

adduced at trial, the investigation revealed that plaintiff had obtained a map of Littlejohn's apartment complex, and had discovered her address, telephone number, and computer password by searching her handbag. Plaintiff admitted to investigators that he had a "relationship" with Littlejohn and that he had frequent discussions about her with other inmates.

{¶3} In a Conduct Report dated April 18, 2001, plaintiff was charged with a Class II, Rule 19 violation, which was defined under Ohio Adm.Code 5120-9-06 as: "[a]ny act that is a felony or misdemeanor as defined by any Ohio or federal law." (Joint Exhibit A-7.) In plaintiff's case, the illegal act alleged was conspiracy to commit murder. However, prior to conducting a hearing, the charge was reviewed by administrative personnel and reduced to a Class II, Rule 16 violation. Rule 16 prohibits "[a]ny act *** knowingly done which obviously constitutes a threat to the security of the institution, its staff, other inmates, or the inmate himself." (Joint Exhibit A-7.) Nevertheless, the facts that formed the basis of the charge did not change in any respect.

{¶4} On May 2, 2001, a hearing was held before the Rules Infraction Board (RIB). Thereafter, the board issued a "disposition sheet" stating that it believed that plaintiff had violated Rule 16, "due to having a map of the staff member's apartment complex and other info on the staff member. [Plaintiff] self-admitted knowing info and having a relationship (non-sexual) with Ms. Littlejohn." (Joint Exhibit A-3.) As a result, the RIB found plaintiff guilty, imposed a sentence of 15 days in disciplinary control, and recommended both local control and administrative control.

{¶5} The RIB recommendations were then forwarded to the Control Unit Hearing Board where they were reviewed by both the local and administrative control committees. The three-member committees each voted unanimously to recommend placement in local and administrative control. The "notice of hearing for administrative control placement" states that: "*** Through an investigation inmate Sullivan did conspire to kill Ms. Littlejohn, the librarian at SCI." (Joint Exhibit A-4.) The notice includes a comment that the Rule 19

conspiracy charge was later dropped to the above-referenced Rule 16 violation. The statement regarding plaintiff conspiring to kill Littlejohn was reiterated in several additional documents that followed. For example, it is contained in "AC Assessments," paragraphs D and F; however, there is also a statement of the facts upon which both the Rule 19 and Rule 16 charges were based, and a comment that the original charge was dropped to a Rule 16 allegation. The same language is repeated in three subsequent "administrative control review documents" (dated October 16, 2001, December 18, 2001, and March 19, 2002) and in defendant's "inmate transfer request."

{¶6} As a result of these proceedings, the warden of the institution ultimately made a recommendation to the bureau of classification chief that plaintiff be transferred to a different correctional facility. In that recommendation, the warden stated that "*** [the inmate] conspired to kill Ms. Littlejohn, librarian at SCI." The document also describes the conduct that formed the basis of the offense. (Joint Exhibit A-5.)

{¶7} Plaintiff contends that defendant's employees libeled and defamed him "by stating as fact, in written communications, that the plaintiff did conspire to kill a staff member ***." (Plaintiff's Complaint, Paragraph 56.) Plaintiff further maintains that the written statements misrepresented the findings of the RIB and were false and defamatory. He claims that he suffered injury as a result of being reclassified as a more dangerous prisoner, transferred to a less desirable correctional facility, and ultimately denied parole as a result of the allegedly defamatory statements.

{¶8} Defamation is defined as "the unprivileged publication of a false and defamatory matter about another *** which tends to cause injury to a person's reputation or exposes him to public hatred, contempt, ridicule, shame or disgrace or affects him adversely in his trade or business." *McCartney v. Oblates of St. Francis deSales* (1992), 80 Ohio App.3d 345, 353. As suggested by the definition, a publication of statements, even where they may be false and defamatory, does not rise to the level of actionable

defamation unless the publication is also unprivileged. Thus, the threshold issue in such cases is whether the statements at issue were privileged or unprivileged publications.

{¶9} In *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244, the Ohio Supreme Court addressed the nature of communications that are subject to a conditional or qualified privilege. The court identified such communications as those which are:

{¶10} “*** made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a manner and under circumstances fairly warranted by the occasion and duty, right or interest. The essential elements thereof are good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.”

{¶11} The existence of the privilege has long been recognized. *Id.* citing *Toogood v. Spyring* (1834), 149 Eng. Rep. 1044, 1 Crompton, Meeson and Roscoe 181. The concept “is based upon public policy and the need to protect the publication of a communication made in good faith.” *Jacobs v. Frank* (1991), 60 Ohio St.3d 111, 114.

{¶12} Further, a qualified privilege can be defeated only by clear and convincing evidence of actual malice on the part of defendant. *Bartlett v. Daniel Drake Mem. Hosp.* (1991), 75 Ohio App.3d 334, 340. “Actual malice” means “acting with reckless disregard as to [a statement’s] truth or falsity.” *Jacobs v. Frank* supra, at 116. Lack of innocent motive is not enough to establish actual malice. *A & B Abell Elevator Co., Inc. v. Columbus/Cent. Ohio Bldg. & Const.*, 73 Ohio St.3d 1 at 11, 1995-Ohio-66. “Reckless disregard” is shown by presenting “sufficient evidence to permit a finding that the defendant had serious doubts as to the truth of his publication.” *Id.* at 12.

{¶13} In this case, the evidence demonstrates that an employee of defendant did incorrectly record the basis of the charge against plaintiff. Specifically, the Rule 19 charge of

conspiracy to commit murder was dropped to the Rule 16 allegation within a matter of days. The Rule 19 charge was not pursued; plaintiff was never called upon to defend himself on that charge; and he clearly was never found guilty of such charge. The use of the language in defendant's documents that plaintiff "did conspire to kill Ms. Littlejohn" was an error.

{¶14} However, the court finds that the existence of a qualified privilege in this case could not be more clear. Defendant had a duty to maintain the safety and security of its institution. Prisons are inherently dangerous institutions and prison officials are the acknowledged experts in the field of placement and management of their prisoners. See, e.g., *Mitchell v. Ohio Dep't of Rehabilitation & Correction* (1995), 107 Ohio App.3d 231. The court finds that defendant's employees made the statements at issue in good faith and in furtherance of defendant's interest and duty to its institution, its prisoners and its employees. Although it was false to state that plaintiff did intend to kill Ms. Littlejohn, the underlying facts were not in dispute, and plaintiff was indeed found guilty of engaging in activity that posed a threat to security. Defendant's use of the assessment and placement documents was limited to its particular scope and purpose, and made in a proper manner to proper parties.

{¶15} The court further finds that there has been no showing of actual malice to overcome the existence of the privilege. The court found defendant's witnesses to be entirely credible in their testimony; it can find no evidence that they acted with reckless disregard for the truth or falsity of the information they communicated. Moreover, since the underlying facts were the same for both the Rule 19 and Rule 16 charges, it would be nearly impossible to find that defendant's employees had any serious doubts as to the truth of the statements recorded and relied upon in the documents. In short, the evidence falls far short of the clear and convincing standard required to prove actual malice.

{¶16} For these reasons, the court finds that defendant is not liable for defamation by virtue of its qualified privilege. Accordingly, judgment is recommended for defendant.

{¶17} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

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