Sorensson v. Willis, et al
2022 | Cited 0 times | E.D. North Carolina | March 25, 2022

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

EASTERN DIVISION No. 4:21-CV-94-FL

KAROLINA SORENSSON,) P l a i n t i f f ,) O ORDER and v .) M MEMORANDUM & R RECOMMENDATION STATE OF NORTH CAROLINA at al., 1

Defendants.)

This pro se case is before the court on the application [DE #1] by Plaintiff, Karolina Sorensson, to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1) and for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B), the matter having been referred to the undersigned by the Honorable Louise W. Flanagan, United States District Judge. Also before the court are a motion for leave to file a USB drive containing media and other documentary evidence (Mot. Leave File USB [DE #5]) and a motion to appoint counsel (Mot. Appoint Counsel [DE #7]). For the reasons set forth below, the court GRANTS Plaintiff's application to proceed in forma pauperis,

1 The defendants named in Plaintiff's case caption differ from those listed elsewhere in Plaintiff's proposed complain t and filings. The undersigned construes the following as being named as defendants by Plaintiff: State of North Carolina, North Carolina State Bar, DA Thomas, NC Prosecutor Augustus Willis IV (Gus), Patrick Donald Newman & Assoc., Patrick D. Newman, Mason Miller, Joshua Tetterton & Assoc., Carteret Health Care, Sheriff Asa Buck, Deputy Sheriff Shawna Enderle, Deputy Sheriff Null, Carteret County NC Superior Court, Judge Nobles (Superior Court Carteret Co.), Judge Cherry, Judge Mack, and Judge Karen Alexander.

2 RECOMMENDS that Plaintiff's complaint be dismissed in part, DENIES WITHOUT PREJUDICE Plaintiff's motion for leave to file a USB drive, and DENIES Plaintiff's motion to appoint counsel.

I IFP MOTION The standard for determining in forma pauperis status is whether "one cannot because of his poverty pay or give security for the costs . . . and still be able to provide himself and dependents with the necessities of life." Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339 (1948). Based on the information contained in Plaintiff's affidavit, the court finds that Plaintiff has demonstrated appropriate evidence of inability to pay the required court costs. Thus, Plaintiff's

application to proceed in forma pauperis is ALLOWED.

DISCUSSION I. Background

A. Posture Plaintiff applied for in forma pauperis status and filed her original proposed complaint on July 9, 2021, naming certain individuals and entities as defendants. (IFP Application [DE #1]; Prop. Compl. [DE #1-1].) On July 16, 2021, the court issued a deficiency order, indicating, among other things, that Plaintiff's proposed complaint does not include a short and plain statement of the grounds for jurisdiction and does not include a short and plain statement of Plaintiff's claims, both being required by Fed. R. Civ. P. 8. (Deficiency Order [DE #4.) In response, Plaintiff filed a twelve-page letter captioned only as "To Whom It May Concern" (7/21/21 Letter [DE #6]) on July

3 21, 2021, and a five-page document titled "Short and Plain Statement of Plaintiff's Karolina Sorensson Claims" (Short & Plain Stmt. [DE #8]) on July 27, 2021.

2 On September 3, 2021, Plaintiff filed another letter captioned only as "To Whom It May Concern" containing factual allegations and exhibits related to her proposed complaint. (9/3/21 Letter [DE #11].) Due to Plaintiff's pro se status, the undersigned construes the aforementioned filings as amendments to Plaintiff's proposed complaint and considers them for purposes of frivolity review.

B B. Factual Summary 1. July 2019 Arrest, Detention, and Prosecution Although difficult to parse, the gravamen of Plaintiff's proposed complaint is that her constitutional rights were violated in numerous ways in connection with an arrest, detention, and prosecution in July 2019 by Carteret County, North Carolina, law enforcement and the local prosecutor's office. The undersigned attempts to summarize the facts underlying Plaintiff's cl aims below, in the light most favorable to Plaintiff given the case posture.

On July 27, 2019, Deputy Sheriff Shawna Enderle of Carteret County arrested Plaintiff for allegedly violating N.C. Gen. Stat. § 14-11.4, which makes it illegal to misuse the 911 system. 3

During the course of this arrest, Deputy Enderle placed

2 Plaintiff also filed a Motion for Leave to Manually File USB [DE #5] and a Motion to Appoint Counsel [DE #7].

3 It is unclear where this arrest occurred, although Plaintiff has hinted that it took place at her former home located at 615 Flybridge Lane, Beaufort, NC. (See 7/21/21 Letter at 3–4 ("When I arrived on 7/ 27/19 to retrieve my belongings, Officer Enderle was next to John Dickinson . . . ."); Short & Plain Stmt. at 1.) It appears that

4 Plaintiff in her patrol vehicle, which was very hot and humid. (7/21/21 Letter at 1; Short & Plain

Stmt. at 1.) Because of the heat and humidity inside the patrol vehicle, Plaintiff developed difficulty breathing. (7/21/21 Letter at 1.) Deputy Enderle opened a door in her patrol vehicle, and Plaintiff vomited outside of the vehicle. (Id.; see Short & Plain Stmt. at 1.) Plaintiff was then taken to jail by Deputy Enderle. (See 7/21/21 Letter at 1.) Plaintiff was in jail from approximately 2:00 p.m. on July 27, 2019, until approximately 4:30 p.m. on July 29, 2019. (7/21/21 Letter at 1; 9/3/21 Letter at 1.) During the time Plaintiff was in jail, she told a female Caucasian jail guard that she needed to take her prescription medication Citalopram but was never provided this medication. (7/21/21/ Letter at 1; 9/3/21 Letter at 1.) At some point either before or during the jail stay, Plaintiff was transported to the local Carteret County hospital for treatment, where she encountered "s nappy [and] biased" medical staff and observed other patients in the facility being mistreated. (7/21/21 Letter at 1–2.) At some point on July 29, 2019, Plaintiff appeared in state superior court in Carteret County before Judge Nobles, where a deputy sheriff aggressively restrained her and gave her unsolicited legal advice. (7/21/21 Letter at 6.)

the house at 615 Flybridge Lane had been subject to a foreclosure proceeding, and Plaintiff, Deputy Enderle, and Attorney Russell Alexander were present on July 27, 2019, to allow Plaintiff to retrieve some of her belongings from the house. (See 7/21/21 Letter at 6 (stating that Deputy Enderle "broke & entered" 615 Flybridge Lane on July 27, 2019, while Plaintiff and her friend Abraham were attempting to retrieve some of Plaintiff's property from the house); Short & Plain Stmt. at 2 (discussing events of July 27, 2019, and stating that the Flybridge Lane home had been subject to a "wrongful foreclosure").)

5 Also on July 27, 2019, and at some point before arresting Plaintiff, Deputy Enderle and Attorney Russell Alexander entered Plaintiff's house at 615 Flybridge Lane. (7/21/21 Letter at 6.) Plaintiff alleges this was an unlawful entry (characterizing it as "breaking and entering"), although other aspects of Plaintiff's filings lead the undersigned to conclude that this was a pre-arranged entry to permit Plaintiff to collect belongings from inside the house with Attorney Alexander and Deputy Enderle playing some type of enforcement/escort role. Specifically, Plaintiff states that on June 3, 2019, she encountered Deputy Enderle at 615 Flybridge Lane while she was waiting for Attorney Alexander to appear so that he would unlock 615 Flybridge Lane and allow Plaintiff the opportunity to retrieve personal effects and documents from the house. (7/21/21 Letter at 11; Short & Plain Stmt. at 1 ("I had requested a Civil Standby, apparently Carteret Co. names it "Escort," for me "to retrieve said belongings and while there was a legal battle to save my home at . . . 615 Flybridge Lane . . . .").)

At some point after Deputy Enderle's July 27, 2019, arrest of Plaintiff for misuse of 911 system, Plaintiff was also charged with violating N.C. Gen. Stat. § 14- 258.4(a), which makes malicious conduct by a prisoner involving a bodily fluid a felony offense. (7/21/21 Letter at 7, 9; 9/3/21 Letter at 2–3, 7.) Attorney Patrick Donald Newman was appointed to represent Plaintiff in connection with the misuse of 911 system and malicious conduct by prisoner charges, and he engaged in plea negotiations with Assistant District Attorney (ADA) Augustus Willis IV. (7/21/21 Letter at 8–9; Short & Plain Stmt. at 1–2; 9/3/ 21 Letter at 1–3, 7.) One of the proposed

6 plea offers from ADA Willis included a condition that Plaintiff, a United States citizen, purchase a one-way airplane ticket to Nicaragua, Plaintiff's country of birth. (7/21/21 Letter at 9–10; Short & Plain Stmt. at 1–2; 9/3/21 Letter at 1–3, 7 & related exhibits [DE ##11-1 through 11-4].) Plaintiff does not explain how the above criminal proceedings were resolved. However, two aspects of Plaintiff's filings le ad the undersigned to infer that Plaintiff pleaded guilty to the misuse of 911 system charge and the felony malicious conduct by prisoner charge was dismissed: (1) Plaintiff's statement that "at the end only the 'Misconduct by Prisoner' was dismissed" (9/3/21 Letter at 3), and (2) Plaintiff's request that the misuse of 911 system be dismissed and sealed (Prop. Compl. at 3). 4 Additionally, a public search of pending criminal cases in the district and superior courts of Carteret County for "Sorensson,K" revealed no upcoming court dates. See https://www1.aoc.state.nc.us/www/calendars.Criminal.do?county=150&court=BTH& defendant=Sorensson%2CK&start=0&navindex=0&fromcrimquery=yes&submit=Se arch (last visited Mar. 23, 2022). 2. Previous Incidents Plaintiff also mentions other incidents with Carteret County law enforcement. Plaintiff specifically mentions interactions with Deputy Enderle and another deputy

4 If, in fact, one or both of these state charges are still pending, the undersigned would recommend this court abstain from considering Plaintiff's request for injunctive relief based on Younger v. Harris, 401 U.S. 37 (1971) (federal courts may generally not enjoin pending state criminal proceedings). See also Nivens v. Gilchrist, 444 F.3d 237, 248 (4th Cir. 2006) (federal district court should, under Younger, stay rather than dismiss "claims for monetary relief that cannot be redressed in the state [criminal] proceeding" (quoting Deakins v. Monaghan, 484 U.S. 193, 202 (1988)).

7 sheriff, Deputy Null, on December 28, 2018 (7/21/21 Letter at 2–3 ("On or about 12/28/18 and 6/3/19 Officers Enderle and Null came to harass me and abuse their authority and discriminate against me in my own home."), and June 3, 2019 (id. at 2–3, 11). As to December 28, 2018, Plaintiff states that Deputy Null responded to Plaintiff's 911 call reporting an attempted breaking and entering at 615 Flybridge Lane and yelled at Plaintiff for allegedly misusing the 911 system. (Id. at 3.) As to June 3, 2019, it appears that Plaintiff had arranged another civil escort to retrieve belongings from inside 615 Flybridge Lane, to which Deputies Enderle and Null had been assigned. (Id. at 3, 11.) During this encounter, Deputy Enderle yelled at Plaintiff not to enter 615 Flybridge Lane and kicked in the side garage door of the house. (Id.)

Plaintiff also mentions an interaction with Deputy Null on an unspecified date in 2017 when Plaintiff had called the sheriff's office to report her neighbor littering on, and having sex in, her lawn at 615 Flybridge Lane. (7/21/21 Letter at 4). Deputy Null was apparently dispatched to the scene and told Plaintiff he did not believe her. (Id.)

C C. Requested Relief Plaintiff requests (i) dismissal of the misuse of 911 system charge, and sealing of related court records, at no cost; (ii) return of her house at 615 Flybridge Lane, Beaufort, North Carolina, with no assessment of taxes; and (iii) $70 million for emotional distress. (Prop. Compl. at 3.)

8 I II. Standard for Frivolity Review

Notwithstanding the determination that Plaintiff is entitled to IFP status, the court is required to dismiss all or part of an action found to be frivolous or malicious, which fails to state a claim on which relief can be granted, or which seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2); Michau v. Charleston County, 434 F.3d 725, 728 (4th Cir. 2006). A case is frivolous if it lacks an arguable basis in either law or fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). Pro se complaints are entitled to a more liberal treatment than pleadings drafted by lawyers. See White v. White, 886 F.2d 721, 722–23 (4th Cir. 1989). However, the court is not required to accept a pro se plaintiff's contentions as true. Denton v. Hernandez, 504 U.S. 25, 32 (1992). The court is permitted to "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke, 490 U.S. at 327. In making the "inherently elastic" frivolity determination, Nagy v. FMC Butner, 376 F.3d 252, 256–57 (4th Cir. 2004), the court may "apply common sense," Nasim v. Warden., Md. House of Correction, 64 F.3d 951, 954 (4th Cir. 1995).

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to give a "short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. The statement must give a defendant fair notice of what the claim is and the grounds upon which it rests. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "A 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,

9 405 (4th Cir. 2001); see also White, 886 F.2d at 723 (affirming district court's dismissal of suit as frivolous where complaint "failed to contain any factual allegations tending to support [plaintiff's] bare assertion"). The complaint must contain "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. While the court must read the complaint carefully to determine if the plaintiff has alleged facts sufficient to support his claims, White, 886 F.2d at 724, the court is not required to act as the pro se plaintiff's advocate or to parse through volumes of documents or discursive arguments in an attempt to discern the plaintiff's unexpressed intent, Williams v. Ozmint, 716 F.3d 801, 805 (4th Cir. 2013).

"Federal courts are courts of limited jurisdiction and are empowered to act only in those specific situations authorized by Congress." Bowman v. White, 388 F.2d 756, 760 (4th Cir. 1968). The presumption is that a federal court lacks jurisdiction in a particular case unless it is demonstrated that jurisdiction exists. Lehigh Min. & Mfg. Co. v. Kelly, 160 U.S. 327, 336–37 (1895). "The burden of establishing subject matter jurisdiction rests with the plaintiff as 'the party asserting jurisdiction.'" AGI Assocs., LLC v. City of Hickory, N.C., 773 F.3d 576, 578 (4th Cir. 2014) (quoting Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982)). "Furthermore, the complaint must state on its face the grounds for . . . jurisdiction," regardless of whether it is a case of diversity or federal question jurisdiction. Bowman, 388 F.2d at 760.

10 I III. Plaintiff' s Claims Plaintiff's proposed complaint and amen dments are not an example of

clarity and it is difficult to identify the legal bases for Plaintiff's claims and this court's subject-matter jurisdiction. For example, her civil cover sheet (Civil Cover Sheet [DE #1-5]) indicates that she is seeking to bring state tort claims; civil rights claims based on housing, employment, and disability; immigration claim(s); and a Freedom of Information Act claim. She also invokes constitutional provisions (First Amendment, 5 Fourth Amendment, 6

and Eighth Amendment 7

at numerous places, and emphasizes the federal nature of this proposed lawsuit (Short & Plain Stmt. at 2–3, 5). At other points, Plaintiff also lists other claims but never specifies the legal bases for these claims. (See Short & Plain Stmt. at 3–4.) The under signed can discern the legal basis for some of these claims (for example, "P olice/Sheriff's Brutality") but not all.

After reviewing all of Plaintiff's filings, and construing these filings extremely liberally, the undersigned discerns the following proposed claims:

false arrest and malicious prosecution based on misuse of 911 system and

malicious conduct by prisoner state criminal charges; excessive force in connection with her arrest for the misuse of 911 system

charge;

5 Short & Plain Stmt. at 2–3; 9/3/21 Letter at 1. 6 7/21/21 Letter at 11; Short & Plain Stmt. at 2–3. 7 7/21/21 Letter at 10; Short & Plain Stmt. at 2–3; 9/3/21 Letter at 1.

11 denial of medical care of a pretrial detainee in connection with her detention

for two days in July 2019; and selective prosecution based on (i) ADA Willis including a condition in a

proposed plea offer that was based on Plaintiff's race and national origin, and (ii) Plaintiff's arrest and prosecution for misuse of 911 system based on Plaintiff's race and national origin wh en Caucasian persons during the same time period were not prosecuted. 8 It also appears that Plaintiff seeks to challenge the outcome of a foreclosure proceeding against her house at 615 Flybridge Lane, Beaufort, North Carolina. This claim is difficult to parse because Plaintiff does not indicate that her home was foreclosed on, although she includes facts which support this inference. (See Short & Plain Stmt. at 1–2, 4 (indicating, among other things, that deputy sheriffs were providing an escort as she attempted to retrieve belongings from 615 Flybridge Lane and that an attorney had created a "ghost person/entity" to steal her home and that a deputy sheriff told her that she was not allowed to enter the home because she lost it in a foreclosure); 9/3/21 Letter at 2 (mentioning that Plaintiff had a hearing in state superior court to "save [her] house").) Furt hermore, Plaintiff's request that her house

8 Plaintiff identifies malicious prosecution as the basis for her claim against ADA Willis for including the airplane ticket to Nicaragua condition in one of the proposed plea offers. The undersigned evaluates a potential malicious prosecution below. However, the undersigned also liberally construes Plaintiff to be asserting a selective prosecution claim as to the challenged plea offer.

12 at 615 Flybridge Lane be returned to her (Prop. Compl. at 3) is strong evidence that she seeks to challenge the outcome of a foreclosure proceeding. Plaintiff identifies numerous persons and entities as defendants but does not explain how each is an appropriate party. Several of the named defendants are immune from liability or bear no connection to the facts Plaintiff has alleged. The undersigned will first explain which defendants should be dismissed from Plaintiff's lawsuit based on immunity or insufficient factual nexus. As a final preliminary matter, the court assumes the basis of Plaintiff's claims to be 42 U.S.C. § 1983, which provides a private right of action where a person acting under color of state law deprives an individual of a federally protected right. Such claims require proof that the alleged constitutional deprivation was (1) "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State" and (2) 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). The Supreme Court has specifically held that neither states nor state officials are "persons" under § 1983. Will v. Michigan Dep't of State Police , 491 U.S. 58, 71 (1989). A A. Immunity 1. Eleventh Amendment

Plaintiff names the State of North Carolina, the North Carolina State Bar, and Carteret County Superior Court as defendants. Although not entirely clear, Plaintiff appears to name these entities as defendants in connection with her treatment in the

13 Carteret County, North Carolina, judicial system and by various attorneys. These entities are immune from damages liability, however.

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. "Under the Eleventh Amendment, . . . neither a State nor its officials in their official capacity may be sued for damages in federal court without their consent." Gamache v. Cavanaugh, 82 F.3d 410, 1996 WL 174623, at *1 (4th Cir. 1996) (unpublished table decision); see also Gray v. Laws, 51 F.3d 426, 430 (4th Cir. 1995). Such immunity "extends as well to state agencies and other government entities properly characterized as 'arms[s] of the State.'" Gray, 51 F.3d at 430 (quoting Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977); then citing Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993)); see also Teague v. N.C. Dep't of Transp. , No. 5:07-CV-45-F, 2007 WL 2898707, at *2 (E.D.N.C. Sept. 28, 2007) (citing Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 (1984)).

In Quern v. Jordan, 440 U.S. 332 (1979), the Court held that 42 U.S.C. § 1983 did not abrogate a state's Eleventh Amendment immunity. Id. at 337–45 (reaching this conclusion by analyzing the plain language and legislative history of § 1983). Lower courts have similarly held that 42 U.S.C. §§ 1981 & 1986 do not abrogate Eleventh Amendment immunity. Parks v. Piedmont Tech. Coll., 76 F.3d 374, 1996

14 WL 36897, at *1 (4th Cir. 1996) (unpublished table decision) (state immune from money damages under § 1981); Huang v. Bd. of Governors of Univ. of N.C., 902 F.2d 1134, 1138 (4th Cir. 1990) (state immune from money damages under § 1981); Demuren v. Old Dominion Univ., 33 F. Supp. 2d 469, 474 (E.D. Va. 1999) (state immune from money damages under § 1981), aff'd, 188 F.3d 501 (4th Cir. 1995) (unpublished table decision); Martin v. Clemson Univ., 654 F. Supp. 2d 410, 428 (D.S.C. 2009) (§ 1986).

The North Carolina State Bar is an entity of the State of North Carolina, N.C. Gen. Stat. § 84-15, and is, therefore, entitled to Eleventh Amendment immunity. See Gray, 51 F.3d at 430; Arroyo v. Zamora, No. 3:17-CV-721-FDW-DCK, 2018 WL 1413195, at *4 (W.D.N.C. Mar. 21, 2018) (North Carolina State Bar is state agency immune from suit); Alexander v. N.C. Judicial Standards Comm'n , No. 7:20-CV-66- FL, 2020 WL 4278683, at *6 (E.D.N.C. June 11, 2020) (North Carolina state agencies immune from suit), mem. & recommendation adopted by 2020 WL 4279513 (July 24, 2020). Plaintiff includes no allegations from which it may be inferred that North Carolina has waived its immunity with respect to any § 1983 claim, nor does Plaintiff invoke a federal statute that abrogates North Carolina's sovereign immunity. Accordingly, any claim seeking damages against the State of North Carolina or the North Carolina State Bar should be dismissed.

The Carteret County Superior Court is also entitled to Eleventh Amendment immunity. The North Carolina Constitution creates a "unified judicial system," known as the General Court of Justice, consisting of an Appellate Division, a Superior

15 Court Division, and a District Court Division. N.C. Const. art. IV, § 2. See also North Carolina Judicial Branch Overview 2019-20, North Carolina Judicial Branch Fact Sheets, https://www.nccourts.gov/assets/documents/publications/North-Carolina-Judicial-Branch-Fact-Sheet_2019-20.pdf?b_tvpY7AjqTp.fNMKbXDCcphOgRGdKG9 (last visited Mar. 3, 2022) ("North Carolina 's court system, called the General Court of Justice, is a state-operated and state-funded unified court system."). The Superior Court in Carteret County falls into Superior Court District 3B, which is one of the local superior courts created by the state legislature pursuant to the state constitution. See N.C. Const. art. IV, § 9. As such, it is part of the State of North Carolina and therefore immune from liability under the Eleventh Amendment for the reasons discussed above. Any claim against the Carteret County Superior Court should therefore be dismissed.

2. Judicial Immunity Plaintiff names as defendants Judge Nobles, Judge Cherry, Judge Karen Alexander, and Judge Mack. (Prop. Compl. at 2; 9/3/21 Letter at 1 (naming Judge Alexander and Judge

Cherry).)

"It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions." Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985). "[J]udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." Stump v. Sparkman, 435 U.S. 349, 355–56 (1978) (quoting Bradley v. Fisher, 80 U.S. 335, 351 (1871)) (internal

16 quotation marks omitted). "A judge will no t be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." Id. at 356–57 (quoting Bradley, 80 U.S. at 351) (internal quotation marks omitted).

Plaintiff has included no facts to suggest that any of the named judges were acting outside of their normal duties as judges. 9

Thus, there is no reason to believe they were acting in the "cle ar absence of all jurisdiction." They are, accordingly, immune from liability and the claims against them should be dismissed.

3. Prosecutorial Immunity Plaintiff names "DA Thomas"

10 and ADA Willis as defendants. Plaintiff's claims against these defendants appear to stem from the misuse of 911 system and malicious conduct by prisoner charges that were brought against her in July 2019. As to ADA Willis, Plaintiff alleges that he included as a condition in a plea offer that Plaintiff purchase a one-way airplane ticket to Nicaragua, a location where Plaintiff was born and has family. (7/21/21 Letter at 9–10 (alleging facts to support malicious prosecution claim against ADA Willis); 9/3/21 Letter at 2–3, 7 (email from Plaintiff's defense attorney Patrick D. Newman conveying plea offer from ADA Willis).)

9 Plaintiff specifically alleges that Judge Cherry violated Plaintiff's First Amendment rights by failing to permit her to explain, while in court, how ADA Willis and Attorney Newman forced her to purchase the one-way airplane ticket to Nicaragua. (9/3/21 Letter at 1.)

10 Mr. Scott Thomas is the District Attorney for N.C. Prosecutorial District 4, which encompasses Carteret County.

17 Prosecutors are absolutely immune from individual liability for acts taken in carrying out their prosecutorial functions. Imbler v. Pachtman, 424 U.S. 409, 431 (1976). Such activities include determining whether and when to initial criminal proceedings and in prosecuting the case. Id. at 430–31 (reasoning that the work of the prosecutor would be impeded were prosecutors not absolutely immune for activities "intimately associated with the ju dicial phase of the criminal process"). Plea

negotiations are an essential component of the prosecutorial function. Taylor v. Kavanaugh, 640 F.2d 450, 453 (2d Cir. 1981), cited with approval in Powell v. United States, No. 5:12-CT-3052-FL, 2012 WL 5395814, at *2 (E.D.N.C. Nov. 5, 2012).

While Plaintiff has alleged (and proffered evidence) that ADA Willis included a plea condition that could be construed as discriminatory (i.e., based on Plaintiff's race and/or national origin), prosecutors enjoy immunity for actions intimately associated with the judicial phase of a criminal case, which includes plea negotiations. See Taylor, 640 F.2d at 453. Thus, ADA Willis is immune from damages liability.

Plaintiff has not specified whether she is attempting to sue District Attorney Thomas in his official or individual capacity. In either case, such claims should be dismissed. Claims against a North Carolina District Attorney in his official capacity are barred by the Eleventh Amendment. Nivens v. Gilchrist, 444 F.3d 237, 249 (4th Cir. 2006). Thus, any § 1983 damages claim against District Attorney Thomas in his official capacity should be dismissed. Furthermore, any § 1983 damages claim against District Attorney Thomas in his individual capacity should be dismissed because a

18 supervisor may not be held individually liable under § 1983 under the doctrine of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009) ("Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior."); Monell, 436 U.S. at 690–91. A supervisor may be held individually liable for the unconstitutional acts of a subordinate only where (1) "the supervisor had actual or co nstructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury"; (2) the supervisor was deliberately indifferent to or tacitly authorized the conduct; and (3) there exists an "affirmative caus al link" between the supervisor's actions and th e constitutional injury. Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994) (internal quotation marks omitted). See also Randall v. Prince George's Cnty., Md. , 302 F.3d 188, 206 (4th Cir. 2002) (noting that Shaw's second prong cannot ordinarily be met by identifying single or isolated incidents of unconstitutional conduct). "Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Ashcroft, 556 U.S. at 676.

While Plaintiff has pleaded facts relating to ADA Willis, her proposed complaint and related amendments fail to allege any facts to support a claim that District Attorney Thomas was involved in the acts of which Plaintiff complains. Also, had Plaintiff pleaded sufficient facts related to District Attorney Thomas, he would

19 nevertheless be entitled to prosecutorial immunity. Claims against District Attorney Thomas seeking damages should therefore be dismissed.

B. Defendants Patrick D. Newman, Patrick Donald Newman & Associates,

and Mason Miller Plaintiff names Patrick D. Newman and Patrick Donald Newman & Associates as defendants. According to Plaintiff's filings, Mr. Newman is an attorney who was appointed by the court to represent Plaintiff on the misuse of 911 system and malicious conduct by prisoner charges that are central to Plaintiff's proposed complaint. (See 7/21/21 Letter at 8.) Court-appointed defense attorneys do not act under color of state law as required under § 1983. Polk County v. Dodson, 454 U.S. 312, 321 (1981). Plaintiff has made no allegations regarding Attorney Newman that could form the basis for any other claim. Accordingly, any claims against Attorney Newman, and his law firm, should be dismissed. Relatedly, any claims against Defendant Mason Miller, who Plaintiff alleges was Attorney Newman's legal assistant (7/21/21 Letter at 9), should also be dismissed.

C. Defendant Joshua Tetterton & Associates Plaintiff names Joshua Tetterton & Associates as a defendant. (Prop. Compl. at 1.) This firm is not mentioned anywhere else in Plaintiff's filings. Accordingly, any claims against this Defendant should be dismissed as frivolous or for failure to state a claim.

D. Defendant Carteret Health Care Plaintiff names Carteret Health Care as a defendant. (Prop. Compl. at 1.) The only conceivable factual allegations related to Carteret Health Care are Plaintiff's

20 statements that "an extremely snappy bi ased doctor/nurse" saw her when she was taken from the Carteret County Jail to Carteret County Hospital. (7/21/21 Letter at 1–2.) Plaintiff also includes factual allegati ons related to treatment of other patients she observed while at the hospital. (Id.)

Plaintiff has not alleged that Carteret County Hospital and Carteret Health Care are connected. Assuming without deciding that Carteret Health Care operates the hospital which employed the extremely snappy and biased doctor/nurse that saw Plaintiff, the conduct alleged by Plaintiff is insufficient to state any claim against Carteret Health Care. Being snappy and biased is not a constitutional violation, and Plaintiff's allegations against Carteret Heal th Care are not sufficient to make out a state tort claim. Furthermore, Plaintiff has not alleged that Carteret Health Care is a state actor, and public information suggests that it is not. See About Carteret Health Care, https://www.carterethealth.org/about-us/ (last visited Mar. 23, 2022) ("Our hospital is an independent, not- for-profit, 135-bed community hospital."). Accordingly, Defendant Carteret Health Care should be dismissed from Plaintiff's lawsuit.

To the extent Plaintiff attempts to bring claims on behalf of others whose treatment she witnessed while in the hospital, Plaintiff lacks standing to bring any such claims. See Ne. Fla. Chapter of Assoc'd Gen. Contractors v. City of Jacksonville , 508 U.S. 656, 663 (1993) (party must demonstrate that it has a suffered a concrete and particularized harm to its legally protected interest to meet the injury component of standing doctrine); Myers v. Loudoun Cnty. Pub. Sch., 418 F.3d 395, 400 (4th Cir.

21 2005) ("The right to litigate for oneself, however, does not create a coordinate right to litigate for others." (citing Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975))).

E E. Sheriff Asa Buck Plaintiff names Sheriff Asa Buck as a defendant. (Prop. Compl. at 1.) The undersigned has identified three other places in Plaintiff's filings where Sheriff Buck is mentioned, or where there is a general reference to "Sheriff." (7/21/21 Letter at 1, 4, 6–7.) One reference appears to be about unnamed deputy sheriffs, not Sheriff Buck. (7/21/21 Letter at 6–7 (Plaintiff alleging that while being escorted in a state courtroom, a sheriff aggressively gripped her arm and gave her unsolicited legal advice).) Another reference is a request for production of a video of Plaintiff's alleged false arrest on July 27, 2019, by Deputy Sheriffs Enderle and Null. (7/21/21 Letter at 1 ("When [Deputy Sheriff] Enderle opened the vehicle's door I vomited outside the vehicle, I am asking Carteret Co. Sheriff Dept. incl. but not limited to Asa Buck and this District/Federal Court for a video of the false arrest . . . .").) And the last reference is a factual allegation which expresses a question whether Sheriff Buck is related to a person with whom Plaintiff had a previous relationship. (7/21/21 Letter at 4 ("I don't know if David Buck influenced Asa Buck, the head of Carteret Co. Sheriff. The relationship with David lasted 3 years, on and off.").)

These factual allegations alone would not support any non-frivolous claims against Sheriff Buck. However, as explained below, Plaintiff has pleaded some non- frivolous claims regarding constitutional violations she experienced in connection

22 with her arrest, incarceration, and prosecution. As Sheriff Buck is the custodian for people detained in his jail, and out of an abundance of caution given the inherently elastic nature of frivolity review, the undersigned recommends that Sheriff Buck remain as a defendant but only as to Plaintiff's due process and equal protection claims, as explained below.

F. Request for Return of House/Foreclosure Claim To the extent Plaintiff seeks to overturn a state foreclosure proceeding against her house at 615 Flybridge Lane, Beaufort, North Carolina, this court lacks subject- matter jurisdiction over any such claim because the legality of that claim is inextricably intertwined with the factual and legal findings of the state foreclosure proceeding. The Rooker-Feldman doctrine deprives this court of subject-matter jurisdiction over such a claim. See Saimplice v. Ocwen Loan Serv., Inc., 368 F. Supp. 3d. 858, 864 (E.D.N.C. 2019). Under the Rooker-Feldman doctrine, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." Lance v. Dennis, 546 U.S. 459, 463 (2006) (per curiam); see Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983). Jurisdiction to review such decisions lies with superior state courts and, ultimately, the United States Supreme Court. See 28 U.S.C. § 1257(a). The Rooker-Feldman doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting [federal] court review and rejection of those judgments." Thana v. Bd. of License Comm'rs , 827 F.3d

23 314, 319 (4th Cir. 2016) (quotation marks omitted) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). The doctrine prevents federal courts from considering "issues actually presented to and decided by a state court, but also . . . constitutional claims that are

inextricably intertwined with questions ruled upon by a state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." Plyer v. Moore, 129 F.3d 728, 731 (4th Cir. 1997) (quotation marks and citations omitted). "[I]f the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, 'inextricably intertwined' with the state-co urt decision, and is therefore outside of the jurisdiction of the federal district court." Davani v. Va. Dep't of Transp. , 434 F.3d 712, 719 (4th Cir. 2006). While the Rooker-Feldman doctrine is a narrow exception to federal subject-matter jurisdiction, Vicks v. Ocwen Loan Servicing, 676 F. App'x 167, 168 (4th Cir. 2017) (per curiam) (unpublished) (characterizing Rooker-Feldman as a "narrow doctrine"), it nevertheless preclude s a federal district court from reviewing final judgments of state courts, even when a plaintiff has attempted to re-fashion his federal complaint to avoid this jurisdictional bar, Moore v. Idealease of Wilmington, 465 F. Supp. 2d 484, 490 (E.D.N.C. 2006) ("[A] plaintiff cannot escape the reach of Rooker-Feldman by merely arguing a different legal theory not raised in state court." (citing Davani v. Va. Dep't of Transp. , 434 F.3d 712, 719 (4th Cir. 2006)). This conclusion also implicates Plaintiff's Fourth Amendment claims against Deputy Enderle. To the extent Plaintiff states that these deputies violated her Fourth

24 Amendment rights by "breaking and enteri ng" and otherwise damaging the house at 615 Flybridge Lane, such claims cannot survive frivolity review as Plaintiff no longer had any Fourth Amendment interest in property that was foreclosed on.

G. Claims Stemming from July 27, 2019, Arrest, Incarceration, and

Prosecution There are several claims stemming from Plaintiff's July 27, 2019, arrest, incarceration, and prosecution. Plaintiff asserts false arrest and malicious prosecution claims, alleging that the basis for the misuse of 911 system charge was fraudulent. (See, e.g., 7/21/21 Letter at 1–3, 9; Short & Plain Stmt. at 1.) Plaintiff also alleges Fourth Amendment claims based on Deputy Enderle's unlawful entry into 615 Flybridge Lane and excessive force during her arrest on July 27, 2019. (See 7/21/21 Letter at 1–3, 9; Short & Plain Stmt. at 1; 9/3/21 Letter at 2 (Deputy Enderle bruised Plaintiff during arrest and forced her into extremely hot and humid car).) Lastly, Plaintiff states that the Carteret County jail where she was incarcerated denied her access to prescription medication (7/21/21 Letter at 1; Short & Plain Stmt. at 1; 9/3/21 Letter at 1), which the undersigned construes as a due process claim given Plaintiff's pretrial detainee status. These claims are discussed below.

1. False Arrest and Malicious Prosecution Plaintiff's claims for false arrest and malicious prosecution are cognizable under both § 1983 and North Carolina tort law although the elements are substantively the same. See Morgan v. Spivey, No. 5:16-CV-365-FL, 2019 WL 81480, at *11 & n.25, 24–25 (E.D.N.C. Jan. 2, 2019). Given the liberal nature of frivolity

25 review, the undersigned construes Plaintiff as asserting these claims under both § 1983 and state tort law.

Plaintiff does not specify whether the arrest for misuse of 911 system was pursuant to a warrant. See Brooks v. City of Winston-Salem, N.C., 85 F.3d 178, 181– 82 (4th Cir. 1996) (false arrest claim is based on warrantless detention without probable cause and malicious prosecution claim is based on detention pursuant to warrant or for damages associated with the period of detention after issuance of legal process); Bellamy v. Wells, 548 F. Supp. 2d 234, 237 (W.D. Va. 2008) (false imprisonment claims address detention without legal process). For purposes of frivolity review, the undersigned analyzes Plaintiff's July 27, 2019, arrest under both false arrest and malicious prosecution theories.

"A claim of malicious prosecution under § 1983 'is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of the common law tort' of malicious prosecution." Quarles v. Weeks, 815 F. App'x 735, 737–38 (4th Cir. 2020) (per curiam) (quoting Humbert v. Mayor of Baltimore, 866 F.3d 546, 555 (4th Cir. 2017), in regards to § 1983 claim, and citing Evans v. Chalmers, 703 F. 3d 636, 657 (4th Cir. 2012), in regards to state tort). "To prevail on such a claim, 'a plaintiff must show that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in the plaintiff's favor.'" Quarles, 815 F. App'x at 737–38 (quoting Humbert, 866 F.3d at 555, as to § 1983 claim, and citing Evans, 703 F.3d at 657, for similar requirements under state tort law).

26 In contrast, a false arrest claim requires only that a plaintiff show she was unlawfully detained without probable cause. See Johnson v. City of Fayetteville, 91 F. Supp. 3d 775, 799 (E.D.N.C. 2015) ("False arrest claims are analyzed under the Fourth Amendment: arrests are illegal when probable cause did not exist at the time of the arrest."); Morgan, 2019 WL 81480, at *11 & n.25.

Plaintiff has alleged sufficient facts to survive frivolity review on certain of her false arrest and malicious prosecution claims against Deputy Enderle. As to false arrest for the misuse of 911 system, Plaintiff states numerous times that this was a false arrest. Normally, such conclusory statements would not be sufficient to survive review. See Trulock, 275 F.3d at 405. However, reading Plaintiff's filings in their totality, the undersigned finds that Plaintiff has alleged that she was arrested by Deputy Enderle on July 27, 2019, without probable cause to believe she misused the 911 system. However, Plaintiff has not alleged non-frivolous malicious prosecution claims arising out of the misuse of 911 system charge, as Plaintiff's pleadings indicate this charge was not terminated in Plaintiff' s favor. Thus, while the false arrest claim against Deputy Enderle based on Plaintiff's arrest and detention for misuse of 911 system survives frivolity review, the malicious prosecution claim against Deputy Enderle arising out of the same charge should be dismissed.

As to her malicious prosecution claim based on the malicious conduct by prisoner charge, Plaintiff has alleged sufficient facts to survive frivolity review. Plaintiff has alleged that (i) Deputy Enderle caused her to be detained for malicious conduct by prisoner based on actions that would not support a finding of probable

27 cause to believe she committed the offense (i.e., vomiting in or just outside Deputy Enderle's

patrol vehicle due to heat and humi dity) and (ii) this charge was eventually dismissed. (7/21/21 Letter at 1; Short & Plain Stmt. at 1.; 9/3/21 Letter at 3 (malicious conduct by prisoner charge dismissed).) These facts are sufficient to survive frivolity review based upon consideration of the elements for these claims. See Humbert, 866 F.3d at 555; Evans, 703 F. 3d at 657.

In sum, the undersigned determines that Plaintiff's (i) false arrest claims against Deputy Enderle in connection with the misuse of 911 system charge, and (ii) malicious prosecution claims against Deputy Enderle in connection with the malicious conduct by prisoner charge, survive frivolity review. Any other false arrest and malicious prosecution claims Plaintiff attempts to bring should be dismissed as frivolous or for failure to state a claim upon which relief may be granted.

2. Excessive Force Claim Plaintiff alleges that Deputy Enderle used excessive force during the July 27, 2019, arrest. (See 7/21/21 Letter at 1–3, 9; Short & Plain Stmt. at 1; 9/3/21 Letter at 2.)

A claim for excessive force is cognizable under the Fourth Amendment. See Cooper v. Brunswick Cnty. Sheriff's Dep't, 896 F. Supp. 2d 432, 445 (E.D.N.C. 2012) ("A police officer violates the Fourth Amendment when he uses force against an individual in an objectively unreasonable manner.").

Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "'the nature and quality of the intrusion on the individual's Fourth Amendment interests'" agains t the countervailing governmental

28 interests at stake. . . . [T]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. Graham v. Connor, 490 U.S. 386, 396 (1989) (second alteration in original) (citations omitted) (quoting Tennessee v. Garner, 471 U.S. 1, 7 (1985) and Bell v. Wolfish, 441 U.S. 520, 559 (1979)); see also Morgan, 2019 WL 81480, at *14–15.

The undersigned expresses no opinion concerning the veracity of Plaintiff's allegations or the reasonableness of Deputy Enderle's alleged actions. Given the liberal construction due Plaintiff's complain t, however, Plaintiff' s claim that Deputy Enderle, acting under color of state law, violated her Fourth Amendment right to be free from unreasonable seizures is neither legally frivolous nor factually baseless. Accordingly, this claim survives frivolity review.

3. Unlawful Entry Claim Plaintiff alleges that Deputy Enderle violated her Fourth Amendment right by illegally entering 615 Flybridge Lane and damaging her belongings. (Short & Plain Stmt. at 6, 11.)

"The Fourth Amendment protects against unreasonable searches and seizures." Wildauer v. Frederick Cnty., 993 F.2d 369, 372 (4th Cir. 1993) (citing United States v. Place, 462 U.S. 696 (1983)). "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." Payton v. New

29 York, 445 U.S. 573, 585 (1980) (quoting United States v. United States District Court, 407 U.S. 297, 313 (1972)). But the "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." Rakas v. Illinois, 439 U.S. 128, 143 (1978); see also Rawlings v. Kentucky, 448 U.S. 98, 104– 06 (1980) (noting that Rakas rejected "arcane concepts of property law" in the Fourth Amendment context (internal quotation marks omitted)).

Here, Plaintiff has alleged that her house at 615 Flybridge Lane was subject to a "wrongful foreclosure." (Short & Plain Stmt. at 2.) She also states that, on at least two separate occasions, she scheduled some type of civil escort with local law enforcement and an attorney to obtain property and belongings from 615 Flybridge Lane. (7/21/21 Letter at 11; Short & Plain Stmt. at 1.) And she asks this court to return 615 Flybridge Lane to her. (Prop. Compl. at 3.) Taking all these factual allegations as true, the undersigned concludes that Plaintiff's house at 615 Flybridge Lane, at least on June 3, 2019, and thereafter, had been foreclosed on and was no longer Plaintiff's property. Th at Plaintiff needed to meet with a lawyer and schedule a law enforcement escort to obtain belongings from 615 Flybridge Lane on June 3, 2019, and July 27, 2019, shows that she did not have a legitimate expectation of privacy in the house. Accordingly, she had no Fourth Amendment right in 615

30 Flybridge Lane on June 3, 2019, and July 27, 2019. This Fourth Amendment claim should therefore be dismissed. 11

4. Medical Needs Due Process Claim Plaintiff states that the Carteret County jail where she was incarcerated denied her access to prescription medication despite her informing the staff that she required such medication. (7/21/21 Letter at 1; Short & Plain Stmt. at 1; 9/3/21 Letter at 1.) Plaintiff only identifies the jail staff generally and an unnamed guard (7/21/21 Letter at 1 ("Caucasian Female over 300 pounds)).

The denial of medical care for a pretrial detainee may violate the Fourteenth Amendment's due process clause. Mays v. Sprinkle, 992 F.3d 295, 300 (4th Cir. 2021). A pretrial detainee cannot be subject to punishment and can make out a due process violation "at least where '[s]he shows delib erate indifference to serious medical needs under cases interpreting the Eighth Amendment.'" Id. (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). Under the Eighth Amendment, such a claim

includes objective and subjective elements. Jackson v. Lightsey, 775 F.3d 170, 178 4th Cir. 2014). The objective element requires a "serious" medical condition. Id. A medical condition is objectively serious when it either is "diagnosed by a physicia n as mandating treatment" or is "so obvious that

even a lay person would easily recognize the necessity for a doctor's attention." Scinto v. Stansberry, 841 F.3d 219, 225 (4th Cir. 2016) (quoting Iko v. Shreve, 535 F.3d 225, 241 (4th Cir. 2008)). And for the subjective element, the prison official must have acted with a "sufficiently culpable state of mind." Farmer v. Brennan, 511 U.S. 825, 834 (1994). The subjective state of mind required is that of "deliberate 11 These factual allegations also show that Plaintiff is seeking to obtain federal district court review of state foreclosure proceedings, which is barred under the Rooker-Feldman doctrine. See Saimplice, 368 F. Supp. 3d at 866.

31 indifference . . . 'to inmate health or safety.'" Scinto, 841 F.3d at 225 (quoting Farmer, 511 U.S. at 834). And deliberate indifference requires that the official have "had actual subjective knowledge of both the inmate's serious medical condition and the excessive risk posed by the official's action or inaction." Jackson, 775 F.3d at 178; Parrish ex. rel. Lee v. Cleveland, 372 F.3d 294, 302 (4th Cir. 2004) ([D]eliberate indifference requires a showing that the defendants . . . actually knew of and ignored a detainee's serious need for medical care." (quoting Young v. City of Mount Ranier, 238 F.3d 567, 575–76 (4th Cir. 2001))). Mays, 992 F.3d at 300 (alteration in original) (parallel citations omitted).

The undersigned expresses no opinion concerning the veracity of Plaintiff's allegations or the conduct of the jail staff. Given the liberal construction due Plaintiff's complaint, however, Plaintiff's claim that her due process right to medical care as a pretrial detainee was violated is neither legally frivolous nor factually baseless. Of the named defendants, only Carteret County and Sheriff Buck could arguably be held responsible for his claim. See Vaught v. Ingram, No. 5:10-CT-3009- FL, 2011 WL 761482, at *3–4 (E.D.N.C. Feb. 24, 2011) (noting that (i) a North Carolina county may have a statutory duty to provide medical care to county jail detainees, and (ii) the county sheriff "has th e sole statutory responsibility for the care and custody of the inmates at the county jail" pursuant to N.C. Gen. Stat. § 162-22). Accordingly, this claim should be allowed to proceed against Defendant Carteret County and Defendant Sheriff Asa Buck.

5. Selective Prosecution Claims Plaintiff has alleged two possible selective prosecution claims: (1) ADA Willis violated the equal protection clause in plea negotiations by extending a plea offer that was based in part on Plaintiff's race and national origin, and (2) Plaintiff was subject

32 to arrest and prosecution for misuse of 911 system while other Caucasian persons who prank called 911 during the same time period were not. (7/21/21 Letter at 12 (allegation regarding differential treatment of Caucasian persons for prank 911 calls).)

Generally, "a selective prosecution claim is an 'assertion that the prosecutor had brought the charge for reasons forbidden by the Constitution.'" United States v. Venable, 666 F.3d 893, 900 (4th Cir. 2012) (quoting United States v. Armstrong, 517 U.S. 456, 463 (1996)). While "[t]he government ordinarily has wide latitude in deciding whether to prosecute[,] . . . equal protection forbids basing the decision 'on an unjustifiable standard such as race, religion, or other arbitrary classification.'" Venable, 666 F.3d at 900 (quoting Armstrong, 517 U.S. at 464).

Several factual issues regarding the status of Plaintiff's state criminal case that implicate whether Plaintiff's selective prosecution claims are cognizable in this court remain unknown. However, because so many issues are unclear, the undersigned cannot say that Plaintiff's sele ctive prosecution claims are frivolous at this point in time. Accordingly, Plaintiff's selective prosecution claims against the State of the North Carolina, DA Thomas and ADA Willis, Carteret County, Sheriff Buck, and Deputy Enderle should be allowed to proceed at this time. 12

12 As explained above, to the extent Plaintiff seeks money damages from the State, District Attorney Thomas, and ADA Willis, those claims are barred by immunity principles.

33 I IV. Motion to File USB Drive Plaintiff has moved for leave to file a USB drive containing videos, photographs, and other documentary evidence related to her claims. (Mot. Leave File USB [DE #5].) Federal Rule of Civil Procedure 8 requires a complaint to give a "short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. The rule does not provide for the submission of evidence in the manner requested by Plaintiff. At this early stage of the litigation, submission of such evidence is inappropriate. Accordingly, the court denies without prejudice Plaintiff's motion for leave to file the USB drive. V. Motion to Appoint Counsel After filing her IFP application and proposed complaint, Plaintiff filed a motion requesting that "an unbiased attorney" re present her in this matter. (Mot. Appoint Counsel [DE #7].) The undersigned construes this as a request that the court appoint counsel to represent Plaintiff. There is no constitutional right to counsel in civil cases, and courts should exercise their discretion to request an attorney to represent a pro se civil litigant only in exceptional cases. Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). The existence of such exceptional circumstances "hinges on [the] characteristics of the claim and the litigant." Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984), abrogated on other grounds by Mallard v. U.S. Dist. Court for S. Dist. of Iowa, 490 U.S. 296 (1989). The facts of this case and Plaintiff's abilities do not present such exceptional circumstances. Accordingly, the court denies Plaintiff's request for appointed counsel.

34 Nevertheless, and in response to Plaintiff's modest request for assistance, the court maintains a list of attorneys who have indicated a willingness to consider providing pro bono representation in certain categories of civil cases ("pro bono panel"). Review by the pro bono panel does not guarantee that counsel will be secured. Because of the number of pro se cases and the shortage of volunteer attorneys, submission of a case to the pro bono panel frequently results in a declination of representation. In accordance with the court's routine practice, the Clerk is directed to review this case in order to determine whether it falls within one of the categories of cases appropriate for consideration by the pro bono panel.

C CONCLUSION For the reasons stated above, Plaintiff's application to proceed in forma pauperis [DE #1] is GRANTED, Plaintiff's motion for leave to file a USB drive containing media and other documentary evidence [DE #5] is DENIED WITHOUT PREJUDICE, and Plaintiff's motion to appoint counsel [DE #7] is DENIED. It is further RECOMMENDED that Plaintiff's complaint be

dismissed as frivolous or for failure to state a claim upon which relief can be granted except as to the following nonfrivolous claims, which should be allowed to proceed: 1. False arrest under § 1983 and state tort law against Deputy Enderle in connection with the misuse of 911 system charge; 2. Malicious prosecution under § 1983 and state tort law against Deputy Enderle in connection with the malicious conduct by prisoner charge;

35 3. Excessive force under the Fourth Amendment, as incorporated through the Fourteenth Amendment, against Deputy Enderle; 4. Denial of medical needs under the Fourteenth Amendment's due process clause against Sheriff Buck and Carteret County; and

5. Selective prosecution under the Fourteenth Amendment's equal protection clause against the State of North Carolina, District Attorney Thomas, Assistant District Attorney Willis, Carteret County, Sheriff Buck, and Deputy Enderle.

It is DIRECTED that a copy of this Order and Memorandum & Recommendation be served on Plaintiff, who is hereby advised as follows:

You shall have until A April 11, 2022, to file written objections to the Memorandum & Recommendation. The presiding district judge must conduct his or her own review (that is, make a de novo determination) of those portions of the Memorandum & Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum & Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. See, e.g., 28 U.S.C. § 636(b)(l); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C. (Dec. 2019).

If you do not file written objections by the foregoing deadline, you will be giving up the right to review of the Memorandum & Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order

36 or judgment based on the Memorandum & Recommendation without such review. In addition, your failure to file written objections by the foregoing deadline may bar you from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum & Recommendation. See Wright v. Collins, 766 F.2d 841, 846–47 (4th Cir. 1985).

This 25th day of March 2022.

_______________________________________ KIMBERLY A. SWANK United States Magistrate Judge

__ _ _ _ _ _ _ _ _ _ _ _ _ __________ _ _ _ _ _ _ _ _ _ _ _ _ _________________ __ _ _ _ _ _ __ _ _
KIMBERLY L L LY L LY L LY LY L LY LY L LY Y L L LY L L L L L L L L L L L L L L L L L L L L
L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L

Sorensson v. Willis, et al

2022 | Cited 0 times | E.D. North Carolina | March 25, 2022

L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L L A. SWANK