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Jul 15 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Commons Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2019-CP-40-01299
Appellate Case No. 2022-000447

Christopher Shimeld,

Appellant,

v.

Richland County Sheriff's Office,

Respondent.

APPELLANT'S RETURN IN OPPOSITION TO
RESPONDENT'S MOTION FOR COSTS

Appellant Christopher Shimeld was arrested and spent a week in jail for a crime of which he is demonstrably innocent. He had documentary evidence from tolls, his home security system, and his bank that he was in Florida at the time of the Columbia, South Carolina burglary for which he was arrested.

This Court found there was probable cause for the arrest in an unpublished opinion. Appellant understands that opinion. After reviewing the reasoning of the opinion with his counsel, Appellant decided a petition for a writ of certiorari to the Supreme Court would not be successful. He accepted this Court's opinion.

Respondent has now moved for costs, asking for the \$2500 in attorney's fees available under the Rule. Appellant asks this Court to exercise its discretion and deny the request on the grounds it would be fundamentally unfair to award fees under these specific circumstances.

Rule 222 of the South Carolina Appellate Court Rules provides that the party prevailing on appeal can seek \$2500 in attorney's fees. While the Rule states the Court "shall" award those fees, the award is not mandatory and lies within this Court's discretion. For example, the same language ("shall") is found in the Unfair Trade Practice Act related to an award of attorney's fees. S.C. Code Ann. § 39-5-140(a). Yet this Court has stated the decision to award or deny attorneys' fees and costs remains in the discretion of a court. *Maybank v. BB&T Corp.*, 416 S.C. 541, 579-80 (2016).

Appellant was no doubt wronged in this case, whether the Respondent was liable or not. He was arrested because his fingerprint was found on an alarm system at the scene of a burglary. However, the very fingerprint card used to match his fingerprint stated he worked for an alarm company and that was why his fingerprints were on file. He was in a different state at the time of the crime. While this Court upheld the circuit court's finding probable cause existed this was certainly not a frivolous appeal.

There was a real factual question about whether the fingerprint was sufficient for probable cause under the circumstances of this case. Appellant exercised his right to pursue that question and should not be punished for it. There are often times appeals are filed for delay or involve unreasonable arguments, and it is certainly fair to tax costs against a losing party in those circumstances. In this case, there was nothing improper, abusive, or even questionable about the appeal.

Appellant had a legitimate case against an agency who wrongfully arrested him. Though Respondent has prevailed in the legal system, there is absolutely no question Shimeld was an innocent man arrested for a crime he did not commit. It is fundamentally unfair to now make him pay the Respondent for this appeal from his wrongful arrest. Appellant respectfully requests the Court exercise its inherent authority to deny attorney's fees in this case.

Respectfully Submitted,

s/ Joshua Snow Kendrick
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CERTIFICATE OF SERVICE

Plaintiff Christopher Shimeld served the *Return in Opposition to Respondent's Motion for Costs* on the opposing counsel listed below via e-mail, or if requested via United States Postal Service at the address below.

Andrew Lindemann, Esquire
Post Office Box 6923
Columbia, SC 29260
andrew@ldlawsc.com

Service was accomplished on this 15th day of July 2024.

Respectfully Submitted,

s/ Joshua Snow Kendrick
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