

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Op. No. 5248
(S.C. Ct. App. filed July 23, 2014)

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S.C. Supreme Court

Demetrius Mack, Respondent,

v.

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

BRIEF OF PETITIONER

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QUESTION PRESENTED

- I. Did the Court of Appeals err in directing that a subjective test for the determination of probable cause be applied by the trial judge on remand?

STATEMENT OF THE CASE

This is an action for false arrest/imprisonment brought by the Respondent Demetrius Mack against the Petitioner Leon Lott, in his official capacity as Sheriff of Richland County. This action arises out of the arrest of Mack on December 6, 2008,¹ in the vicinity of Club Essence, a nightclub located on Two Notch Road in Richland County, South Carolina. Mack was working at the time as a private security officer at Club Essence. Mack was arrested by Richland County sheriff's deputies on the charge of simple assault following his pursuit, apprehension, and handcuffing of the victim, McKenzie Williamson.

Demetrius Mack initiated this action by the filing of a complaint on August 4, 2010, wherein he alleged causes of action for false arrest/imprisonment, negligence, gross negligence, negligent training, assault and battery. (R. 10-17). All of the causes of action except for the false arrest/imprisonment claim were voluntarily dismissed prior to trial. (R. 7-8).

The case was scheduled for a jury trial to begin on April 4, 2012. The parties thereafter waived their right to a jury trial and consented to a bench trial before Circuit Court Judge DeAndrea G. Benjamin. The case was tried on April 4-

¹ In her order entered April 6, 2012, Judge DeAndrea Benjamin states that the events including the arrest occurred on December 8, 2008. That is a clerical error. The events and arrest occurred on December 6, 2008. (R. 1).

5, 2012. On April 5, 2012, Judge Benjamin issued a judgment in favor of the Respondent Mack and awarded \$7,500.00 in actual damages. (R. 9). That judgment was memorialized in an order filed April 6, 2012. (R. 1-3).

Sheriff Lott subsequently filed a motion to alter or amend judgment pursuant to Rule 52(b) and/or Rule 59(e), SCRCF. (R. 24-32). That motion was summarily denied in a form order filed May 11, 2012. (R. 4).

Sheriff Lott thereafter filed a timely appeal to the Court of Appeals which remanded the case by a published opinion issued on July 23, 2014. The Court of Appeals concluded that the "trial court's findings of fact are insufficient under Rule 52(a)," and as a result, the Court remanded "for more detailed findings as to whether Mack met his burden of proving Gore did not have probable cause to arrest him." (App. 4).

Sheriff Lott petitioned for rehearing, and that petition was summarily denied. (App. 5-6).

Sheriff Lott filed a petition for writ of certiorari raising two questions. By Order issued February 5, 2015, this Court granted the writ of certiorari with respect to the first question presented only.

STATEMENT OF FACTS

On December 6, 2008, the Respondent Demetrius Mack was employed with DTH Protective Services and working at Club Essence, a nightclub on Two Notch Road in Richland County. On that date, a Club Essence patron named McKenzie Williamson had been creating some trouble at the nightclub. According to Mack, Williamson had been escorted off the property several times by members of DTH Protective Services. (R. 140-143).

At some point during the early morning hours, Williamson returned to the nightclub and was spotted by Mack. When Mack approached Williamson to arrest him, Williamson immediately began to flee on foot. (R. 143-144). Mack pursued Williamson and during the course of the pursuit in the direction of Weir Avenue,² Mack claims that Williamson tripped and fell under a white vehicle parked on the public roadway. (R. 143-144, 187). Mack testified that he then "grabbed" Williamson, "pulled" him from under the parked vehicle, and placed him in handcuffs. (R. 188, 191-192).

Richland County Sheriff's Deputies James Gore and Kenneth Proffitt were on duty in their assignment in Region Two at or near the 100 block of Weir

² The adjoining property to the Club Essence location is 109 Weir Avenue which is owned by the owner of Club Essence. That property was used as a parking lot for the nightclub and was within the scope of DTH Protective Services' contract. (R. 334).

Avenue. Specifically, they were in the process of placing some subjects in custody for narcotics violations. (R. 100). At that time, these deputies observed some type of commotion taking place at Club Essence, which was approximately forty yards from their location. (R. 100-101). In particular, they observed a subject running from the nightclub's parking lot out into the road with another subject chasing him. (R. 100). Deputy Gore observed the second subject tackle the first subject in the roadway. It then appeared that the second subject placed handcuffs on the first subject. (R. 102). Deputy Proffitt witnessed the same events. (R. 261-264).

Deputy Proffitt called for back-up units, and Deputy Stacy Parish, who was in the vicinity, responded. With her dashboard video activated, Deputy Parish turned from Two Notch Road onto Weir Avenue and passed the location of Williamson, which is depicted on the video. (R. 227, 347). When the video is shot, Williamson had already been pulled from underneath the vehicle and was handcuffed. (R. 228, 347). Thus, while the video does not show Williamson being dragged from beneath the white car by Mack, it does show the position of the car in question, which is at least partially in the street, and it shows Williamson at least partially in the street after his arrest. (R. 347). By Mack's own account, he pulled Williamson from under the white car, and Williamson was then placed under arrest and handcuffed while at least partially in the street. Mack himself confirmed on direct examination that Williamson was not moved after his arrest. (R. 145).

Deputy Gore proceeded to the location and spoke with Demetrius Mack who identified himself as a security guard for Club Essence. Gore advised Mack as to Section 40-18-110, which provides that a person who is appropriately certified as a private security officer has the authority and arrest powers given to sheriff's deputies. However, such powers are specifically confined to the property on which he is employed. (R. 106-108).³

Deputy Gore also spoke with McKenzie Williamson who had been handcuffed by Mack. Williamson informed him that he wished to press charges against Mack. (R. 110). Gore observed Williamson and noted that he sustained injuries to his hands and face and that he had blood "all over his shirt." (R. 109). Those injuries required treatment, and Williamson was subsequently transported to the hospital via Richland County EMS. (R. 110).

Deputy Gore believed that Mack's actions in seizing and handcuffing Williamson occurred in the public roadway and beyond his jurisdiction as a security guard for Club Essence. Thus, Gore instructed Master Deputy Stacy

³ Section 40-18-110, which is part of the South Carolina Private Detective and Private Security Agency Act, provides as follows: "A person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of this State *but possesses the powers of arrest only on the property on which he is employed.*" S.C. Code Ann. § 40-18-110. (Emphasis added).

Parish to effectuate an arrest of Mack for simple assault. Mack was arrested and transported to the Alvin S. Glenn Detention Center.

ARGUMENTS

I. The Court of Appeals erred in directing that a subjective test for the determination of probable cause be applied by the trial judge on remand.

In its opinion, the Court of Appeals concluded that the "trial court's findings of fact are insufficient under Rule 52(a)," and as a result, the Court remanded "for more detailed findings as to whether Mack met his burden of proving Gore did not have probable cause to arrest him." (App. 4). The Petitioner Leon Lott does not disagree with this ruling. Sheriff Lott agrees that the trial court's findings of fact are insufficient and fail to support the court's ultimate ruling that Deputy Gore lacked probable cause. However, Sheriff Lott petitioned for a writ of certiorari because the Court of Appeals incorrectly directed that a subjective test for the determination of probable cause be applied by the trial court on remand.⁴

In its opinion, the Court of Appeals boils down the essence of this dispute to the following:

If Mack arrested Williamson on Club Essence property, any assault Mack committed during the arrest was lawful. However, if Williamson was in the roadway when Mack

⁴ Sheriff Lott also argued in his petition for writ of certiorari that a remand is unnecessary because the existence of probable cause may be determined as a matter of law based on the undisputed evidence contained in the record and the concessions Mack made in his own sworn testimony. This Court denied the petition as to that issue.

arrested him, Mack acted without legal authority to make the arrest and would be guilty of assault.

(App. 3). Sheriff Lott agrees with that analysis.

The Court of Appeals then continues: "Therefore, Gore had probable cause to arrest Mack if Gore reasonably believed Mack arrested Williamson in the road -- not on Club Essence property." (App. 3-4). Further clarifying, the Court of Appeals explains that "Mack was required to prove as a matter of fact that Gore did not reasonably believe Mack arrested Williamson in the road." (App. 4). The Court later reiterated that "the primary factual issue in the case" is "whether Gore reasonably believed Mack was off Club Essence property at the time he arrested Williamson." (App. 4).

Sheriff Lott, however, respectfully disagrees with how the Court of Appeals has posited the "primary factual issue in the case" and the direction that the Court has given to the trial judge on remand. The Sheriff submits that probable cause requires an objective analysis – not a subjective one where a factfinder attempts to determine the subjective beliefs of the arresting officer. Sheriff Lott is concerned that the Court of Appeals' phrasing of the dispositive issue suggests that the factfinder must assess what Gore's subjective belief was and then whether that belief was reasonable. That is not the proper test and would likely result in further error on remand.

Sheriff Lott submits that the direction given by the Court of Appeals as to the applicable test and the required proof for probable cause is contrary to established case law in this state and from the United States Supreme Court. For example, in *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005), the Court of Appeals previously ruled that "[p]robable cause is determined as of the time of the arrest, based on facts and circumstances -- *objectively measured* -- known to the arresting officer." 623 S.E.2d at 659. (Emphasis added). Similarly, the Court of Appeals has previously explained that "[a] probable cause analysis involves the use of a *fact-based, objective perspective*." *State v. Morris*, 395 S.C. 600, 720 S.E.2d 468, 472 (Ct. App. 2011). (Emphasis added).

This requirement of an objective test is mandated by United States Supreme Court case law as well as this Court's own decisions. In *Ornelas v. United States*, 517 U.S. 690 (1996), the Supreme Court explained that "[t]he principal components of a determination of ... probable cause will be the events which occurred leading up to the ... search [or seizure], and then the decision whether these historical facts, *viewed from the standpoint of an objectively reasonable police officer*, amount ... to probable cause." 517 U.S. at 696. (Emphasis added). An almost identical recitation of the law is included in the Court of Appeals' opinion in *State v. Morris*, 395 S.C. 600, 720 S.E.2d 468 (Ct. App. 2011), where that Court wrote: "The principal components of the determination of probable

cause will be whether the events which occurred leading up to the search [or seizure], viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." 720 S.E.2d at 472. In *State v. Brockman*, 339 S.C. 57, 528 S.E.2d 661 (2000), this Court rejected the *de novo* standard of review from *Ornelas*, but this Court did cite favorably to the "two step process" for determining probable cause as articulated in that decision. This Court explained the "two-step process" as follows: "First, a court must determine the events which occurred leading up to the stop or search. Second, the court must decide whether these historical facts, *viewed from the standpoint of an objectively reasonable police officer*, amount to reasonable suspicion or to probable cause." 528 S.E.2d at 664. (Emphasis added). This very test was recently reiterated by this Court in *State v. Morris*, 2015 WL 340805 (S.C. 2015), where this Court affirmed the Court of Appeals' decision which is discussed above. Citing *Ornelas*, this Court explained that probable cause is based on the facts leading up to the stop, search or seizure, followed by a "decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." 2015 WL 34080, *4.

The use of an objective standard has likewise been proffered by Justice Kittredge when he wrote in a dissenting opinion as follows:

Concerning probable cause, we are guided by Fourth Amendment jurisprudence. In this regard, an officer's

"[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." The proper inquiry is an objective one, based on what would a reasonable police officer believe under the same circumstances.

State v. Brannon, 379 S.C. 487, 666 S.E.2d 272, 292 (Ct. App. 2008) (Kittredge, J., dissenting), citing *Whren v. United States*, 517 U.S. 806, 813 (1996). See also, *United States v. Porter*, 71 Fed.Appx. 277, 278 (4th Cir. 2003) ("the Supreme Court has emphasized that the analysis of whether probable cause exists is an objective one, that is unaffected by the officer's subjective beliefs or state of mind"). 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").

In the leading case of *Devenpeck v. Alford*, 543 U.S. 146 (2004), the United States Supreme Court explained that "[o]ur cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause." 543 U.S. at 153. "As we have repeatedly explained, the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Id.*

In sum, Sheriff Lott submits that the Court of Appeals erred in instructing the trial court on remand to apply what appears to be a subjective test and to determine "whether Gore reasonably believed Mack was off Club Essence property at the time he arrested Williamson." (App. 4). Instead, the Court should require the trial court to determine whether an objectively reasonable police officer in Gore's position would believe that Mack was off the Club Essence property at the time he arrested Williamson. That should be the proper articulation of the dispositive issue in this case.

Sheriff Lott respectfully requests that this Court confirm that the applicable test for probable cause is an *objective* one. In determining whether probable cause exists, the historical facts must be viewed solely from the standpoint of an objectively reasonable police officer in the position of Deputy Gore.

CONCLUSION

Based on the foregoing discussion, the Petitioner Leon Lott respectfully requests that the Court clarify that the dispositive issue to be remanded for proper findings of fact is whether an objectively reasonable police officer in the position of Deputy Gore would have believed that Demetrius Mack was off Club Essence property at the time he arrested McKenzie Williamson.

Respectfully submitted,

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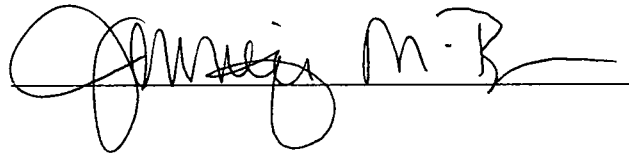
March 9, 2015

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Petitioner, does hereby certify that service of the **Brief of Petitioner** 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 9th day of March 2015:

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MAR - 9 2015
S.C. Supreme Court

RE: Demetrius Mack v. Richland County Sheriff Leon Lott, in his Official Capacity
Appellate Case Number: 2014-002229
Civil Action Number: 2010-CP-40-5214
Our File Number: 314.8515

Dear Mr. Shearouse:

Please find enclosed for filing the original and fifteen copies of the **Brief of Petitioner** as well as fourteen additional copies of the **Appendix** with regard to the above referenced matter. Please file the original brief and return a clocked-in copy of the brief and appendix to me by way of my courier.

By copy of this letter, I am serving a copy of the brief on respondent's counsel.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Daniel E. Shearouse
March 9, 2015
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