

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**DEMETRIUS MACK,**

*Plaintiff,*

v.

**LEON LOTT, in his official capacity as  
SHERIFF OF RICHLAND COUNTY,**

*Defendant.*

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2010-CP-40-5214

ORDER

**RECEIVED**

AUG 17 2017

**SC Court of Appeals**

RICHLAND COUNTY  
FILED  
2017 JUL 19 AM 9:48  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

This matter came before the Court for rehearing on May 4, 2017 at the Richland County Judicial Center. The sole issue on rehearing was the issue of probable cause. Present at the hearing were counsel for Defendant, Robert D. Garfield, Esq. and for Plaintiff, Joshua S. Kendrick, Esq. for the reasons discussed below, the Court finds that probable cause for arrest did not exist, and accordingly, finds in favor of the Plaintiff.

PROCEDURAL BACKGROUND

On August 4, 2010, this action was brought in this Court by Plaintiff against Defendant for the causes of action of false imprisonment, negligence, gross negligence, negligent training, assault, and battery. The bench trial in this case commenced on April 4, 2012 where the central issue was whether the Defendant had probable cause to arrest the Plaintiff on the day and time in question.<sup>1</sup> This Court heard arguments and testimony for two days before entering judgment, by order dated April 6, 2012, in favor of Plaintiff in the amount of \$7500.00. The Defendant timely filed a Motion to Alter or Amend Judgment and/or Motion for Reconsideration on April 2, 2016.

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<sup>1</sup> All of the causes of action, except for the false arrest/imprisonment, were voluntarily dismissed prior to trial.

The motion specifically requested the Court to reconsider and address various issues not specifically discussed in the Order. This Court denied said motion by Form 4 Order and Defendant timely filed a Notice of Appeal on June 19, 2012.

The South Carolina Court of Appeals, in its opinion filed July 22, 2014, found that this Court's findings of fact were insufficient under Rule 52(a) and remanded this case for more detailed findings as to whether the Plaintiff met his burden of proving that Deputy Gore did not have probable cause to arrest him. In its Opinion, the Court of Appeals discussed the applicable law governing the Plaintiff's false arrest claim given the specific factual scenario presented. The Court also addressed what the evidence is required to show in order to support a conclusion that Deputy Gore lacked probable cause to arrest the Plaintiff. The Defendant petitioned the Court of Appeals for rehearing, on grounds that the remand was unnecessary and the Court of Appeals appeared to apply a subjective test on the issue of probable cause, which was ultimately denied on September 8, 2014.

The Defendant thereafter petitioned the South Carolina Supreme Court for a Writ of Certiorari which was granted by Order filed February 5, 2015. This Writ was granted solely for the determination of whether the Court of Appeals erred in directing that a subjective test for the determination of probable cause be applied by this Court on remand. The Supreme Court, *per curiam*, ordered that the opinion of the Court of Appeals be depublished due to its, arguably, unclear language on the issue of the proper standard for determining probable cause.<sup>2</sup> The Court, however, was clear to reiterate that the proper standard for determining probable cause is an

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<sup>2</sup> By Opinion and Remittitur, both filed on December 9, 2015.

objective standard and that whether the historical facts viewed from the perspective of an objectively reasonable police officer, amount to probable cause.

In light of the appellate courts' clarification regarding the proper standard for determining probable cause, this Court considers the historical facts in view of an objective standard and makes the following conclusions in this matter.

#### APPLICABLE STANDARD

The proper standard for determining probable cause is an objective one. "Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal." *State v. Cope*, 385 S.C. 274, 290, 684 S.E.2d 177, 185 (Ct. App. 2009); *State v. Frazier*, 394 S.C. 213, 220, 715 S.E.2d 650, 653 (Ct. App. 2011) (internal citations omitted).

This requirement of an objective test is mandated by United States Supreme Court and South Carolina case law. 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 our State's Supreme Court in *State v. Morris*, 2015 WL 340805 (S.C. 2015), where the Court affirmed the Court of Appeals' decision which is discussed above. In doing so and citing *Ornelas*, the 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)

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citing *Whren v. United States*, 517 U.S. 806, 814 (1996) ("subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis").

In its decision in the instant matter, the South Carolina Supreme Court followed the prevailing authority defining probable cause: "[T]he proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." See, *Mack v. Lott*, 415 S.C. 22 (2015).

The Court, having heard testimony in this case for two days and having reviewed the exhibits and testimony in evidence, finds the following:

#### FINDINGS OF FACT

1. On December 6, 2008, Plaintiff Demetrius Mack was working for DTH Protective Services. (Tr. 132, ll.22-24). That night he was assigned to work security at Club Essence, a nightclub on Two Notch Road in Columbia, South Carolina. (Tr. 132, l.25-p.133, l.6). Club Essence was a hip-hop club frequented by young people. (Tr. 134, ll.12-14). Mack testified the club was a dangerous place, frequented by hostile gang members who drank cheap liquor. (Tr. 134, ll.15-21).
2. On the night of the incident, Mack encountered McKenzie Williamson, who would cause trouble at Club Essence throughout the night. Mack's first run-in with Williamson took place in the foyer of Club Essence, where Williamson was trying to get into the club without paying the required entrance fee. (Tr. 135, ll.1-4). When he arrived in the foyer, Mack saw Williamson try to walk past the lady collecting entrance fees without paying. (Tr. 135, l.15-p.136, l.2). Mack told Williamson to leave if he was not going to pay the entrance fee, and he left. (Tr. 135., l.24-p.136, l.2).

3. Williamson tried to enter the club for free again. (Tr. 136, ll.3-8). He was caught once again and Mack escorted him off the premises. (Tr. 136, ll.8-13). Williamson tried to sneak into the club for free a third time. (Tr. 136, ll.17-20). This time, a different security guard caught him and escorted him out of the club. (Tr. 136, ll.18-20).
4. Williamson became belligerent. (Tr. 136, l.22). He stood in the middle of Weir Avenue, a street next to Club Essence, and started throwing gang signs at the security guards. (Tr. 136, ll.22-25). Mack was standing at the door to the club with the owner and watched Williamson. (Tr. 137, ll.1-3). In addition to gang signs, Williamson made threatening gestures about shooting at the club. (Tr. 137, ll.4-11).
5. Williamson made another attempt to sneak into Club Essence. As the night went on, the crowd became increasingly unruly. Eventually, a fight broke out in the club. (Tr. 137, ll.13-16). As the security guards, including Mack, tried to assist the club bouncers in breaking up the fight, another employee of the club told Mack that Williamson was back on the property. (Tr. 137, ll.18-25). Mack had warned Williamson earlier that he would arrest him if he came back to Club Essence. (Tr. 138, ll.1-3).
6. Williamson took off running down Weir Avenue. (Tr. 138, ll.4-8) Mack saw him change direction when he realized sheriff's deputies were at the end of Weir Avenue. (Tr. 138, ll.14-18). As he changed direction, he hit a car, slipped, and fell under the car. (Tr. 138, ll.19-25). Williamson fell on the property located at 109 Weir Avenue, which was also under his jurisdiction as a security guard that night. (Tr. 138, ll.22-24).
7. After catching Williamson and handcuffing him, one of the bouncers from Club Essence flagged down Deputy Parish, who was responding as backup to an unrelated scene at the end of Weir Avenue. (Tr. 140, ll.11-13).

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8. Mack informed Parrish that Williamson had been attempting to sneak into Club Essence, throwing gang signs, and making threatening gestures about shooting up the club. (Tr. 140, ll.13-25). He told Parrish he wanted Williamson put on trespass notice so he could be arrested if he insisted on returning to the club. (Tr. 140, ll.14-18).
9. Deputy Gore then arrived on the scene and asked what was happening. (Tr. 141, ll.7-13). Gore immediately told Mack that he and the sheriff's department were tired of private security guards not showing up for court hearings. (Tr. 141, ll.14-18). Mack was confused about Gore's attitude and told Gore he was just trying to let them know what happened with Williamson. (Tr. 141). Mack described Williamson's earlier behavior to Gore. (Tr. 142, ll.19-24). Mack told Gore he did not want Williamson arrested, but did want him placed on trespass notice so that he could be arrested immediately if he returned to the property. (Tr. 142, ll.7-9).
10. As the scene calmed down, Gore walked off to talk privately with Parrish. (Tr. 142, ll.16-17). He returned and told Mack it was Mack who was going to be arrested. (Tr. 142, ll.17-19). Gore claimed Mack was out of his jurisdiction and had committed a simple assault when he handcuffed Williamson. (Tr. 142, ll.20-25).
11. Mack had detained Williamson on property over which he had jurisdiction as a private security guard. (Tr. 143, ll.6-8). Mack attempted to have Gore talk with someone from his company, but Gore refused. (Tr. 143, ll.9-16). Mack called his supervisor, who wanted Gore to wait until he arrived before arresting Mack and taking him to jail. (Tr. 143, ll.17-144, .12). After talking to Williamson, Gore handcuffed Mack and placed him in the back of a patrol car. (Tr. 145, ll.13-16)

Mack was taken to jail, where he remained for the night and most of the rest of the day.  
(Tr. 146-148).

12. The Court heard Deputy Gore testify about this incident. He was in the area on a narcotics arrest the night of the incident. (Tr. 58, ll.15-18). Gore testified he saw Plaintiff Mack tackle Williamson in the middle of the street. (Tr. 58, ll.21-25). This testimony was different from an earlier statement Gore made, where he did not mention seeing Mack tackle Williamson. (Tr. 66, ll.4-7). The first time Gore told the story about Mack tackling Williamson in the middle of the street was at his deposition. (Tr.66, ll.13-21). Gore specifically testified the reason he arrested Plaintiff was because Plaintiff chased Williamson into the road and tackled him in the middle of the road. (Tr.69, ll.11-20).

13. Deputy Parish also testified about the incident. She arrived after Williamson was placed in handcuffs. Parish testified Williamson was in front of a car in handcuffs and the car was parked primarily in the road. (Tr. 200, ll.7-17). She did not see Plaintiff tackle Williamson. (Tr. 207, ll.16-21).

14. The Court also watched a dashcam video from Deputy Parish's patrol car. At the remand hearing, Defendant referred to two exhibits related to that video. There is a still photograph from the video and another picture showing the border between the road and the grass in the daylight. While the pictures are not entirely clear, the car appears to be primarily parked in the grass, contrary to Deputy Parish's testimony. Comparing both pictures, and using the light pole in the background as a reference point, the preponderance of the evidence suggests Williamson was not tackled or arrested in the roadway.

15. This Court has had the opportunity to watch the demeanor of the witnesses and assess their credibility in light of the evidence presented. Deputy Gore's testimony is not credible. The Court finds that his story about seeing Plaintiff tackle Williamson in the roadway is not consistent with any of the other evidence presented in the trial. The Court finds by a preponderance of evidence Deputy Gore did not see the arrest of Williamson.
16. Deputy Parish concedes she did not see the arrest of Williamson and cannot testify as to where it took place. Williamson was not called to testify about where he fell.
17. Plaintiff's testimony is credible and consistent with the other evidence presented. The Court is acting as the fact finder in this bench trial. In that role, this Court has carefully observed the witnesses and weighed the credibility of their testimony. The Court finds Plaintiff was a private security guard at the time of this incident. The Court further finds the acts leading up to the arrest of Williamson, as well as the arrest of Williamson, all took place on private property. This private property was properly under the jurisdiction of Plaintiff in his capacity as a security guard. The Court does not believe Plaintiff tackled Williamson in the middle of the road or otherwise arrested him outside of property over which Plaintiff had jurisdiction.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter.
2. The central issue in this case is whether the Defendant had probable cause to arrest the Plaintiff.
3. Probable cause is a reasonable ground for belief of guilt particularized with respect to the person to be arrested. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). To determine

whether an officer had probable cause to arrest an individual, the Court examines the events leading up to the arrest. The Court then decides if those historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. *Id.*

4. In this case, Plaintiff had the authority to detain and arrest Williamson on property which he had been hired to provide security. He did not have that authority off that property. *See* Section 40-18-110.
5. Probable cause to arrest Plaintiff in this case turns on whether Plaintiff arrested Williamson on private property.
6. Based on the exhibits and testimony before this Court, Defendant did not have probable cause to arrest the Plaintiff for simple assault on December 8, 2008. Plaintiff did not arrest Williamson off private property. More importantly, the arresting officer had no information to the contrary at the time of the arrest.
7. Specifically, the arresting officer did not see Plaintiff tackle Williamson in the middle of the street. This testimony is not believable and the Court finds it not credible. The only objective information the officer possessed was the statement from Plaintiff about the events leading up to Mr. Williamson's arrest. Plaintiff's statements did not support probable cause for Defendant to place him under arrest.
8. The dashcam video of the incident is not determinative of whether the incident took place on private property or in the road. This is consistent with the opinions from the Court of Appeals and the Supreme Court. Defendant asked both of those courts to find the video indisputable and rule there was probable cause as a matter of law. Both courts declined to make that finding.

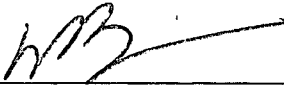
Based on these Findings of Fact and Conclusions of Law, this Court enters the following



order:

This Court rules that the Defendant did not have probable cause to arrest Plaintiff. Defendant falsely arrested Plaintiff and is liable for damages to the Plaintiff. This Court does not disturb its prior ruling awarding damages in favor of Plaintiff. This Court heard arguments and testimony for two days before entering judgment, by order dated April 6, 2012 in favor of Plaintiff in the amount of 7,500 dollars.

IT IS SO ORDERED.

  
\_\_\_\_\_  
DeAndrea Benjamin  
Presiding Judge

~~June~~ July 18, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010-CP-40-05214

Demetrius Mack

Richland County Sheriff's Dept., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

Judgment in the amount of \$7500.00 for Plaintiff.

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge W/B Judge Code 2161 Date 4-5-12

**For Clerk of Court Office Use Only**

This judgment was entered on the 5 day of April, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Neal M. Lourie

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert David Garfield

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McGrade