THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2010-CP-40-5214

Demetrius Mack, ... Respondent,

v.

Leon Lott, in his Official Capacity
as Sheriff of Richland County, ... Appellant.

REPLY BRIEF OF APPELLANT

Andrew F. Lindemann
Robert D. Garfield
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant

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ARGUMENTS

I. The trial court erred in finding that probable cause for the arrest of the Respondent Demetrius Mack was lacking.

The Respondent Demetrius Mack made several concessions in his response brief that confirmed some of the critical points that the Appellant Leon Lott ("Sheriff") made in his opening brief. Specifically, Mack concedes that "the location of [McKenzie] Williamson's arrest was the critical factor in deciding this case." *See*, Respondent's Brief, p. 11. He further explained that "Mack could only arrest someone on property within his jurisdiction. If he was outside of his jurisdiction, any action he took against Williamson could be considered unjustified." *See*, Respondent's Brief, p. 11. He then reiterated that "[i]t makes no difference where the car was parked; the location of Williamson is the critical factor." *See*, Respondent's Brief, p. 12.

Yet, with the parties agreeing that the "critical" or determinative fact in this case is the location of Williamson, it is quite telling that Judge DeAndrea Benjamin never makes a finding of fact deciding that critical fact. Judge Benjamin never states where Williamson was located when he was "grabbed" by Mack and handcuffed. She never decides whether Williamson was in the public roadway which was outside of Mack's jurisdiction as a private security officer or whether he

was on the grassy side of the road which was within Mack's jurisdiction. She never states whether Williamson was on the pavement or not.

Mack, nonetheless, insists that Judge Benjamin does make a sufficient finding of fact on this "critical" fact in paragraph 2 of the "Findings of Fact" section of her order. Paragraph 2 reads in its entirety as follows:

> Upon review of the testimony and exhibits regarding the location of the alleged assault, Plaintiff was arrested by Defendant on December 8, 2008 at 109 Weir Avenue in Columbia, South Carolina.

(R. 1). Mack erroneously argues that these findings state that "the location of Williamson's arrest was within Mack's jurisdiction." *See*, Respondent's Brief, p. 10. That is not, however, what Judge Benjamin finds. She found instead that the Plaintiff – that being Demetrius Mack – was arrested at 109 Weir Avenue. She makes no mention about the location of Williamson's "arrest" – of course, Williamson was never actually arrested and obviously was not "arrested by Defendant." Judge Benjamin certainly makes no finding as to the location of Mack's assault upon Williamson. In short, paragraph 2 does not state what Mack purports that it does, and that only confirms Sheriff Lott's original argument regarding the inadequacy of the trial court's findings of fact and conclusions of law.

Later in his brief, Mack references paragraph 4 of the "Findings of Fact" – in addition to paragraph 2 – as "specifically referenc[ing] 109 Weir Avenue as ... the

location of the alleged assault." *See*, Respondent's Brief, p. 15. Paragraph 4 states no such thing. Paragraph 4 states in its entirety as follows: "That upon review of Plaintiff's exhibit 5 and testimony of Shawn Hale, DTH had security jurisdiction over 109 Weir Avenue at the time when Plaintiff was arrested." (R. 2). There is no mention of the "alleged assault" or its location in paragraph 4. Mack is simply reading into the findings of fact what he agrees is the "critical factor" on which the case turns but which was never addressed as a factual finding by Judge Benjamin.

Nonetheless, as Sheriff Lott argued in his opening brief, a remand is not necessary because the existence of probable cause may be determined as a matter of law based on the undisputed evidence contained in the record and concessions Mack made in his sworn testimony. That includes the video evidence, which given its very nature, should be deemed undisputed.

To recap, as the parties appear to agree, the critical fact in this case is Williamson's location when Mack admittedly "grabbed" and "pulled" Williamson from beneath a parked white vehicle at which point Mack then restrained Williamson by handcuffing him. Deputy Stacy Parish was responding to a call for backup at a Weir Avenue location past Club Essence where other deputies were working a narcotics arrest. With her dashboard video activated, Deputy Parish turned from Two Notch Road onto Weir Avenue and passed the location of Williamson, which is depicted in the video. (R. 227, 347). The video reflects that Williamson was supine in front of a white vehicle with his legs located in the

roadway extending beyond the vehicle itself. At this point in time, Williamson had already been pulled from underneath the vehicle and was handcuffed. (R. 228, 347). One of Mack's fellow security guards can be seen attempting to stop Deputy Parish as she drove by. (R. 145, 187, 192, 347).

The video evidence is important because it shows the position of the vehicles on the roadway including the position of the white vehicle from underneath which Williamson was "grabbed" and pulled by Mack. The video further shows that Williamson was at least partially in the roadway when he was detained by Mack and handcuffed. Yet, Judge Benjamin makes no specific mention of the video evidence in her order. There is nothing in that order that would even suggest that she gave any weight to that evidence. Likewise, she does not give any basis for disregarding the video evidence or for finding it to be unreliable or immaterial or irrelevant in any respect.

In response, Mack surmises that Judge Benjamin did not mention the video evidence in her order "based on the video's lack of clarity." *See*, Respondent's Brief, p. 12. Yet, earlier in his brief, Mack claims that the "video evidence clearly shows" that the white vehicle was not "parked primarily in the roadway." *See*, Respondent's Brief, p. 8. Thus, Mack concedes that the video showed something "clearly."

Obviously, the video evidence is in the appellate record, and the Court may itself judge the clarity of the video and the significance of the evidence. (R. 347).

Without question, the video cannot be simply disregarded. That would be an error of law. As the United States Supreme Court's decision in *Scott v. Harris*, 550 U.S. 372 (2007), makes clear, the existence of police video is typically dispositive of disputed factual issues particularly where there are inconsistencies in the witness testimony.

As indicated, the video evidence from Deputy Parish's dashboard camera reflects that Williamson is located in the roadway after he was detained by Mack. His feet clearly extend past the row of vehicles. In addition, the video shows the position of the vehicles lining Weir Avenue, including the white vehicle at issue. The daytime photographs of that location on Weir Avenue, which are in evidence, may also be used as reference points when examining the video on this issue. (R. 344, 348). Weir Avenue is a two-lane road; yet the parked vehicles lining the street essentially reduced the street to one lane – as evidenced by the limited space that Deputy Parish had to maneuver her vehicle. That demonstrates that the vehicles, including the white vehicle, were parked at least partially in the roadway. (R. 347, 348).

Finally, Mack's concessions regarding the evidence of "road rash" deserve comment. The Sheriff has explained that the injuries to Williamson as observed by the officers, which appeared to be consistent with "road rash," provided further information that would allow an objectively reasonable officer on the scene to conclude that the injuries were sustained in the public roadway which was outside

of Mack's jurisdiction rather than on the grassy side of the road which was within his jurisdiction. In response, Mack agrees that the "road rash" "is also entirely consistent with Mack's observation of Williamson slipping under the car." *See*, Respondent's Brief, p. 13. Mack thus appears to agree that Williamson was located in the public roadway when underneath the white vehicle. At the very least, as the Sheriff maintains, the "road rash" allows a objectively reasonable officer to believe that Williamson, when he was "grabbed" and "pulled" by Mack from beneath the white car, had been located on the pavement of the public roadway.

The video thus provides indisputable evidence that the vehicles were parked partially in the roadway, including the white vehicle from underneath which Mack claims to have "grabbed" and pulled Williamson. (R. 227, 347). That video also provides indisputable evidence that Williamson was handcuffed and detained for police while he was lying partially in the roadway. (R. 228, 347).[1] In short, as a matter of law, these facts would lead an objectively reasonable officer on the scene to believe Mack's actions occurred, at least in part, in the public roadway, and as a result, outside of Mack's jurisdiction.[2] Stated differently, an objectively reasonable

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[1] From his brief, it appears that Mack concedes that the white vehicle was partially in the public roadway and that Williamson, after he was pulled from under the white vehicle, was partially in the public roadway. It further appears from Mack's counsel's questioning of Deputy Parish at trial, including his use of leading questions, that he was making these factual concessions at trial. (R. 206, 209, 213, 233).

[2] At one point in his brief, Mack appears to suggest that probable cause is a subjective standard. He writes: "It is the simple question of whether the police officer believed the individual was guilty of a crime at the time of the arrest that governs probable cause." *See*,

police officer in Deputy Gore's position could have perceived and concluded that Mack committed an unwanted touching resulting in injuries sustained in the public roadway. Thus, based on the undisputed evidence contained in the record and concessions Mack made in his sworn testimony, there can be no question that probable cause existed for Mack's arrest. As a result, judgment in Mack's favor should be reversed, and the Court should conclude that Mack failed to prove his cause of action for false arrest/imprisonment.

Respondent's Brief, p. 9. Sheriff Lott disagrees. It is well settled that a determination of probable cause requires an objective test – whether an objectively reasonable police officer may believe that a crime was committed. *See*, *Jackson v. City of* Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). *See also*, *State v. Banda*, 371 S.C. 245, 639 S.E.2d 36, 40, n.3 (2006) *citing Whren v. United States*, 517 U.S. 806, 814 (1996) ("subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis").

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Leon Lott respectfully renews his request that this Court reverse the orders of Circuit Court Judge DeAndrea G. Benjamin and remand with instructions that judgment be entered in favor of Sheriff Lott. In the alternative, Sheriff Lott requests that the Court remand with instructions that Judge Benjamin issue an order complying with Rule 52(a), SCRCP, that addresses all issues and defenses and provides sufficient findings of fact and conclusions of law that will allow for appropriate appellate review.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant Leon Lott

Columbia, South Carolina

October 28, 2013

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant Leon Lott certifies that the Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant Leon Lott

Columbia, South Carolina

October 28, 2013

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Leon Lott certifies that the Final Reply Brief of Appellant complies with the Supreme Court's Order of August 13, 2007, regarding personal identifiers and sensitive information.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant Leon Lott

Columbia, South Carolina

October 28, 2013

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant, does hereby certify that service of the **Reply Brief of Appellant** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 28th day of October 2013:

Neal M. Lourie, Esquire
Lourie Law Firm, LLC
Post Office Box 12089
Columbia, South Carolina 29211

Joshua S. Kendrick, Esquire
Kendrick & Leonard, P.C.
Post Office Box 886
Columbia, South Carolina 29202-0866