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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180343

Birmingham Broadcasting (WVTM-TV) LLC

v.

Leslie Wayne Hill

1180370

Leslie Wayne Hill

v.

Sheriff Mike Hale, Deputy Jacob Reach, and Deputy Jason Orr

Appeals from Jefferson Circuit Court
(CV-14-904839)

STEWART, Justice.

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In appeal no. 1180343, Birmingham Broadcasting (WVTM-TV) LLC ("WVTM") appeals from a \$250,000 judgment entered on a defamation verdict against it and in favor of Leslie Wayne Hill in the Jefferson Circuit Court ("the trial court"). In appeal no. 1180370, Hill appeals from an order of the trial court dismissing all the claims Hill asserted against three members of the Jefferson County Sheriff's Department ("the Sheriff's Department"), including former Sheriff Mike Hale, Deputy Sheriff Jason Orr, and Lieutenant Jacob Reach (hereinafter referred to collectively as "the sheriff defendants"), on the basis of state immunity. For the reasons expressed below, we reverse the judgment in appeal no. 1180343 and render a judgment in favor of WVTM, and we affirm the judgment in appeal no. 1180370.

Facts and Procedural History

In 1992, Hill pleaded guilty in the Jefferson Circuit Court to five misdemeanor counts of distributing obscene material, see § 13A-12-200.2(a)(1), Ala. Code 1975, for renting adult videos at a video-rental store he owned. In November 2013, Hill was arrested in Homewood on a misdemeanor charge of harassing communications. Pursuant to that arrest,

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the Sheriff's Department conducted a criminal-history check on Hill and determined that, based on Hill's 1992 convictions of distributing obscene material, Hill was required to register as a sex offender under the Sex Offender Registration and Community Notification Act, § 15-20A-1 et seq., Ala. Code 1975 ("SORNA").¹ Deputy Orr, who worked in the sex-offender unit of the Sheriff's Department, informed Hill that he had to register as a sex offender. Hill refused to do so on the ground that the 1992 convictions did not qualify as sex offenses under SORNA. Deputy Orr eventually completed an Alabama Uniform Incident/Offense Report concerning Hill's failure to register and submitted the report to the Jefferson County District Attorney's Office. An assistant district attorney concluded that probable cause existed that Hill was in violation of SORNA and approved the Sheriff's Department's request to seek warrants for Hill's arrest. After determining that probable cause existed, a Jefferson County magistrate

¹Section 15-20A-5, Ala. Code 1975, establishes the offenses that require registration under SORNA. Misdemeanor distribution of obscene material is not specifically enumerated in the statute, although § 15-20A-5(41) provides that a sex offense may include "[a]ny other offense not provided for in this section wherein there is a finding of sexual motivation as provided by Section 15-20A-6."

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issued warrants for Hill's arrest for failing to register as a sex offender under SORNA, see § 15-20A-7, Ala. Code 1975, and for maintaining a residence within 2,000 feet of a school, in violation of § 15-20A-11(a), Ala. Code 1975.

In 2013, the Sheriff's Department was collaborating with WVTM on a weekly televised news segment entitled "To Catch a Predator." Deputy Orr testified at trial regarding the role of the Sheriff's Department in creating the "To Catch a Predator" segments:

"In 2013, our unit averaged 25 to 30 ... warrants a month and we would go through and we would select somebody that we were either having trouble finding or somebody that had refused to come register or whatever the case may be. And we would type up a script for the Sheriff. It was either me or Lieutenant Reach that did it. It was one of us that did it 99.9 percent of the time. And we would type up a script for the Sheriff to read, and then we would take it over to his office and he would read it basically in front of one of the TV cameras in his office to run on TV."

Deputy Orr testified that the scripts for the segments were based on incident and offense reports created by the Sheriff's Department. The segments were video-recorded by a WVTM employee at the sheriff's office on Wednesday mornings and were aired Friday nights at 10:00 p.m. on WVTM.

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Hill was featured on the December 6, 2013, segment of "To Catch a Predator" ("the December 6 broadcast"). The December 6 broadcast began with an introduction from a WVTM news anchor person, who stated: "A local sex offender is back in trouble with the law tonight and investigators need your help in tracking him down. Here's tonight's 'To Catch a Predator.'" A graphic was then displayed showing the name of the segment -- "To Catch A PREDATOR" -- for approximately three seconds. A photograph of Hill was then displayed with the title of the segment -- "TO CATCH A PREDATOR" -- immediately above the photograph and Hill's full name directly below the photograph. Lieutenant Reach, who worked in the sex-offender unit of the Sheriff's Department, testified that the graphic was created by WVTM. As Hill's photograph was displayed, Sheriff Hale began reading the following script:

"We're looking for Leslie Wayne Hill. Hill is a convicted sex offender with five counts of distribution of obscene material in 1992 right here in Jefferson County. The Jefferson County Sheriff's Office Sex Offender Unit received information in regards to Hill never registering. The Unit confirmed Mr. Hill's convictions and also contacted him, and we gave him an opportunity to register. He refused to register as a sex offender. The Sex Offender Unit obtained two warrants on the offender on November 26 of this year. One for violation of the Sex Offender Act for failure to register and the

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second one -- violation of the Sex Offender Act -- residing within 2,000 feet of a school or day care. The offender was advised that he could not reside at his current address. ... The address is within 2,000 feet of Integrity Christian Academy."

During Sheriff Hale's dialogue, which lasted approximately one minute, the video alternated between Hill's photograph and video of Sheriff Hale sitting at a desk reading the script. After Sheriff Hale's portion of the segment concluded, Hill's name and photograph were again displayed along with the segment title, and a background announcer stated: "Take another look at this convicted sex offender. If you've seen him, call [the telephone number for the sex-offender unit of the Sheriff's Department]. Your call will remain anonymous." The segment concluded with the WVTM news anchor person stating: "Remember, you can help to catch a predator every Friday night on Alabama's 13 News at 10 and again here on Saturday morning." The entire portion of the December 6 broadcast pertaining to Hill lasted approximately 1 minute and 20 seconds. The December 6 broadcast re-aired on WVTM on the morning of December 7, 2013.

After the December 6 broadcast, Hill, through his attorney, contacted the Jefferson County deputy district

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attorney to convey his opinion that his 1992 convictions did not constitute a sex offense under SORNA. The deputy district attorney agreed and requested that the warrants be recalled. On December 10, 2013, both warrants issued against Hill were recalled. Neither Hill nor his attorney contacted WVTM after the December 6 broadcast to inform it that the warrants against Hill had been recalled, to otherwise request a retraction of the December 6 broadcast, or to provide an explanation for or a contradiction of the December 6 broadcast.

On December 13, 2013, WVTM aired another "To Catch a Predator" segment ("the December 13 broadcast"). During the December 13 broadcast, Sheriff Hale addressed a case that was unrelated to Hill's, but, at the conclusion of that broadcast, a WVTM news anchor person stated: "And here's a follow up to last week's 'To Catch a Predator' report. The Jefferson County Sheriff's Office told us Friday that earlier this week, two charges were recalled against Leslie Wayne Hill, the man profiled in our story last Friday night." During that portion of the December 13 broadcast, the same photograph of Hill that was shown during the December 6 broadcast was displayed along

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with Hill's full name immediately below the photograph and the headline "CHARGES DROPPED" immediately above the photograph. The portion of the December 13 broadcast pertaining to Hill lasted approximately 13 seconds.

Hill sued Sheriff Hale, Deputy Orr, Lieutenant Reach, and WVTM in the trial court, alleging state-law claims of defamation, false light, negligent training and supervision, and the tort of outrage against all defendants.² The trial court granted the sheriff defendants' motion to dismiss on the basis of state immunity, finding that the sheriff defendants were working within the line and scope of their employment when they sought warrants against Hill and when they

²Hill also alleged violations of 42 U.S.C. § 1983 against the sheriff defendants. The sheriff defendants removed Hill's claims against them to the United States District Court for the Northern District of Alabama. The district court entered a memorandum opinion and order in which it dismissed Hill's § 1983 claims against the sheriff defendants on the basis of sovereign immunity and qualified immunity. The district court remanded Hill's state-law claims against the sheriff defendants to the trial court. See Hill v. Hale, No. 2:15-CV-00457-AKK, June 24, 2015 (N.D. Ala. 2015) (not selected for publication in the Federal Supplement). Hill appealed the district court's judgment to the United States Court of Appeals for the 11th Circuit, and that court affirmed the district court's judgment. See Hill v. Hale, 637 F. App'x 577 (11th Cir. 2016) (not selected for publication in the Federal Reporter).

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participated in WVTM's broadcasts and concluding that Article I, § 14, Ala. Const. 1901, barred Hill's claims against them.

WVTM filed a motion for a summary judgment, arguing that its broadcasts were privileged as fair reports under § 13A-11-161, Ala. Code 1975, discussed infra; that it broadcast truthful information about Hill; and that Hill could not prove any recoverable special damages. The trial court granted WVTM's motion for a summary judgment on Hill's tort-of-outrage claim but denied it on Hill's claims of defamation, false light, and negligent training and supervision. In its summary-judgment order, the trial court stated that WVTM "established a conditional fair-report privilege" under § 13A-11-161 and that the December 6 broadcast was a "fair and impartial report" because "the Sheriff's office created the video segment" and WVTM "did not substantially alter it in any way." The trial court also found that WVTM "did not publish the [December 6 broadcast] with malice." The trial court, however, concluded that an exception to the fair-report privilege under § 13A-11-161 could apply. The trial court stated that, in the December 13 broadcast,

"[WVTM] neglected to publish [Hill's] contradiction and explanation of why he was not a sex offender or

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predator in the same manner [the December 6 broadcast] identified and labeled him as a sex offender and predator who refused to comply with SORNA. ...

"... The disputed significant fact is whether or not [the December 13 broadcast] was in the same manner as [the December 6 broadcast]. If it was, the fair reporting qualified privilege stands and defeats Hill's defamation, and false light claims. ... If it was not in the same manner an exception to the privilege is established."

The trial court considered the exception because WVTM "voluntarily chose to broadcast [the 'To Catch a Predator'] segments created by the Sheriff" and, in so doing, "undertook the duty to publish in the same manner Hill's contention he was not required to register as a sex offender, and his explanation of why."

The trial court then conducted a jury trial on Hill's defamation, false-light, and negligent-training-and-supervision claims against WVTM, at which videos of the December 6 broadcast and the December 13 broadcast were entered into evidence and viewed by the jury. The trial court granted WVTM's motion for a judgment as a matter of law on Hill's negligent-training-and-supervision claim at the close of Hill's evidence, and it granted WVTM's posttrial motion for a judgment as a matter of law on Hill's false-light claim, but

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it allowed Hill's defamation claim against WVTM to be submitted to the jury.

The trial court instructed the jury to determine whether an exception to Alabama's fair-report privilege applied, charging the jury as follows:

"The publication of a fair and impartial report of the issuance of any warrant shall be privileged unless it is proved that [WVTM] acted with malice towards Mr. Hill, which is not at issue, or [WVTM] refused or neglected to publish in the same manner in which the publication complained of appeared a reasonable explanation or a contradiction by the plaintiff. That's the one you're going to be focusing on.

"The third element is, [o]r that [WVTM] refused upon written request of the plaintiff to publish the subsequent determination of what happened, hearing that the warrants were recalled. There are three ways that it cannot be privileged. The one you are charged with under the statute is to determine whether [WVTM] neglected to publish in the same manner -- again, I want to remind you earlier I said there's an element of the statute about a written request for retraction. There's no requirement that a written request be made. So here you must decide whether [WVTM] negligently failed in the December 13, 2013, broadcast to publish in the same manner of its December 6, 2013, broadcast a reasonable explanation or contradiction of what eventually happened."

The jury returned a verdict in favor of Hill on his defamation claim and assessed damages against WVTM in the amount of \$250,000. The trial court entered a judgment on that

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verdict. WVTM filed a postjudgment motion under Rules 50 and 59, Ala. R. Civ. P., for a judgment as a matter of law on the jury's verdict of liability on Hill's defamation claim, for a new trial, or for remittitur of damages. The trial court denied WVTM's motion. WVTM appealed. Hill cross-appealed, challenging the trial court's dismissal of his claims against the sheriff defendants.

Standard of Review

We note that "[j]ury verdicts are presumed correct, and this presumption is strengthened by the trial court's denial of a motion for new trial. Therefore, a judgment based on a jury verdict will not be reversed unless it is 'plainly and palpably' wrong." Davis v. Ulin, 545 So. 2d 14, 15 (Ala. 1989) (citing Ashbee v. Brock, 510 So. 2d 214 (Ala. 1987)).

This Court has also stated:

"When reviewing a ruling on a motion for a JML [judgment as a matter of law], this Court uses the same standard the trial court used initially in granting or denying the motion. Palm Harbor Homes, Inc. v. Crawford, 689 So. 2d 3 (Ala. 1997). Regarding questions of fact, the ultimate issue is whether the nonmovant has presented sufficient evidence to allow the case or issue to be submitted to the jury for a factual resolution. Carter v. Henderson, 598 So. 2d 1350 (Ala. 1992). In an action filed after June 11, 1987, the nonmovant must present substantial evidence to withstand a motion

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for a JML. See § 12-21-12, Ala. Code 1975; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). A reviewing court must determine whether the party who bears the burden of proof has produced substantial evidence creating a factual dispute requiring resolution by the jury. Carter, 598 So. 2d at 1353. In reviewing a ruling on a motion for a JML, this Court views the evidence in the light most favorable to the nonmovant and entertains such reasonable inferences as the jury would have been free to draw. Id. If the question is one of law, this Court indulges no presumption of correctness as to the trial court's ruling. Ricwil, Inc. v. S.L. Pappas & Co., 599 So. 2d 1126 (Ala. 1992)."

Ex parte Alfa Mut. Fire Ins. Co., 742 So. 2d 1237, 1240 (Ala. 1999)

As to this Court's review of a trial court's order granting a motion to dismiss on the basis of state immunity, this Court has stated:

"In Newman v. Savas, 878 So. 2d 1147 (Ala. 2003), this Court set out the standard of review of a ruling on a motion to dismiss for lack of subject-matter jurisdiction:

"A ruling on a motion to dismiss is reviewed without a presumption of correctness. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This Court must accept the allegations of the complaint as true. Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002). Furthermore, in reviewing a ruling on a motion to dismiss we will not consider whether the pleader will ultimately prevail

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but whether the pleader may possibly prevail. Nance, 622 So. 2d at 299.'

"878 So. 2d at 1148-49."

Pontius v. State Farm Mut. Auto. Ins. Co., 915 So. 2d 557, 563 (Ala. 2005).

Discussion

Appeal no. 1180343

Section 13A-11-161, which is Alabama's version of the fair-report privilege, provides a conditional privilege to publishers of reports relating to, among other things, the issuance of arrest warrants and the filing of pleadings and documents in court proceedings, unless one of the exceptions listed in the statute applies. Section 13A-11-161 provides:

"The publication of a fair and impartial report of the return of any indictment, the issuance of any warrant, the arrest of any person for any cause or the filing of any affidavit, pleading or other document in any criminal or civil proceeding in any court, or of a fair and impartial report of the contents thereof, or of any charge of crime made to any judicial officer or body, or of any report of any grand jury, or of any investigation made by any legislative committee, or other public body or officer, shall be privileged, unless it be proved [1] that the same was published with actual malice, or [2] that the defendant has refused or neglected to publish in the same manner in which the publication complained of appeared, a reasonable explanation or contradiction thereof by the plaintiff, or [3] that the publisher has refused

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upon the written request of the plaintiff to publish the subsequent determination of such suit, action or investigation."

(Emphasis added.)

WVTM first argues that the trial court incorrectly applied the second exception in §13A-11-161 when it determined that, as a matter of law, a defendant can lose the fair-report privilege if it neglects to publish a reasonable explanation or contradiction of the original publication in the same manner as the original publication when the plaintiff does not provide the defendant with that explanation or contradiction. WVTM contends that the language "by the plaintiff" in § 13A-11-161 required Hill to supply WVTM with a contradiction or an explanation to trigger the second exception to the fair-report privilege. WVTM also argues that the December 13 broadcast was true and, because Hill did not provide an explanation or contradiction, cannot support a defamation claim under Alabama law and that it had no duty under § 13A-11-161 to investigate and broadcast a legal explanation for why the charges against Hill were dropped.

In support of its argument that the fair-report privilege should apply without application of the second exception, WVTM

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cites Bardwell v. Kentucky New Era Newspaper, No. 5:15-CV-00242-TBR, Feb. 15, 2017 (W.D. Ky. 2017) (not selected for publication in the Federal Supplement). In that case, a Kentucky newspaper published an article stating that the plaintiff had been arrested and charged with criminal offenses. The article referenced the arrest warrant and recited the facts of the alleged criminal offense as they appeared in the warrant. The plaintiff filed a libel suit against the newspaper in the United States District Court for the Western District of Kentucky, alleging that the newspaper had published a false and injurious article about him. In its motion for a summary judgment, the newspaper argued that the publication of the article was privileged under Ky. Rev. Stat. § 411.060, which is Kentucky's version of the fair-report privilege. Like § 13A-11-161, that statute provides that a publication of fair and impartial reports will be privileged, unless, among other things, "the defendant after request by the plaintiff has failed to publish a reasonable explanation or contradiction thereof, giving the explanation or contradiction the same prominence and space as the original publication." The district court granted the newspaper's

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motion for a summary judgment, concluding that the fair-report privilege covered the publication of the article because the plaintiff never asked the newspaper to publish an explanation or contradiction, because the publication was accurate, and because it was published without malice.

WVTM also relies on Oney v. Allen, 39 Ohio St. 3d 103, 106, 529 N.E.2d 471, 473 (1988), a case in which the Ohio Supreme Court determined that Ohio Rev. Code Ann. § 2317.05, Ohio's version of the fair-report privilege, protected a newspaper that published the name and information of the plaintiff among a list of defendants who had been indicted on drug-trafficking charges. Before the indictments were returned, the prosecutor provided the newspaper's reporter with a list of individuals who would be indicted, and the plaintiff's name was on the list. After the reporter compared the names on the list with the names on the court's docket of individuals who had been indicted, which included the plaintiff, the newspaper published the article, including the plaintiff among those indicted. It was later established that the plaintiff had been indicted by mistake. The plaintiff sued the newspaper and the reporter alleging defamation, and the

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trial court entered a summary judgment in favor of the newspaper and the reporter. In affirming the summary judgment, the Ohio Supreme Court explained:

"In order to show that a publication falls within the privilege of [the statute], the defendant must demonstrate that the publication is a substantially accurate report of the official record. . . . A publication is substantially accurate if it conveys the essence of the official record to the ordinary reader, without misleading the reader by the inclusion of inaccurate extra-record information or the exclusion of relevant information in the record."

39 Ohio St. 3d at 106, 529 N.E.2d at 473. The court further stated:

"The criminal docket of the court of common pleas is a public record and it reflected that an indictment was returned for Mike Oney. It is axiomatic that a court speaks through its docket and journals. Indus. Comm. v. Musselli (1921), 102 Ohio St. 10, 130 N.E. 32.

"By its terms, [Revised Code] 2317.05 protects fair and impartial reporting of the return of any indictment. The facts material to our determination are not in dispute. Therefore, we find that the publication was privileged pursuant to [Revised Code] 2317.05"

39 Ohio St. 3d at 107, 529 N.E.2d at 474.

In the present case, this Court is called upon to construe the second exception to the fair-report privilege-- "that the defendant has refused or neglected to publish in the

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same manner in which the publication complained of appeared, a reasonable explanation or contradiction thereof by the plaintiff." § 13A-11-161. This Court has stated:

"Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992) (citing Tuscaloosa Cty. Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa Cty., 589 So. 2d 687 (Ala. 1991)). The trial court interpreted that provision to say that WVTM would lose the fair-report privilege if the December 13 broadcast was not published in the same manner as the December 6 broadcast, regardless of whether Hill failed to provide a reasonable explanation or contradiction to WVTM. This Court, however, will "review questions of statutory construction and interpretation de novo, giving no deference to the trial court's conclusions." Pitts v. Ganqi, 896 So. 2d 433, 434 (Ala. 2004) (citing Greene v. Thompson, 554 So. 2d 376 (Ala. 1989)).

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As it is used in § 13A-11-161, the phrase "by the plaintiff" is a prepositional phrase that relates to and modifies the immediately preceding phrase--"a reasonable explanation or contradiction thereof." The phrase "by the plaintiff," in unambiguous terms, denotes that the plaintiff must take some action to provide a reasonable explanation or contradiction of the initial publication. A defendant cannot be held to have refused or neglected to publish "in the same manner" an explanation or contradiction it has not been provided; therefore, the only reasonable and logical interpretation is that the statute requires the plaintiff to provide the defendant a reasonable explanation or contradiction of the initial report. Only after the defendant has been provided an explanation or contradiction and only after the defendant refuses or neglects to publish that explanation or contradiction "in the same manner" as the original publication can the exception be triggered. Thus, unless the plaintiff has provided the defendant with an explanation or contradiction of the initial report, a court need not reach the question whether the second exception in § 13A-11-161 applies. It is undisputed in this case that Hill

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did not contact WVTM after the December 6 broadcast, much less supply WVTM with an explanation or contradiction of the information contained in the December 6 broadcast. Rather, according to the December 13 broadcast, the Sheriff's Department contacted WVTM after the December 6 broadcast informing WVTM that the warrants for Hill's arrest had been recalled, and that information formed the basis for the December 13 broadcast. Because Hill did not provide WVTM with a reasonable explanation or contradiction of the December 6 broadcast, the trial court incorrectly concluded that the December 13 broadcast triggered the second exception to the fair-report privilege.

Moreover, the December 13 broadcast did not constitute a voluntary undertaking of a duty by WVTM to publish an explanation or contradiction by Hill, and the statute did not require WVTM to conduct an investigation to determine what Hill's explanation or contention would have been. Rather, the December 13 broadcast itself constituted a fair and impartial report, made without malice, of a matter of public concern based on information WVTM received from the Sheriff's Department. Specifically, the December 13 broadcast reported

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on the recalling of arrest warrants in Jefferson County, an act that involved the "filing of [a] ... pleading or other document in [a] criminal ... proceeding in [a] court." § 13A-11-161.

In addition, regarding the elements of a cause of action for defamation, this Court has stated:

"To establish a prima facie case of defamation, the plaintiff must show [1] that the defendant was at least negligent, [2] in publishing [3] a false and defamatory statement to another [4] concerning the plaintiff, [5] which is either actionable without having to prove special harm (actionable per se) or actionable upon allegations and proof of special harm (actionable per quod)."

Delta Health Grp., Inc. v. Stafford, 887 So. 2d 887, 895 (Ala. 2004) (quoting Nelson v. Lapeyrouse Grain Corp., 534 So. 2d 1085, 1091 (Ala. 1988)). "One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true." Restatement (Second) of Torts § 581A (1977). Stated otherwise, "[t]ruth is a 'complete and absolute defense' to defamation." Federal Credit, Inc. v. Fuller, 72 So. 3d 5, 10 (Ala. 2011) (quoting Battles v. Ford Motor Credit Co., 597 So. 2d 688, 692 (Ala. 1992)). Hill does not question on appeal the trial court's determination in that part of its order denying WVTM's request for a summary

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judgment on Hill's defamation claim that the December 6 broadcast was a fair and impartial report. Likewise, the December 13 broadcast fairly, impartially, and truthfully reported that the warrants issued for Hill's arrest had been recalled and that the charges against him had been dropped. Hill failed to produce any evidence demonstrating that the December 13 broadcast, which formed the basis of the defamation verdict, contained any false statements. Because Hill could not establish the elements of a defamation claim against WVTM, the trial court incorrectly denied WVTM's motion for a summary judgment and motion for a judgment of a matter of law as to that claim.

The December 13 broadcast was a fair and impartial report that accurately reported on the disposition of an arrest warrant in Hill's favor, and § 13A-11-161 created no duty on WVTM's part to publish the December 13 broadcast in the same manner as the December 6 broadcast. We conclude that the trial court incorrectly determined in that part of its order denying WVTM's motion for a summary judgment on the defamation claim and in its order denying WVTM's motion for a judgment as a matter of law as to that claim that the December 13 broadcast

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was not privileged under § 13A-11-161. Accordingly, the judgment entered on the jury verdict in favor of Hill on Hill's defamation claim is reversed and a judgment rendered in favor of WVTM.

In light of our holding, we pretermitt discussion on the other issues raised by WVTM on appeal, specifically whether applying a negligence standard to establish defamation liability under § 13A-11-161 violates the First Amendment to the United States Constitution, whether the trial court gave improper jury instructions, and whether the jury verdict was excessive and unsupported by the evidence.

Appeal no. 1180370

Hill argues that the trial court incorrectly dismissed his defamation, false-light, tort-of-outrage, and negligent-supervision-and-training claims against the sheriff defendants on the ground that the sheriff defendants were protected by state immunity under Article I, § 14, Ala. Const. 1901.

Article I, § 14, states that the "the State of Alabama shall never be made a defendant in any court of law or equity." This constitutional provision "has been described as a 'nearly impregnable' and 'almost invincible' 'wall' that

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provides the State an unwaivable, absolute immunity from suit in any court." Ex parte Town of Lowndesboro, 950 So. 2d 1203, 1206 (Ala. 2006) (quoting Alabama Agric. & Mech. Univ. v. Jones, 895 So. 2d 867, 872 (Ala. 2004); Patterson v. Gladwin Corp., 835 So. 2d 137, 142 (Ala. 2002); and Alabama State Docks v. Saxon, 631 So. 2d 943, 946 (Ala. 1994)). State immunity applies "whenever the acts that are the basis of the alleged liability were performed within the course and scope of the officer's employment." Ex parte Davis, 930 So. 2d 497, 500-01 (Ala. 2005) (citing Boshell v. Walker Cty. Sheriff, 598 So. 2d 843, 844 (Ala. 1992)). "State officers and employees, in their official capacities and individually, are absolutely immune from suit when the action is, in effect, one against the State." Phillips v. Thomas, 555 So. 2d 81, 83 (Ala. 1989). "The prohibition of Section 14 cannot be circumvented by suing the official or agent individually." Milton v. Espey, 356 So. 2d 1201, 1202 (Ala. 1978). "As executive officers, sheriffs have sovereign immunity under Article I, § 14" Hereford v. Jefferson Cty., 586 So. 2d 209, 210 (Ala. 1991). "We have also held that deputy sheriffs are immune from suit to the

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same extent as sheriffs." Alexander v. Hatfield, 652 So. 2d 1142, 1144 (Ala. 1994).

Hill does not contest that the sheriff defendants were acting in the line and scope of their duties as employees of the Sheriff's Department when they communicated their interpretation of the registration requirements to Hill, when they sought and obtained the warrants for Hill's arrest, and when they assisted in the production of the December 6 broadcast and the December 13 broadcast.

Hill contends, however, that the sheriff defendants' actions in this case are subject to the following exception to state immunity under § 14, which this Court stated in Ex parte Moulton, 116 So. 3d 1119, 1141 (Ala. 2013), as follows:

"'[A]ctions for damages brought against State officials in their individual capacity where it is alleged that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law, subject to the limitation that the action not be, in effect, one against the State. Phillips v. Thomas, 555 So. 2d 81, 83 (Ala. 1989).'"

In support of his argument that the sheriff defendants acted in bad faith and under a mistaken interpretation of the law, Hill cites Livingston v. State, 419 So. 2d 270, 277 (Ala. Crim. App. 1982), for the proposition "that the legislature in

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passing criminal statutes may not delegate its legislative power to make laws. This power generally consists of the power to define crime and fix the punishment for it." Hill contends that the sheriff defendants usurped the role of the legislature when they concluded that misdemeanor convictions for distribution of obscene material, which is not specifically enumerated as a crime under § 15-20A-5, constituted a sex offense requiring compliance with the registration and residency requirements of SORNA. Hill's argument neglects to take into account that § 15-20A-5(41) provides a catch-all provision that includes in the definition of "sex offense" "[a]ny other offense not provided for in this section wherein there is a finding of sexual motivation as provided by Section 15-20A-6."³ Hill's argument also overlooks the facts that the sheriff defendants received a legal opinion from the Jefferson County District Attorney's Office that probable cause existed and that a neutral and detached magistrate in the Jefferson County clerk's office made a probable-cause determination to issue the warrants. See Rule

³We do not decide whether a misdemeanor conviction for distribution of obscene material constitutes a sex offense under § 15-20A-5(41). That question is not before us.

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2.4, Ala. R. Crim. P. ("If the ... magistrate is reasonably satisfied from the complaint and the evidence, if any, submitted that the offense complained of has been committed and that there is probable cause to believe that the defendant committed it, the ... magistrate shall proceed under Rule 3.1[, Ala. R. Crim. P.]"). Accordingly, we conclude that Hill failed to demonstrate that the sheriff defendants acted in bad faith or that they acted under a mistaken interpretation of the law sufficient to exempt them from the application of state immunity under § 14.⁴

Conclusion

In case no. 1180343, the trial court's judgment entered on the jury verdict in favor of Hill on Hill's defamation claim is reversed and a judgment rendered in favor of WVTM. In case no. 1180370, the trial court's order dismissing Hill's claims against the sheriff defendants on the basis of state immunity is affirmed.

1180343 -- REVERSED AND JUDGMENT RENDERED.

⁴Hill also argues that the sheriff defendants are not entitled to immunity under Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000). But Cranman supplies the standard for state-agent immunity, not state immunity under § 14 of the Alabama Constitution. The trial court did not find that state-agent immunity was applicable in this case.

1180343 and 1180370

Parker, C.J., and Bolin, Shaw, Bryan, Sellers, Mendheim,
and Mitchell, JJ., concur.

1180370 -- AFFIRMED.

Parker, C.J., and Bolin, Sellers, Mendheim, and Mitchell,
JJ., concur.

Shaw and Bryan, JJ., concur in the result.