

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
DeAndrea Gist Benjamin, Circuit Court Judge SC Court of Appeals

Case No. 2010-CP-40-5214  
Appellate Case No. 2017-001734

Demetrius Mack,.....Respondent,

v.

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

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INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT WAS CORRECT IN RULING THERE WAS NO PROBABLE CAUSE FOR THE ARREST OF RESPONDENT DEMETRIUS MACK.
- II. THE TRIAL COURT WAS NOT REQUIRED TO RULE AS A MATTER OF LAW THAT AN OBJECTIVELY REASONABLE POLICE OFFICER IN DEPUTY JAMES GORE'S POSITION COULD HAVE CONCLUDED RESPONDENT DEMETRIUS MACK COMMITTED AN ASSAULT.

## STATEMENT OF THE CASE

This appeal stems from a trial involving a Richland County Sheriff's Department deputy's arrest of Respondent Demetrius Mack.

On December 6, 2008, Mack was working for DTH Protective Services. (Tr. 132). That night he was assigned to work security at Club Essence, a nightclub on Two Notch Road in Columbia, South Carolina. (Tr. 133). Club Essence was a hip-hop club frequented by young people. (Tr. 134). Mack described the club as a dangerous place, frequented by hostile gang members who drank cheap liquor. (Tr. 134).

On the night of the incident, Mack came into contact with McKenzie Williamson, who would turn out to be a real troublemaker. 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 fee for entrance. (Tr. 136). According to Mack's observations when he arrived in the foyer, Williamson tried to walk right past the lady collecting entrance fees without paying. (Tr. 136). The lady pointed Williamson out to Mack and told Mack he had entered without paying. (Tr. 136). Mack told Williamson to leave if he was not going to pay the entrance fee, and he did. (Tr. 136).

Later, Williamson tried to enter the club for free again. (Tr. 136). He was caught once again and Mack escorted him off of the premises. (Tr. 136). Failing to get the message, Williamson tried to sneak into the club for free a third time. (Tr. 136). This time, a different security guard caught him and began to escort him out of the club. (Tr. 136).

Williamson became belligerent. (Tr. 136). 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). Mack was standing at the door to the club with the owner and watched Williamson

making a scene. (Tr. 137). In addition to gang signs, Williamson began making threatening gestures about shooting at the club. (Tr. 137).

Williamson was still not done. He would make yet 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). As the security guards, including Mack, tried to assist the club bouncers in breaking up the fight, another employee of the club informed Mack that Williamson was back on the property. (Tr. 137). Mack had warned Williamson earlier that he would arrest him if he came back to Club Essence. (Tr. 137).

Williamson took off running down Weir Avenue. (Tr. 138) Mack saw him change direction when he realized sheriff's deputies were at the end of Weir Avenue. (Tr. 138). As he changed direction, he hit a car, slipped, and fell under the car. (Tr. 139). Williamson fell on the property located at 109 Weir Avenue, which was also under his jurisdiction as a security guard that night. (Tr. 139). Mack was only able to catch Williamson because of the fall. (Tr. 139).

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). 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). He told Parish he wanted Williamson put on trespass notice so he could be arrested if he insisted on returning to the club. (Tr. 140).

Deputy Gore then arrived on the scene and asked what was happening. (Tr. 141). 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). 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). 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).

As the scene calmed down, Gore walked off to talk privately with Parish. (Tr. 142). He returned and told Mack it was Mack who was going to be arrested. (Tr. 142). Obviously surprised, Mack asked what he had done to result in him being the one under arrest, rather than Williamson. (Tr. 142). Gore claimed Mack was out of his jurisdiction and had committed a simple assault when he handcuffed Williamson. (Tr. 142-143).

Mack was shocked at this turn of events, in light of the fact he detained Williamson on property over which he had jurisdiction as a private security guard. (Tr. 143). Mack attempted to have Gore talk with someone from his company, but Gore refused. (Tr. 143). Mack called his supervisor, who wanted Gore to wait until he arrived before arresting Mack and taking him to jail. (Tr. 143-144). After talking to Williamson, Gore handcuffed Mack and placed him in the back of a patrol car. (Tr. 145)

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

Any other pertinent facts are discussed in the argument portion of Respondent's brief.

## ARGUMENTS

### I. THE TRIAL COURT WAS CORRECT IN RULING THERE WAS NO PROBABLE CAUSE FOR THE ARREST OF RESPONDENT DEMETRIUS MACK.

This Court reviews actions at law, tried without a jury, only to correct errors of law. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct.App. 2010). The trial judge's findings of facts will not be disturbed unless there is no evidence to reasonably support those findings. *Id.* The law in South Carolina on witness credibility and facts found at trial is well-settled. The judge at a bench trial is free to believe some, all, or none of the testimony, even when it is not contradicted. *Lollis v. Dutton*, 807 S.E.2d 723 (S.C.Ct.App. 2017)(emphasis added).

In the instant case, the trial judge heard an extensive description of the events leading to Mack's arrest from both Mack and the deputies. She correctly decided to credit Mack's version of events, rather than the deputies. During their testimony, neither of the deputies involved in Mack's arrest cited credible objective facts to support Mack's arrest. Gore claimed he saw Mack tackle Williamson in the middle of the road, though this was not recorded in his incident report from that night. (Tr. 59, 63). Parish claimed in her testimony that the car under which Williamson fell was parked primarily in the roadway, though the video evidence clearly shows that to be untrue. (Tr. 200, Video).

The Appellant argues that the trial court's findings are of no moment; Deputy Gore's decision to decline to be truthful on the stand should not affect the factual findings in this case:

“However, where the court does not believe the arresting officer's version of the facts, in whole or in part, that does not automatically mean that there was no probably cause for the arrest.”

*Brief of Appellant*, p.13. In this case, that is exactly what it means. When a source of information decides to lie to the court, the court is under no obligation to use anything that source says. In this case, the remaining facts after discounting the deputies' lies leave nothing to support their claim of probable cause.

The existence of probable cause turns on the totality of the circumstances surrounding the information known to the officers. *State v. George*, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996). In other words, the officers must take into account all of the facts surrounding the incident. They are not free to disregard facts that should be considered in making a probable cause determination.

Both sides agree that whether Mack was within his jurisdiction at the time he detained Williamson is the key issue in this case. If he was not within his jurisdiction, Mack did not have the legal right to detain Williamson. If he was within his jurisdiction, Mack did have the legal right to detain Williamson. Simple assault and battery is an *unlawful* act of violent injury to another. *State v. White*, 361 S.C. 407, 413, 605 S.E.2d 540, 543 (2004). Consequently, if he was within his jurisdiction, his actions were not unlawful and could not constitute a simple assault.

In making that determination, the fact-finder is required to view the objective facts surrounding the arrest. An objective standard of conduct is required for fair law enforcement. *Id.* at 659, 667 (quoting *Horton v. California*, 496 U.S. 128, 138, 110 S.Ct. 2301 (1990)). The law enforcement officer's perspective does not exist in a vacuum. It must be reasonable.

Contrary to the Appellant's position, the judge correctly applied the proper standard for determining probable cause in this case. The Appellant argues the judge did not apply the correct legal principles, claiming she made no attempt to consider an

objective assessment of the facts as they were known to the arresting officer. The order on remand reflects the Appellant is incorrect.

The trial court cited this Court for the proposition that probable cause for an arrest exists when circumstances within the arresting officer's knowledge are sufficient to believe a crime has been committed. *State v. Cope*, 385 S.C. 274, 290 (Ct.App. 2009); *State v. Frazier*, 394 S.C. 213, 220 (Ct.App. 2011). The trial court further recognized the South Carolina Supreme Court in this case set out the two-step test for 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.” *Mack v. Lott*, 415 S.C. 22 (2015).

Appellant's dispute is not really with the trial court's test or how it was applied. Instead, Appellant continues to dispute the result. Two law enforcement officers were not credible at trial and the trial court did not believe their testimony. (Remand Order 8-9). As both parties have recognized, where Mack arrested Williamson is the critical question in this case.

The trial court found that Deputy Gore did not see Mack arrest Williamson and his testimony that the arrest occurred in the middle of the street was not credible. (Remand Order 9) The trial court found Deputy Parish did not see the arrest and could not offer credible testimony as to where the arrest took place. (Remand Order 8). Parish testified Williamson was in the street when she arrived. (Tr.200, ll.7-17). The trial court specifically found the objective evidence was contrary to her testimony.

The trial court viewed the videotape from Parish's dashcam, as well as several pictures introduced at the remand hearing. (Exhibits) As she clearly stated in her order,

none of those exhibits reflect what the Appellant wants them to reflect. The trial court looked at the objective evidence from the pictures and found the evidence showed Williamson was not in the street when he was tackled and arrested. (Remand Order 8)

None of the historical facts found by the trial court support probable cause to arrest Mack. The trial court found that the evidence supported Mack's version of events. The trial court found that Deputy Gore was not believable. The trial court found he did not see the arrest of Williamson. The trial court then stated the other evidence continued to corroborate Mack's version of events, not the police officer's.

The Appellant claims the trial court should have assessed what an objectively reasonable police officer would have seen. That is not the test. The test is what an objectively reasonable police officer would have seen in Deputy Gore's position. The trial court clearly found Gore did not see anything. There is no further inquiry.

As explained in Mack's statement of the case, there was testimony and evidence to support the judge's findings of fact. After making those findings, she correctly analyzed whether those facts would lead a reasonable person to believe a crime had been committed on the day in question. She found they did not lead to that result. Without probable cause, a false arrest took place. The judge reached the correct decision based on the record.

There is no requirement the trial court formally state "here is what an objectively reasonable officer would have seen or known." It seems the court was being very judicious to the deputies by simply stating it did not find their testimony credible. Based on the specific testimony presented and the facts found by the trial court, it would have been within its rights to rule the deputies had lied on the stand.

II. THE TRIAL COURT WAS NOT REQUIRED TO RULE AS A MATTER OF LAW THAT AN OBJECTIVELY REASONABLE POLICE OFFICER IN DEPUTY JAMES GORE'S POSITION COULD HAVE CONCLUDED RESPONDENT DEMETRIUS MACK COMMITTED AN ASSAULT.

The Appellant also claims the existence of probable cause should have been determined as a matter of law. The Appellant states that Lott has taken this position consistently throughout the litigation. It is of note that the position has been consistently rejected by the Circuit Court, this Court, the Supreme Court, and the Circuit Court again. This case has been tried, appealed all the way through the appellate system, argued in both the Court of Appeals and the Supreme Court, and heard again in the Court of Common Pleas. At no stage have any of those Courts decided to step into the shoes of the fact-finder and rule on a factual inquiry as a matter of law.

The Appellant is arguing that the judge should have granted a directed verdict motion. A directed verdict could not have been granted on this record.

In ruling on a motion for a directed verdict, the trial court considers facts in the light most favorable to the opposing party. *Pye v. Estate of Fox*, 369 S.C. 555, 563 633 S.E.2d 505, 509 (2006). The trial court was required to view all facts and any reasonable inferences from those facts in the light most favorable to Mack. If there is more than one inference to be drawn from the facts, or the inference is in doubt, a directed verdict motion must be denied. *Id.* At the directed verdict stage, the trial court does not evaluate the evidence; it is only concerned with the existence or nonexistence of evidence. *Id.*

This Court should reverse the trial court's decision on a directed verdict in two circumstances. A reversal is only appropriate if there is no evidence to support the trial judge's ruling or the ruling was controlled by an error of law. *Id.*

There were two versions of events at the trial, both of which are described in Appellant's statement of the case. Mack testified he was pursuing Williamson and that Williamson fell under a parked car. Mack pulled Williamson out from under the car and detained him. The Appellant argues the car was partially parked in the roadway. It makes no difference where the car was parked; the location of Williamson is the critical factor.

Gore and Proffitt claimed they saw Mack tackle Williamson in the middle of the street. Mack plainly denied this had occurred. At this stage of the proceedings, the trial judge was bound to accept Mack's version of events in deciding a directed verdict. This Court is bound by the same rule. If there is any evidence to support the judge's denial of a directed verdict, it should be upheld. The testimony of Mack alone precluded the trial judge from granting a directed verdict.

The Appellant argues that it makes no difference where the alleged unwanted touching occurred, because that fact is relevant to ultimate guilt or innocence. It claims the officer's objectively reasonable view of the facts form the basis for probable cause. While this may be correct, it completely disregards the fact-finder's duty to assess the credibility of the witnesses. The judge did not disregard the officers' testimony; it appears she did not believe the officers' testimony. The difference is critical.

The Appellant continues to rely on the video evidence in this case, which has been presented to every court to hear the case. No court has decided that video supports the Sheriff's position. This is most likely based on the video's lack of clarity. It does not reflect the events that occurred leading up to Williamson's arrest. More importantly, what little can be gleaned from the video supports Mack's story, not the Appellant's. The video came from the dashboard camera of Deputy Parrish's patrol car. Though she sped by the relevant scene, it does appear that Mack's story is accurate. The white vehicle described

in testimony is primarily parked in grass at 109 Weir Avenue, not the roadway as claimed by the officers.

*Scott v. Harris* does not support the Appellant's argument. 550 U.S. 372 (2007). All *Scott* did was hold that when a witness's testimony was "utterly discredited" by the record, to the extent no jury could believe him, that testimony would not defeat summary judgment. *Id.* at 381. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Id.* 380.

While one of the stories in this case was blatantly contradicted by the record, it was the Appellants'. The Court cannot endorse a directed verdict in favor of a party that elected to lie during a trial. *Scott v Harris* says nothing to the contrary.

The facts of the case not only warranted rejection of the motion for directed verdict, they clearly support the judge's verdict. The Appellant discusses wounds consistent with "road rash", claiming this supports the officers' decision that the touching occurred in the roadway. However, it is also entirely consistent with Mack's observation of Williamson sliding on the grass under the car when he fell. At the directed verdict stage, the judge accepted Mack's story, as she was required to do by law. In addition, she reasonably credited Mack's version of events over the deputies' version of events. After reviewing the evidence and listening to the testimony, the trial judge obviously decided Mack's version of events was supported by the evidence, while the deputy's version was not.

The Appellant claims the facts and circumstances within Gore's knowledge can only reasonably support a finding of probable cause. This is completely wrong. As has

been described throughout this brief, there are numerous facts which support the judge's verdict and directly counsel against accepting the deputies' version of events.

Contrary to the Appellant's position, the evidence in this case does not require that the only reasonable conclusion is a finding of probable cause. There is clearly another conclusion; probable cause did not exist. Because that conclusion is actually supported by credible evidence, the judge ruled correctly in both her decision on the directed verdict motion and her verdict.

### CONCLUSION

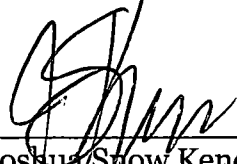
Appellant Demetrius Mack was faced with an unruly and threatening gangster the night of December 6, 2008. Williamson had no respect for Club Essence or those charged with protecting it, as evidenced by his repeated attempts to evade the entrance fee and his implicit threats of gangland retaliation and explicit threats to shoot up the club.

Rather than arrest the real troublemaker, the Appellant's officers decided to arrest Mack, who had done nothing wrong. The evidence at the scene of the arrest did not support probable cause. Though the officers attempted to support probable cause at the trial of this case, the judge clearly rejected their story and accepted Mack's version of events. An objective view of the facts that existed at the time of Mack's arrest do not support probable cause.

This was a reasonable decision, supported by credible evidence, and in line with applicable South Carolina law. It should be affirmed.

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Respectfully submitted,



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ATTORNEYS FOR THE RESPONDENT

January 11, 2018  
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DeAndrea Gist Benjamin, Circuit Court Judge

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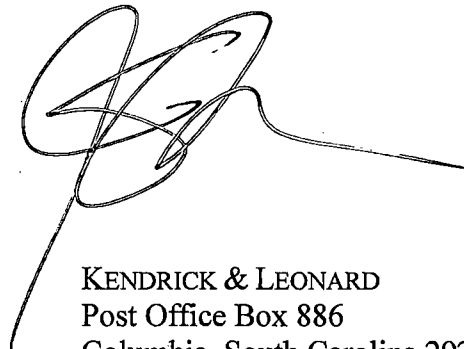
Appellant.

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PROOF OF SERVICE

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I certify that I have served the *Initial Brief of Respondent* and *Motion to File Out of Time* on Richland County Sheriff Leon Lott by depositing a copy of it in the United States Mail, postage prepaid, on January 12, 2018 addressed to his attorney of record, Andrew Lindemann, Esq., P.O. Box 8568, Columbia, SC 29202.



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