 1430, 1433 (4th Cir. 1993) (finding that a police officer's perjury was insufficient to create doubt as to the grand

The indictments act as a bar to Plaintiff's false arrest allegations. Thus, Defendant's motion should be granted with respect to Plaintiff's claim for false arrest.

Entrapment Claim

Plaintiff also contends that Defendant's behavior violated Plaintiff's constitutional rights because he was entrapped. [Doc. 1 at 4.] The United States Supreme Court, in the criminal context, ruled that a criminal defendant's constitutional rights were not violated because he was entrapped. *See United States v. Russell*, 411 U.S. 423, 430 (1973) (finding that the government's conduct—entrapment—did not violate an independent constitutional right of the defendant). Several circuit courts have adopted the Supreme Court's analysis in the civil context, finding that entrapment is not a constitutional violation. *See e.g., Stokes v. Gann*, 498 F.3d 483, 485 (5th Cir. 2007) (collecting cases). Accordingly, even if Plaintiff could prove he was entrapped, entrapment in and of itself does not constitute a violation of a constitutional right; thus, Plaintiff's entrapment claim should be dismissed.

Fourteenth Amendment Claim

Plaintiff alleges that Defendant violated his Fourth Amendment rights "by virtue of" the Fourteenth Amendment. [Doc. 1-3 at 1.] To the extent Plaintiff alleges a due process violation, this claim is without merit.[6] While the "liberal pleading requirements" of Rule 8(a)

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jury's decision to indict); *see also Costello v. United States*, 350 U.S. 359, 363 (1956) (finding that a defendant may not challenge an indictment on the ground that it was not supported by adequate or competent evidence). As such, the undersigned finds Plaintiff's argument unpersuasive with respect to his false arrest claim.

[6]Plaintiff's Fourteenth Amendment claim appears to hinge on his false arrest claim. As the undersigned recommends dismissal of Plaintiff's false arrest claim, Plaintiff's due process claim, to the extent it relies upon the false arrest claim, should be dismissed as well.

require only a "short and plain" statement of the claim, the plaintiff must "offer more detail . . . than the bald statement that he has a valid claim of some type against the defendant." *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001) (internal citations omitted). Even with respect to a pro se complaint, a plaintiff must do more than make mere conclusory statements to support his claim. *Brown v. Zavaras*, 63 F.3d 967, 972 (10th Cir. 1995); see *White v. White*, 886 F.2d 721, 723 (4th Cir. 1989) (dismissing a complaint where it "failed to contain any factual allegations tending to support the [plaintiff's] bare assertion")). It is well settled that federal courts performing their duties of construing pro se pleadings are not required to be "mind readers" or "advocates" for pro se litigants. *See Beaudett*, 775 F.2d at 1278; *Leeke*, 574 F.2d at 1151. Plaintiff's Complaint fails to allege facts sufficient to support a due process claim, and thus, this claim should be dismissed.

Frivolousness

Lastly, this action may also be dismissed based on frivolousness. Defendants request that this action be dismissed and designated as a "strike" pursuant to 28 U.S.C. § 1915(g). [Doc. 21-1 at 8–9.] Plaintiff filed a separate lawsuit alleging the same facts as in the instant matter, which was dismissed without prejudice, pursuant to *Younger v. Harris*, 401. U.S. 37 (1971)). *Lancaster v. Ruane*, No. 7:17-21-TMC-JDA, 2017 WL 727617 (D.S.C. Feb. 1, 2017), *Report and Recommendation adopted by* 2017 WL 713973 (Feb. 23, 2017). That same Report and Recommendation informed Plaintiff that he failed to state a claim for false arrest because Plaintiff was indicted by a grand jury. *Id.* at *2. Plaintiff has also filed multiple lawsuits alleging false arrest and has been advised each time that a facially valid indictment acts as a bar to a false arrest claim. *See Lancaster v. Horton*, No. 7:17-151-TMC-JDA, 2017 WL 727644 (D.S.C. Feb. 1, 2017), *Report and Recommendation*

adopted by 2017 WL 713977 (D.S.C. Feb. 23, 2017); *Lancaster v. Woodward*, No. 7:16-3940-TMC-JDA, 2017 WL 727616 (D.S.C. Jan. 31, 2017), *Report and Recommendation adopted by* 2017 WL 713970 (D.S.C. Feb. 23, 2017). As Plaintiff's claims in the present matter hinge upon his false arrest claim, Plaintiff should know that his lawsuit has no arguable basis in law. *See Nagy v. FMC Butner*, 376 F.3d 252, 256–57 (4th Cir. 2004) (explaining that "[t]he word 'frivolous' is inherently elastic and 'not susceptible to categorical definition.'"); *Worley v. Keller*, 475 F. App'x 484 (4th Cir. 2012) (a suit is frivolous if it lacks an arguable basis in law or fact). Accordingly, Plaintiff's claims can also be dismissed based upon frivolousness.

RECOMMENDATION

Wherefore, based upon the foregoing, the Court recommends that Defendant's motion to dismiss [Doc. 21] be GRANTED and that Plaintiff's motion for summary judgment [Doc. 34] be FOUND AS MOOT. It is further recommended that this action be designated a "strike" pursuant to 28 U.S.C. § 1915(g).

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

April 9, 2018
Greenville, South Carolina

Additional material from this filing is available in the Clerk's Office.