

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARVIN HOLMES,)	
)	
Plaintiff ,)	
v.)	
)	
DETECTIVE GREGORY D’ELIA,)	C.A. No. N13C-12-185 MMJ
)	
Defendant.)	
)	
)	

Submitted: February 26, 2014
Decided: March 17, 2014

Upon Defendant’s Motion to Dismiss due to Insufficient Service of Process

DENIED

Upon Defendant’s Motion to Dismiss due to Failure to State a Claim

NOT RIPE FOR DETERMINATION

ORDER

Marvin Holmes, 1301 East 12th Street, Wilmington, DE 19809. *Pro Se* Plaintiff.

Rochelle L. Gumapac, Esquire, 824 North Market Street, Suite 902, Wilmington, DE 19899. Attorney for Defendant.

JOHNSTON, J.

1. Plaintiff Marvin Holmes filed this action against Defendant Detective Gregory D'Elia on December 23, 2013. Detective D'Elia has filed a Motion to Dismiss pursuant to two grounds: (1) under Superior Court Civil Rule 4(f) claiming insufficiency of process; and (2) failure to state a claim on which relief can be granted.

2. The Court finds that service of process was sufficient. Holmes submitted a praecipe initiating service of process on Detective D'Elia at his place of work, the Newark Police Department, 220 Elkton Road, Newark, DE 19711. Per Deputy Sheriff Deane Cressman, service was made by leaving the relevant documents with Nate Graber in the Records Department at the Newark Police Department.

3. Holmes states in his answering brief that the Newark Police Department does not give out a police officer's home address to a person whom the officer has arrested. The Court finds that service was properly made in accordance with Rule 4(f)(1)(I), "by delivering copies thereof to an agent authorized by appointment or by law to receive service of process."

4. Detective D'Elia has filed a Motion to Dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The Motion relies on 10 *Del. C.* § 4011(a) to establish that Detective D'Elia is immune from any and all tort claims seeking recovery of damages, unless exclusions apply.

5. Exclusions applicable to § 4011(a) tort immunity are found in 10 *Del. C.* § 4011(c), which provides:

An employee may be personally liable for acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with wanton negligence or wilful and malicious intent.

6. Holmes claims that as a result of Detective D'Elia's actions, he has suffered severe psychological problems and, consequently, suicide attempts, among other detriments. The Court orders that Plaintiff Marvin Holmes file a response on the merits of Defendant D'Elia's immunity defense within 60 days from the date of this Order.

7. The Court must deny Holmes' request to appoint an attorney. The Court does not have the funds to appoint counsel in civil matters where the plaintiff is seeking monetary damages. However, the Court recommends that Plaintiff seek counsel through Delaware Volunteer Legal Services or Community Legal Aid Society, Inc.

THEREFORE, Detective D'Elia's Motion to Dismiss due to insufficiency of service is hereby **DENIED**. Defendant's Motion to Dismiss pursuant to 12(b)(6) is **NOT RIPE FOR DETERMINATION**.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston