

Bishopville, SC. 29010

State of South Carolina
In the Court of Appeals

Appeal from Colleton County
Edgar Dickson./ Circuit Court Judge
Case no. 2013-CP-18-01297

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JAN 31 2020

SC Court of Appeals

Dorchester County Sheriff's Department,

Respondent,

v.

Maurio Daetrel Rivers,

Appellant.

Memorandum in support of Appellants
Motion to Reinstate

Statement of the facts

What follows is a detailed description of what the Court saw and heard on the video of the incident on July 12th, 2011 giving rise to this suit. Beginning around the time that the passenger in Rivers vehicle fired on Lt. Burnette and continuing through the time at which the plaintiff was loaded into an ambulance. The times — given in hours, minutes, and seconds — correspond to the clock on Lt. Burnette's dash cam.

The video begins with Lt. Burnette pursuing Rivers who is driving a black Acura. Around 19:08:47 a passenger can be seen emerging from the top of the vehicle. Moments later, Officer Burnette reports, "shots fired." Officer Burnette then appears to accelerate and strike the Acura with his police cruiser on the right side toward the rear of the vehicle. The Acura spins around, veers off the road to the left, and strikes a small tree before overturning at 19:09:06. Although it cannot be seen on the video, Rivers and the passenger exited the car almost immediately after it flipped over running in opposite directions and the passenger fired a shot at Officer Burnette, which struck the windshield of his vehicle. Officer Burnette appears on the video at 19:09:14 with his handgun drawn shouting for the occupants of the vehicle to put their hands up. K9 Feist can be seen unleashed at his side. Lt. Burnette begins to pursue the suspects, running away from the roadway and toward a wooded area that is visible behind the overturned vehicle, and he instructs K9 Feist to chase the suspects at 19:09:19. Other officers can be seen arriving moments later, including Cpl. Knight, who joins in the pursuit.

By 19:09:30 Lt. Burnette, Cpl. Knight, and a third officer are no longer visible on the video, having disappeared into the woods to pursue Rivers and a passenger. Around 19:09:45, one of the officers can be heard saying "get your hands up . . . get them up. Get your hands up or I'll shoot you right now, boy.... Get on the fucking ground." K9 Feist can be heard barking in the background. At 19:10:04 one of the officers says, "get your hands behind your back." There are rustling sounds and some muffled statements that are indiscernible. At 19:10:45, one of the officers can be heard saying to Rivers "get your other hand behind your back" and repeating the instruction at 19:10:52. At 19:11:00 one of the officers radios out, "we've still got one at large." At around 19:11:03, a distressed-sounding voice can be heard saying something along the lines of, "get the dog off." One of the officers can then be heard saying, "good boy, "loose, loose" and repeating the instruction as a dog barks and growls. The video of the incident reveals that minutes later, Rivers is still saying get the dog...And the officer is still saying loose, loose good boy...

During his arrest Rivers was severely injured by the arresting officers **T. Knight & J. Brunette both of which the plaintiff sued in their individual capacities for Excessive force on July 24th, 2013.** Rivers legal claim against the Dorchester County Sheriff's Department is that he was owed a duty of care not be subjected to the excessive force the K9 officer "Feist" was inflicting upon

him. Furthermore the K9 was not certified as properly trained at the time of the incident. The breach of this duty of care constitutes gross negligence.

On May 24th, 2013 Rivers filed a complaint against the Defendants alleging that he had been assaulted by K9 Feist along with two other officers. Rivers requested at that time that a full investigation be made.

A Motion to Proceed In Forma Pauperis was then sent by the court to the Appellant to fill out and resubmit which was done on July 17th, 2013. The motion was then sent with a complaint, summons, affidavit of claims and certificate of service to the court. The court denied the motion on September 12th, 2013

On September 26th, 2013 Rivers sent a Notice of Appeal to the Court of Common Pleas attempting to Appeal the decision to dismiss the Motion to Proceed In Forma Pauperis. The Notice of Appeal should have been forwarded to the Court of Appeals pursuant to **Rule 82(b) of the S.C.R.C.P.**

Rivers was never notified that the South Carolina Court of Appeals had not received his Notice. After inquiring about the Status of the case and being told it had been dismissed years later, Rivers, on August 31st, 2016 filed a Belated Appeal and on September 21st, 2016 the court of Appeals assigned the Plaintiff the case no. 2016-001856. On October 31st, 2016 the court of Appeals denied the Motion for a belated Appeal, however the court noted that if Rivers had submitted a financial certificate stating he need not pay the court fees, he should have been allowed to proceed with his suit. The court then said it was not aware of the certificate.

Rivers re-submitted the financial certificate along with a petition for rehearing which was denied. Rivers then paid \$25 for a motion to Reinstate and \$25 for a motion to amend the complaint along with a \$150 court fee amounting to three cashiers checks. The \$150 court fee was somehow misplaced by the court. A copy of the check was resent to the court. On December 30th, 2019 the Defendants motion to dismiss was granted and the motion to Reinstate denied.

The issues before this court at the moment are (1) should Rivers be allowed to proceed with his suit against the Defendants as timely filed and not procedurally barred? (2) Should Rivers be barred by the doctrine of Collateral Estoppel and or Res Judicata? (3) whether or not the Dorchester

County Sheriff's Department was grossly negligent in not stopping the K9 from continuing to bite the plaintiff after he is in handcuffs and detained? (4) Did the court err in granting the Defendants motion to dismiss? (5) *Did the court err in denying the Plaintiffs Motion to Reinstate?*

Rivers claim against the Dorchester County Sheriff's Department is the 1st suit filed of the two, therefore Collateral estoppel & Res Judicata does not apply. Furthermore The claim against the Dorchester County Sheriff's Department is a negligence claim and the suit against J. Brunette and The. Knight is a excessive force claim therefore Collateral 2does not apply.

The motion to proceed In forma pauperis was denied September 14th 2013 and a Attempt to Appeal was mailed on September 26th 2013 alleging within the limitation. Therefore Rivers should not be procedurally barred.

Conclusion

For the aforementioned reasons Appellant requested this court reverse the decision to grant the Defendants motion to dismiss and reverse the decision to deny the plaintiff motion to reinstate. and Schedule this case for a jury trial.

Respectfully,

 _____

Maurio Rivers #232669

January 29th, 2020