THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
H. Steven DeBerry, IV, Circuit Court Judge

Appellate Case No. 2025-000818
Case No. 2021-CP-07-1217

Paul Vernon Coffman, Jr., ... Respondent,

v.

Town of Port Royal and Kimberly Carter,..... Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

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I. The trial court erred in denying the Appellants' motions for directed verdict and judgment notwithstanding the verdict on both the federal and state law claims.

The Respondent Paul Coffman, like the trial court, has demonstrated in his response brief a misunderstanding of federal law on the qualified immunity doctrine. In fact, the Respondent's arguments on qualified immunity are riddled with errors. Moreover, the Respondent fails to even address the issue of "arguable probable cause" which is the very crux of a qualified immunity defense in a Fourth Amendment unlawful arrest case such as this.

For starters, the Respondent argues that the Appellant Kimberly Carter waived her right to appeal the denial of qualified immunity because she did not appeal from earlier, pre-trial orders denying a motion to dismiss and denying a motion for summary judgment. However, as the Respondent certainly is aware, the South Carolina Supreme Court has repeatedly and consistently held that "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of South Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440, 444 (2003). *See also*, *Silverman v. Campbell*, 326 S.C. 208, 486 S.E.2d 1 (1997). The same is true for the denial of a motion to dismiss. *Levi v. Northern Anderson County EMS*, 409 S.C. 374, 762 S.E.2d 44, 48 (Ct. App. 2014).

Moreover, South Carolina law is well established that dispositive motions do not establish the law of the case or a final judgment that may be appealed. The South Carolina Supreme Court has clearly explained that "[a] denial of a motion for summary judgment decides nothing about the merits of the case." *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994). "The denial of summary judgment does not establish the law of the case, and the issues

raised in the motion may be raised again later in the proceedings." *Id*. *See also*, *McLendon v. South Carolina Department of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539, 540, n.2 (1994) ("the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings").[1]

In arguing that Detective Carter waived her right to appeal the denial of qualified immunity, the Respondent relies in error on federal cases recognizing that an order denying qualified immunity *may* under certain circumstances be immediately appealed based on the federal collateral order doctrine. *See*, *Mitchell v. Forsyth,* 472 U.S. 511 (1985); *Johnson v. Jones*, 515 U.S. 304 (1995). However, the failure to appeal the denial of qualified immunity raised at the summary judgment stage does not constitute a waiver of the defense even in the federal system. Indeed, the United States Supreme Court recognized that a qualified immunity defense may be re-asserted at trial by way of a directed verdict motion and post-trial motions. *See*, *Ortiz v. Jordan*, 562 U.S. 180 (2011).

Most importantly, however, there is no equivalent to the collateral order doctrine under South Carolina appellate jurisprudence, and as mentioned above, an appeal of the denial of a motion for summary judgment is not permitted in this State. In *Johnson v. Frankell*, 520 U.S. 911 (1997), the United States Supreme Court even rejected the argument that a defendant in a § 1983 action brought in state court has a federal right to an interlocutory appeal from a denial of qualified immunity. As in South Carolina, the controlling rules in Idaho did not allow for an interlocutory appeal of a denial of a motion for summary judgment, and the Supreme Court

[1] "As a general rule, only final judgments are appealable." *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205, 208 (2005). As the Supreme Court has explained "[a]ny judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Id*. *See also*, *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163, 164 (1996).

found that an immediate appeal was not controlled by federal law. The Supreme Court, in fact, explained that "the right to an immediate appeal in the federal court system is found in [28 U.S.C.] § 1291, which obviously has no application to state courts." 520 U.S. at 921, n.12. In short, the Respondent's waiver argument, which was never asserted in the lower court, lacks all merit.

The Respondent is equally mistaken in his assertion that qualified immunity presents a jury question. The Respondent writes: "there were genuine issues of material fact that undercut Appellant Carter's assertion of qualified immunity so that the circuit court properly denied the motion and submitted the issue to the jury." *See*, Respondent's Brief, pp. 37-38. The Respondent further contends that the determination of probable cause is based on South Carolina law and its minority rule that probable cause is an issue of fact for the jury. In actuality, for the § 1983 claim against the Appellant Carter, the issue is one of *arguable probable cause*, and that clearly is not an issue of fact for the jury. Instead, arguable probable cause presents an issue of law for the court to decide. Contrary to any suggestion otherwise by the Respondent, the § 1983 claim and Detective Carter's entitlement to qualified immunity are governed exclusively by federal law and not by any state law "minority rule" on probable cause.

It is perhaps most telling, however, that the Respondent, like the trial court, has entirely disregarded the concept of "arguable probable cause" which differs from actual probable cause but is the relevant inquiry for the qualified immunity analysis. Indeed, there is no mention of "arguable probable cause" in the entirety of the Respondent's 49-page brief, The Respondent ignores the issue despite its recognition by the United States Supreme Court in such leading cases on qualified immunity as *Anderson v. Creighton*, 483 U.S. 635 (1987), in which the Court "recognized that it is inevitable that law enforcement officials will in some cases reasonably but

mistakenly conclude that probable cause is present, and we have indicated that in such cases those officials -- like other officials who act in ways they reasonably believe to be lawful -- should not be held personally liable." 483 U.S. 641. Similarly, in *Hunter v. Bryant*, 502 U.S. 224 (1991), the Supreme Court held that "[e]ven law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity." 502 U.S. 227. Moreover, it is well settled that "[w]hether arguable probable cause supports qualified immunity is a pure question of law to be decided by the court." *Schmandle v. Dekalb County Sheriff's Office*, 114 F.4th 648, 656 (7th Cir. 2024). *See also*, *Cibulka v. City of Madison*, 992 F.3d 633, 639, n.2 (7th Cir. 2021); *Hosea v. City of St. Paul*, 867 F.3d 949 (8th Cir. 2017). It quite simply does not present an issue of fact for a jury to decide.

Moreover, not only has the Respondent disregarded the concept of arguable probable cause in its entirety, but he also has no response to the fact that the trial court actually made a finding of arguable probable cause in its rulings on the directed verdict motion. To recap, the trial court ruled that "certainly there's evidence that – that support the finding of probable cause in this record." (Tr. 526). As outlined in the Appellants' opening brief, there is evidence from which Detective Carter could have believed – even perhaps mistakenly – that probable cause existed for the Respondent's arrest. The witness statements and interviews, the corroboration by the video from the boat landing, and the Respondent's many inconsistencies in his account provide, at a minimum, arguable probable cause, if not actual probable cause to support his arrest for Assault and Battery, Third Degree.

Finally, the Respondent attempts to interject a *Franks* analysis into the discussion by asserting that there is evidence that Detective Carter "obtained the warrant without providing full information to the magistrate [sic] and providing information that was misleading." *See*,

Respondent's Brief, p. 40. Yet, as the Appellants explain in their opening brief, the trial court never applied the two-prong *Franks* test during trial or in deciding post-trial motion, nor does the jury charge suggest that either prong of the test was submitted to the jury for any fact-finding. It remains elementary that a verdict cannot be upheld on a legal theory that was never adjudicated in the court below. Notably, the Respondent makes no attempt to refute these points.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellants Town of Port Royal and Kimberly Carter respectfully renew their request that the Court reverse the trial court's order denying their motions for directed verdict and JNOV and remand for entry of judgment for the Appellants. The Appellant Carter further requests that that the Court reverse the trial court's award of attorney's fees and costs under 42 U.S.C. § 1988. In the alternative, if the § 1983 judgment stands, the Court is requested to remand with instructions that the trial court limit or reduce the attorney's fees for the reasons discussed herein and with instructions that the Respondent is entitled only to those costs taxable under 28 U.S.C. § 1920 and Rule 54(e), SCRCP, in accordance with *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873 (2019).

Respectfully submitted,

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