

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
TEXAS, HOUSTON DIVISION

Swan v. Deputy Walter Shields, et al.

Swan · No. 4:25-cv-2799 · Decided March 24, 2026

SUMMARY

The United States District Court for the Southern District of Texas grants defendants’ motion to dismiss Deborah Swan’s claims arising from a 2024 police welfare check and related incident reports. The court dismisses Swan’s First, Fourth, and Fourteenth Amendment claims, her Monell claim, and her state-law defamation and fraud claims, holding that she failed to allege a constitutional violation and that the Texas Tort Claims Act barred the state-law claims. The court also dismisses claims against the Montgomery County Constable’s Office because Swan did not establish that it is a separately suable jural entity.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of Texas, Houston Division                                                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Keith P. Ellison                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | United States District Court for the Southern District of Texas, Houston Division                                                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | March 24, 2026                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 4:25-cv-2799                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Defendants Deputy Walter Shields and Montgomery County moved to dismiss the operative Third Amended Complaint under Federal Rule of Civil Procedure 12(b)(6). The court also considered the sufficiency of claims against the Montgomery County Constable's Office, which had not appeared.                                                                                                                                                        |
| STANDARD OF REVIEW    | On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and views them in the light most favorable to the plaintiff, but does not accept legal conclusions as factual allegations. Dismissal is appropriate unless the plaintiff would be entitled to relief under some set of facts consistent with the complaint. The court may consider public records and documents referred to in and central to the complaint. |

|                           |                                                                                                |
|---------------------------|------------------------------------------------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | unknown                                                                                        |
| <b>PARTIES</b>            | Deborah Swan v. Deputy Walter Shields, Montgomery County, Montgomery County Constable's Office |

## TOPICS

[section 1983](#)
[motions to dismiss](#)
[qualified immunity](#)
[municipal liability](#)
[due process](#)

## PRACTICE AREAS

[civil rights](#)
[constitutional law](#)
[civil procedure](#)
[municipal law](#)
[torts](#)

## QUESTIONS PRESENTED

1. Whether the alleged entry of a false mental-health code and related statements in a police report stated a First Amendment retaliation claim.
2. Whether the allegedly false and stigmatizing police-report entries deprived Swan of a liberty or property interest without due process under the Fourteenth Amendment.
3. Whether the welfare check or incident-report entries stated a Fourth Amendment malicious-prosecution, search, or seizure claim.
4. Whether Deputy Shields was entitled to qualified immunity.
5. Whether Swan stated a Monell claim against Montgomery County or the Montgomery County Constable's Office.
6. Whether Swan's defamation and fraud claims against Deputy Shields were barred by the Texas Tort Claims Act's election-of-remedies provision.
7. Whether Swan's defamation and fraud claims against Montgomery County were barred by governmental immunity.
8. Whether the Montgomery County Constable's Office was a jural entity capable of being sued.

## HOLDINGS

1. The entry of an allegedly incorrect mental-health code in a police report, without more, is not adverse government action actionable under the First Amendment retaliation doctrine. Swan therefore failed to state a First Amendment claim.
2. An allegedly false or stigmatizing entry in an internal police incident report does not, without a material state-imposed deprivation of life, liberty, or property, state a Fourteenth Amendment due process claim.
3. The entry of a mental-health code in a police report did not initiate criminal charges and was not actionable as malicious prosecution under the Fourth Amendment. The brief, nonconfrontational welfare check, which resulted in no detention, arrest, search, or seizure, also did not state a viable Fourth Amendment claim.

4. Deputy Shields was entitled to qualified immunity because Swan failed to allege facts showing a constitutional violation and, in any event, the asserted rights were not clearly established under the alleged circumstances.
5. Swan's Monell claims against Montgomery County and the Montgomery County Constable's Office failed because she did not successfully allege an underlying constitutional violation.
6. Swan's state-law claims against Deputy Shields were subject to dismissal under Texas Civil Practice and Remedies Code section 101.106(f) because the alleged conduct occurred within the scope of his employment and the claims could have been brought against the governmental unit.
7. Swan's defamation and fraud-based claims against Montgomery County were barred because the Texas Tort Claims Act does not waive governmental immunity for those torts.
8. The Montgomery County Constable's Office was not a proper defendant because Swan failed to allege that it had a separate legal existence or that Montgomery County had expressly granted it authority to sue or be sued.

#### KEY QUOTATIONS

*“But a police report alone—even if false—does not constitute adverse government action that is actionable under the First Amendment.” (6)*

*“If appearance on a publicized list of “active shoplifters” does not constitute a deprivation liberty or property under the Fourteenth Amendment, then the issuance of an internal police report labeling Swan with a mental health code certainly does not.” (8)*

*“In order to state a claim against a government entity under Monell, therefore, the plaintiff must first successfully state a valid constitutional violation under § 1983.” (10)*

*“A plaintiff may not bring a civil rights action against a servient political agency or department unless such agency or department enjoys a separate and distinct legal existence.” (13)*

#### FACTUAL BACKGROUND

Swan reported suspected unauthorized access to her email accounts and delivered letters to neighbors asking that the access cease. After a neighbor contacted police, Deputy Walter Shields dispatched a mental-health officer to conduct a welfare check at Swan's home. The encounter lasted fewer than ten minutes, was nonconfrontational, and resulted in no detention, arrest, search, or emergency mental-health detention. Shields later prepared an incident report containing a 10-96 mental-health code and statements describing Swan as mentally ill or delusional; Swan alleged the entries were false and politically motivated.

#### PROCEDURAL HISTORY

Swan filed a Section 1983 action asserting First, Fourth, and Fourteenth Amendment claims, a Monell claim, and state-law tort claims arising from a police welfare check and incident reports. After the filing of the Third Amended Complaint, Defendants moved to dismiss. The court granted the motion, dismissed Swan's claims against Deputy Shields and Montgomery County with prejudice, dismissed claims against the Constable's Office

without prejudice, treated claims against Captain Atkins as voluntarily dismissed, and denied all other pending motions as moot.

#### DISPOSITION

dismissed

#### CASES CITED

- *Rhyne v. Henderson County*, 973 F.2d 386, 392 n.2 (5th Cir. 1992)
- *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)
- *Murphy Brothers v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999)
- *Johnson v. Johnson*, 385 F.3d 503, 529 (5th Cir. 2004)
- *Norris v. Hearst Trust*, 500 F.3d 454, 461 (5th Cir. 2007)
- *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994)
- *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000)
- *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 680 (2009)
- *Colson v. Grohman*, 174 F.3d 498, 508, 512 (5th Cir. 1999)
- *Izen v. Catalina*, 398 F.3d 363, 367 (5th Cir. 2005)
- *Johnson v. Bowe*, 856 F. App'x 487, 493 (5th Cir. 2021)
- *Thompson v. Clark*, 596 U.S. 36, 39 (2022)
- *Paul v. Davis*, 424 U.S. 693, 712 (1976)
- *Goss v. Lopez*, 419 U.S. 565 (1975)
- *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009)
- *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)
- *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009)
- *Heckford v. City of Pasadena*, No. 4:20-CV-04366, 2022 WL 209747, at \*3 (S.D. Tex. Jan. 21, 2022)
- *Mason v. Faul*, 929 F.3d 762, 764 (5th Cir. 2019)
- *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978)
- *Frias v. Hernandez*, 142 F.4th 803, 806, 808 (5th Cir. 2025)
- *Laverie v. Wetherbe*, 517 S.W.3d 748, 752 (Tex. 2017)
- *Alexander v. Walker*, 435 S.W.3d 789, 790, 792 (Tex. 2014)
- *Darby v. Pasadena Police Department*, 939 F.2d 311, 313-14 (5th Cir. 1991)
- *Plemons v. Amos*, No. 2:03-cv-421-J, 2006 WL 1710415, at \*7 (N.D. Tex. June 22, 2006)
- *Jenkins v. Tarrant County Sheriff's Office*, No. 4:21-CV-0910-O, 2022 WL 426593, at \*7 (N.D. Tex. Feb. 11, 2022), *aff'd*, No. 22-10244, 2023 WL 5665774 (5th Cir. Sept. 1, 2023)

- *Wakat v. Montgomery County*, 471 F. Supp. 2d 759, 768 (S.D. Tex.), *aff'd sub nom. Wakat v. Montgomery County Texas*, 246 F. App'x 265 (5th Cir. 2007)
- *Wooten v. McDonald Transit Associates, Inc.*, 788 F.3d 490, 496 (5th Cir. 2015)

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