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## Dismissal of Malicious Prosecution Claim on Pleadings Affirmed by West Virginia Supreme Court of Appeals

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In [Goodwin v. City of Shepherdstown](#), the West Virginia Supreme Court of Appeals recently affirmed the dismissal of a malicious prosecution claim and a related claim for intentional infliction of emotional distress. The crux of the plaintiff's complaint was that the defendants suppressed evidence of an alibi witness in an underlying criminal case. The opinion may signal an increased willingness to dispose of these types of claims on the pleadings, taking judicial notice of relevant court records from the underlying case.

With regard to the malicious prosecution claim, the Court found that the dismissal of the underlying case "without prejudice" upon the state's motion to dismiss "at this time" due to the unavailability of DNA evidence did not satisfy the first requirement of a favorable termination. The Court further found that the complaint was insufficient to establish the second requirement of procurement by the defendants because control of the underlying case rested with the prosecutor, who would review the plaintiff's alibi evidence as subject to cross-examination rather than as constituting an absolute defense. The Court also found that the complaint was insufficient to establish the third element of probable cause, particularly since the finding of probable cause to issue an arrest warrant occurred prior to any alleged police misconduct. The Court further found that the allegations in the complaint failed to reach the level of malice required for the fourth and final requirement of a malicious prosecution claim.

With regard to the intentional infliction of emotional distress claim, the Court concluded that nothing in the complaint suggested that the police interfered with the plaintiff's ability to discover alibi evidence that he alleged was suppressed.

Justice Armstead authored the majority opinion in which three Justices joined. Justice Workman authored a dissent.

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