

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
DeAndrea Gist Benjamin, Circuit Court Judge

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

RECEIVED  
APR 30 2018  
SC Court of Appeals

Demetrius Mack, ..... Respondent,

v.

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

**BRIEF OF APPELLANT**

Andrew F. Lindemann  
LINDEMANN, DAVIS & HUGHES, P.A.  
5 Calendar Court, Suite 202  
Post Office Box 6923  
Columbia, South Carolina 29260  
(803) 881-8920

Robert D. Garfield  
CROWE LAFAYE, L.L.C.  
500 Taylor Street, Suite 401  
Post Office Box 1149  
Columbia, South Carolina 29202  
(803) 724-5729

*Counsel for Appellant*

**TABLE OF CONTENTS**

Table of Authorities..... ii

Statement of Issues on Appeal ..... 1

Statement of the Case ..... 2

Statement of Facts ..... 5

Arguments ..... 8

    I.    The trial court erred in its analysis of probable cause by failing to consider the evidence supporting probable cause from the perspective of an objectively reasonable officer on the scene..... 8

        A.    Applicable Standard ..... 8

        B.    Legal Analysis..... 12

    II.   The trial court erred in failing to rule as a matter of law that an objectively reasonable police officer in Deputy James Gore's position could have perceived and concluded that the Respondent Demetrius Mack committed an unwanted touching resulting in injuries sustained in the public roadway..... 14

Conclusion..... 22

## TABLE OF AUTHORITIES

### Cases

<i>Beck v. Ohio</i> , 379 U.S. 89 (1964).....	10
<i>In the Matter of the Care and Treatment of Brown</i> , 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007).....	11
<i>Jackson v. City of Abbeville</i> , 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005).....	8, 9
<i>Lapp v. South Carolina Department of Motor Vehicles</i> , 387 S.C. 500, 692 S.E.2d 565 (Ct. App. 2010).....	9
<i>Mack v. Lott</i> , 415 S.C. 22, 780 S.E.2d 761 (2015) .....	8
<i>Ornelas v. United States</i> , 517 U.S. 690 (1996).....	9, 10, 11, 12, 13, 14, 16
<i>Scott v. Harris</i> , 550 U.S. 372 (2007).....	17
<i>State v. Brockman</i> , 339 S.C. 57, 528 S.E.2d 661 (2000) .....	10
<i>State v. Geer</i> , 391 S.C. 179, 705 S.E.2d 441 (Ct. App. 2010).....	11
<i>State v. George</i> , 323 S.C. 496, 476 S.E.2d 903 (1996) .....	8, 9
<i>State v. LaCoste</i> , 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001).....	15
<i>State v. Manning</i> , 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012).....	9

<i>State v. Morris</i> , 395 S.C. 600, 720 S.E.2d 468 (Ct. App. 2011).....	10
<i>State v. Morris</i> , 411 S.C. 571, 769 S.E.2d 854 (2015) .....	11, 12
<i>State v. White</i> , 361 S.C. 407, 605 S.E.2d 540 (2004) .....	15
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	11
<i>Texas v. Brown</i> , 460 U.S. 730 (1983).....	11, 18
<i>United States v. Mayes</i> , 2013 WL 267770 (D.S.C. 2013).....	16

**Statutes and Rules**

S.C. Code Ann. § 40-18-110 .....	6, 7
Rule 52(a), SCRCP.....	3
Rule 52(b), SCRCP .....	3
Rule 59(e), SCRCP.....	3

**Miscellaneous**

S.C. Op. Atty. Gen No. 77-203 (1977) .....	16
S.C. Op. Atty. Gen No. 87-73 (1987) .....	16

## STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in its analysis of probable cause by failing to consider the evidence supporting probable cause from the perspective of an objectively reasonable officer on the scene?
  
- II. Did the trial court err in failing to rule as a matter of law that an objectively reasonable police officer in Deputy James Gore's position could have perceived and concluded that the Appellant Demetrius Mack committed an unwanted touching resulting in injuries sustained in the public roadway?

## STATEMENT OF THE CASE

This is an action for false arrest/imprisonment brought by the Respondent Demetrius Mack against the Appellant Leon Lott, in his official capacity as Sheriff of Richland County. This action arises out of the arrest of Mack on December 6, 2008, 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. 21-28). All of the causes of action except for the false arrest/imprisonment claim were voluntarily dismissed prior to trial. (R. 3-4).

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 4-5, 2012. On April 5, 2012, Judge Benjamin issued a judgment in favor of the Respondent Mack and awarded \$7,500.00 in actual damages. That judgment was memorialized in an order filed April 6, 2012. (R. 5-7).

Sheriff Lott subsequently filed a motion to alter or amend judgment pursuant to Rule 52(b) and/or Rule 59(e), SCRCF. (R. 35-43). That motion was summarily denied in a form order filed May 11, 2012. (R. 8).

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." (R. 395). Sheriff Lott petitioned for rehearing, and that petition was summarily denied.

Thereafter, Sheriff Lott filed a petition for writ of certiorari which was granted in part. After full briefing and oral argument, the Supreme Court dismissed the writ as improvidently granted "since both parties and the trial court agree that the 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." (R. 397). The Supreme Court also ordered that the Court of Appeals' opinion be depublished "[b]ecause the Court of Appeals' language on this issue is arguably unclear." (R. 397).

On remand, Judge Benjamin held a hearing on May 4, 2017, at which she heard additional oral argument from the parties. She thereafter issued a written

order filed July 19, 2017, wherein she set forth findings of fact and conclusions of law and ultimately confirmed her earlier judgment in favor of Mack in the amount of \$7,500.00. (R. 9-19).

## 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. 151-154).

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. 154-155). Mack pursued Williamson and during the course of the pursuit in the direction of Weir Avenue,<sup>1</sup> Mack claims that Williamson tripped and fell under a white vehicle parked on the public roadway. (R. 154-155, 198). Mack testified that he then "grabbed" Williamson, "pulled" him from under the parked vehicle, and placed him in handcuffs. (R. 199, 202-203).

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

---

<sup>1</sup> 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. 345-348).

Avenue. Specifically, they were in the process of placing some subjects in custody for narcotics violations. (R. 111). At that time, these deputies observed some type of commotion taking place at Club Essence, which was approximately forty yards from their location. (R. 111-112). In particular, they observed a subject running from the nightclub's parking lot out into the road with another subject chasing him. (R. 112). 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. 113). Deputy Proffitt witnessed the same events. (R. 272-273).

Deputy Proffitt called for back-up units, and Deputy Stacy Parish, who was in the vicinity, responded. The location of Williamson and the parked vehicle are depicted on Deputy Parish's dashcam video. (R. 358).

Deputy Gore proceeded to the location and spoke with Demetrius Mack to ascertain the nature of the commotion. Mack identified himself as a security guard for Club Essence. Mack explained that the subject running off the property was asked several times to leave and would not do so. Mack then chased the subject off the property and into the roadway. (R. 116).

Deputy Gore asked Mack that, at the point the subject was off the property then why did he continue to chase him into the street. Mack replied that he was detaining him so that law enforcement could place him on trespass notice. Deputy Gore then asked Mack whether he intended to press charges against the subject, and Mack stated that he did not. Deputy Gore then 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. 117-119).

Deputy Gore turned his questioning to the McKenzie Williamson who had been handcuffed by Mack. Williamson informed him that he wished to press charges against Mack. (R. 121). Deputy Gore observed Williamson and noted that he sustained injuries to his hands and face and that he had blood "all over his shirt." (R. 120). Those injuries required ambulatory treatment, and Williamson was subsequently transported to the hospital via Richland County EMS. (R. 121). Deputy Gore (who was a Corporal at the time of these events) instructed Master Deputy Stacy 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 trial court erred in its analysis of probable cause by failing to consider the evidence supporting probable cause from the perspective of an objectively reasonable officer on the scene.**

The Appellant Sheriff Leon Lott contends that Circuit Court Judge DeAndrea Benjamin erred in her analysis of probable cause in that she failed to consider the evidence supporting probable cause from the perspective of an objectively reasonable officer on the scene.

### **A. Applicable Standard**

As the Supreme Court recently explained in this very case, "the 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, 780 S.E.2d 761, 761 (2015). (Emphasis added). In *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005), this Court explained that "[p]robable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime." 623

S.E.2d at 658, *citing State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996). "Probable cause is determined as of the time of the arrest, based on facts and circumstances -- objectively measured -- known to the arresting officer." *Jackson*, 623 S.E.2d at 659. Importantly, "[t]he determination of probable cause is not an academic exercise in hindsight." *Id.*

"The term 'probable cause' does not import absolute certainty." *Lapp v. South Carolina Department of Motor Vehicles*, 387 S.C. 500, 692 S.E.2d 565, 568 (Ct. App. 2010). In fact, "[a] finding of probable cause may be based upon less evidence than would be necessary to support a conviction." *Id.* Thus, it is well settled that probable cause does not turn on an individual's actual guilt or innocence." *State v. Manning*, 400 S.C. 257, 734 S.E.2d 314, 319 (Ct. App. 2012). This Court has previously explained that "[a]lthough the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion." *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656, 660 (Ct. App. 2005).

The 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 United States 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 this Court's opinion in *State v. Morris*, 395 S.C. 600, 720 S.E.2d 468 (Ct. App. 2011), where this 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), the State Supreme Court rejected the *de novo* standard of review from *Ornelas*, but the Court did cite favorably to the "two-step process" for determining probable cause as articulated in that decision. The Supreme 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).

Therefore, the first step of the objective test requires the trial court to determine the "historical facts." As the Supreme Court explained in the landmark case of *Beck v. Ohio*, 379 U.S. 89 (1964), "[w]hen the constitutional validity of an arrest is challenged, it is the function of a court to determine whether *the facts available to the officers at the moment of arrest* would warrant a man of reasonable caution in the belief that an offense has been committed." 379 U.S. at 96.

(Emphasis added) That test was reiterated in another landmark case: "[I]t is imperative that the facts be judged against an objective standard: would *the facts available to the officer at the moment of the seizure* or the search warrant a man of reasonable caution in the belief that the action taken was appropriate?" *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). (Emphasis added) The United States Supreme Court has described this as a "flexible, common sense standard" which "does not demand any showing that such a belief be correct or more likely true than false." *Texas v. Brown*, 460 U.S. 730, 742 (1983).

The appellate courts of this State are in accord: Citing *Texas v. Brown*, this Court has explained that "[i]n regard to the lawfulness of an arrest, probable cause merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that an offense has been committed and the accused committed it." *In the Matter of the Care and Treatment of Brown*, 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007). *See also, State v. Geer*, 391 S.C. 179, 705 S.E.2d 441 (Ct. App. 2010).

Therefore, in determining the "historical facts" as part of the "two-step process" established in *Ornelas*, a court must look at the "facts available to the officer" or, put another way, the facts within the officer's knowledge. Once those "historical facts" are determined by the factfinder, the court must then proceed to the second prong of the analysis and decide "whether [those] historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to

probable cause." *State v. Morris*, 411 S.C. 571, 769 S.E.2d 854, 859 (2015), *citing Ornelas*, 517 U.S. at 696.

## **B. Legal Analysis**

In its opinion in *Mack I*, this Court boiled 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 arrested him, Mack acted without legal authority to make the arrest and would be guilty of assault.

(R. 394). This Court then remanded "for more detailed findings as to whether Mack met his burden of proving Gore did not have probable cause to arrest him."

(R. 395). Based thereon, the trial court on remand was required to determine whether an *objectively reasonable police officer* in Deputy Gore's position would believe that Mack was off the Club Essence property at the time he arrested Williamson.

To make that determination, Judge Benjamin was required to apply an objective test, namely the "two-step process" established in *Ornelas*. Judge Benjamin was required to first determine the "historical facts" based on the evidence, those being the facts that were reasonably available to the officer at the time of arrest. It is those facts that must then be viewed from the standpoint of an

objectively reasonable police officer to determine whether those facts give rise to probable cause.

However, Judge Benjamin in her order filed July 19, 2017, never engaged in the proper analysis. The order does describe the "two-step process" established in *Ornelas* in the portion of the order captioned "Applicable Standard"; however, Judge Benjamin never engages in the second prong of the analysis. In effect, she never makes a determination whether an objectively reasonable police officer in Deputy Gore's position could have reasonably perceived that Mack was off the Club Essence property at the time he arrested Williamson. Indeed, in the "Findings of Fact" and "Conclusions of Law" sections of the order, Judge Benjamin never makes that determination *nor even addresses* what an "objectively reasonable police officer" would have reasonably perceived or believed with respect to the arrest of Williamson. Judge Benjamin did make a determination that Deputy Gore's "testimony is not believable" and hence was "not credible." (R. 18). 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 probable cause for the arrest. Instead, the court was required to still determine what facts were reasonably available to the officer at the time of arrest, those being the "historical facts," and it is those facts that must then be viewed from the perspective of an objectively reasonable police officer to determine whether those facts give rise to probable cause.

In sum, Judge Benjamin erred in failing to apply the second prong of the *Ornelas* test. She failed to make findings and conclusions on that prong. She failed to give any consideration to what an "objectively reasonable police officer" could have perceived about the arrest and whether those perceptions were sufficient to establish probable cause.

**II. The trial court erred in failing to rule as a matter of law that an objectively reasonable police officer in Deputy James Gore's position could have perceived and concluded that the Respondent Demetrius Mack committed an unwanted touching resulting in injuries sustained in the public roadway.**

Sheriff Lott submits that another remand is not necessary in order to determine whether an objectively reasonable police officer in Deputy Gore's position would believe that Mack was off the Club Essence property at the time he arrested Williamson. Throughout this litigation, Sheriff Lott has taken the position, consistent with the motions for nonsuit made at the close of Mack's case-in-chief and again at the close of all the evidence as well as after remand, that 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. That evidence includes the dashcam video, which given its very nature, should be deemed undisputed. In other words, even if the evidence is

viewed in a light most favorable to Mack, the Sheriff submits that he is still entitled to a judgment in his favor, and this Court is requested to so rule.

Without dispute, the Respondent Mack was arrested by Deputy Gore for simple assault. The Supreme Court has explained that simple assault is "an unlawful act of violent injury to another, unaccompanied by any circumstances of aggravation." *State v. White*, 361 S.C. 407, 605 S.E.2d 540, 543 (2004). Simple assault has also been defined as "any touching of the person of an individual in a rude or angry manner, without justification." *State v. LaCoste*, 347 S.C. 153, 553 S.E.2d 464, 471 (Ct. App. 2001).

The Sheriff submits that the undisputed evidence at trial establishes as a matter of law that probable cause existed to believe that Mack committed a simple assault upon the victim, McKenzie Williamson, within the public roadway. As a private security officer, Mack enjoyed the arrest powers granted to a sheriff's deputy, but that power may only be exercised on the property on which he is employed. *See*, S.C. Code Ann. § 40-18-110.<sup>2</sup> Thus, if Mack took action beyond the property that he was hired to protect, such as in the public roadway, then he was without jurisdiction and beyond the scope and protection of Section 40-18-

---

<sup>2</sup> 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).

To reiterate, to determine whether probable cause existed for the arrest of Williamson, the court must apply the "two-step process" established in *Ornelas*. Thus, the court must first determine what the historical facts were, and based thereon, then determine whether an objectively reasonable police officer in Deputy Gore's position may have reasonably perceived the arrest of Williamson by Mack to have occurred in the public street. If an objectively reasonable officer could have perceived the arrest as occurring in the street, then probable cause existed for Mack's arrest, and judgment should be entered for Sheriff Lott. Judge Benjamin, however, erred in failing to engage in that analysis.

Importantly, Mack conceded in sworn testimony that he was actively pursuing McKenzie Williamson on foot, that Williamson fell under a parked vehicle, that the vehicle was partially situated in the public roadway, that Mack then proceeded to physically "grab" and "pull" Williamson out from under the vehicle, and that Mack then restrained Williamson by handcuffing him. (R. 154-155, 198-203).

---

<sup>3</sup> Sheriff Lott testified that that South Carolina Private Detective and Private Security Agency Act does not include a provision for a security guard in hot pursuit. (R. 306). That testimony is consistent with case law and Attorney General Opinions on the issue. In *United States v. Mayes*, 2013 WL 267770 (D.S.C. 2013), U.S. District Judge David C. Norton explained that private security guards have no authority to pursue and/or arrest offenders outside the property on which the guards are employed. 2013 WL 267770, \*5, n.8. Judge Norton further explained that "Opinions issued by the South Carolina Attorney General have advised that private security officers licensed by SLED do not have the power to engage in 'hot pursuit' of offenders away from the private property they are assigned to guard." 2013 WL 267770, \*6, citing S.C. Op. Atty. Gen No. 87-73 (1987). See also, S.C. Op. Atty. Gen No. 77-203 (1977).

In addition to Mack's testimony, the Court has the benefit of the dashcam video from Deputy Stacy Parish's vehicle.<sup>4</sup> Deputy Parish was responding to a call for backup at a Weir Avenue location past Club Essence where other deputies were working a narcotics arrest. With her dashcam 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. 238, 358). When the video is shot, Williamson had already been pulled from underneath the vehicle and was handcuffed. (R. 239, 358). 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. That cannot be reasonably disputed. In fact, Mack's counsel conceded as much with his questioning of Deputy Parish at trial, as the following examples show:

Q. And that white vehicle was half on the side of the road and a half on the property of 109 Weir Avenue?

---

<sup>4</sup> The United States Supreme Court's decision in *Scott v. Harris*, 550 U.S. 372 (2007), is instructive on the controlling effect of video evidence over inconsistent witness testimony. In that case, the Supreme Court had the benefit of a videotape of the high-speed police pursuit at issue. The Court concluded that the videotape contradicted the version of events presented by the plaintiff. As a result, the Court held as follows: "Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape." 550 U.S. at 380-381. The same standard is equally applicable in the case at bar. This Court is urged to view the critical facts as they are depicted by the indisputable video evidence.

(R. 217).

Q. And when you arrived on the scene, Mr. Williamson was half on the grass of 109 Weir Avenue and half on the roadway, is that correct?

(R. 220).

Q. Officer Parish, I believe in your testimony with me you said that the white vehicle was all the way in the road. Would you agree with me that that video depicts it half on the grass and a half on the side of the road?

(R. 244).

Thus, Mack took the position at trial that the white vehicle was halfway in the road and that Williamson was also positioned at least halfway in the road. These are critical concessions, and ones that are also supported by the dashcam video, but were disregarded in error by Judge Benjamin.<sup>5</sup>

In effect, by Mack's own admission and as supported by video evidence, Williamson appeared to have been placed under arrest while lying in the street. Importantly, there is no evidence to suggest that Williamson was arrested on the

---

<sup>5</sup> In her order filed July 19, 2017, Judge Benjamin discusses the dashcam video and states that "the car appears to be primarily parked in the grass." (R. 16). That does not negate the Sheriff's position, as well as Mack's position at trial, that the car was partially in the street. That finding also does not discuss nor negate the fact that an objectively reasonable police officer located forty yards away could reasonably perceive the vehicle as being partially in the roadway and that the arrest of Williamson occurred in the roadway. To reiterate, the United States Supreme Court has explained that a probable cause determination "does not demand any showing that [the officer's] belief be correct or more likely true than false." *Texas v. Brown*, 460 U.S. 730, 742 (1983). Thus, contrary to Judge Benjamin's analysis, for purposes of determining probable cause, it is immaterial whether the arrest of Williamson was actually made in the grass or the roadway. What is material is that an objectively reasonable officer could have perceived the arrest under the facts as established as occurring in the roadway.

grass and then moved into the street. Instead, by Mack's own account, he pulled Williamson from under the white car that was positioned halfway in the street, 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:

Q. ... And that is when you handcuffed him?

A. That is when the bouncers who came behind me to assist me said, go ahead and put the cuffs on him. And I cuffed him and pulled him out -- *after they pulled him out from under the car, I put the cuffs on him and we held him right there until one of deputies came down Weir Avenue, which was Deputy Parish*. And one of the guys flagged her down where I held him right here.

Q. Okay.

A. Uh-huh.

Q. *You didn't move him after he came out from under the car, did you?*

A. *No.*

Q. *After you put handcuffs on him?*

A. *No.*

(R. 156). (Emphasis added).

This is important and demonstrates why Sheriff Lott is entitled to judgment as a matter of law. Even assuming the historical facts are as described by Mack and as confirmed on the dashcam video, an objectively reasonable officer in

Deputy Gore's position, which was forty yards down the street (R. 113), would reasonably perceive that the arrest of Williamson occurred in the public street. Williamson could be seen handcuffed and laying at least partially in the roadway. That has been conceded. Williamson was arrested and handcuffed where he lay. That has been conceded. Could an objectively reasonable officer viewing this from forty yards away conclude that the arrest occurred in the street? The answer is obviously "yes."

That conclusion is further supported by the physical evidence, specifically the "road rash" observed by Deputy Gore on Williamson when he came to the immediate scene. The road rash is consistent with a person coming in contact with the asphalt of a roadway. Judge Benjamin does not mention the road rash evidence nor gives any consideration to how that information could be perceived by an objectively reasonable police officer. The Sheriff submits that the observation of road rash, in fact, provided additional corroborating evidence (i.e., historical fact) that an objectively reasonable officer in Deputy Gore's position would use to conclude that the arrest occurred in the public roadway and not on the grass adjoining the roadway.

In sum, as Sheriff Lott argued at trial, even if the historical facts were drawn entirely from Mack's account and the dashcam video, the trial court should have still found that an objectively reasonable police officer observing the events would conclude that Mack's arrest of Williamson occurred at least partially in the

roadway and, as a result, outside of Mack's jurisdiction. Stated differently, an objectively reasonable police officer in Deputy Gore's position could have perceived and concluded that Mack committed an unwanted touching resulting in injuries sustained in the public roadway. However, in this instance, Judge Benjamin erred in not considering what an objectively reasonable officer would have perceived based upon the historical facts.

Thus, based on the undisputed evidence contained in the record and concessions Mack made in his sworn testimony, there can be no question that probable cause existed for Mack's arrest. For that reason, the Court should conclude as a matter of law that Mack failed to prove his cause of action for false arrest/imprisonment.<sup>6</sup>

---

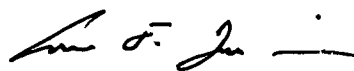
<sup>6</sup> In her order filed July 19, 2017, Judge Benjamin concludes that "[t]he dashcam video of the incident is not determinative of whether the incident took place on private property or in the road." (R. 18). She goes on to state that "[t]his is consistent with the opinions from the Court of Appeals and the Supreme Court." (R. 18). She claims that both appellate courts declined to find the video to be "indisputable." (R. 18). That is absolutely incorrect. There is no mention whatsoever of the dashcam video in either of the appellate courts' opinions issued prior to remand. Both appellate courts chose to remand for further fact-finding rather than addressing the merits of Mack's claim. Thus, there was never a determination of the merits on appeal and no discussion of the dashcam video and what it shows or whether it is or is not "indisputable."

**CONCLUSION**

Based on the foregoing discussion and analysis, the Appellant Leon Lott respectfully requests that this Court reverse the orders of Circuit Court Judge DeAndrea G. Benjamin and remand with instructions that judgment be entered in favor of Sheriff Lott.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY:   
ANDREW F. LINDEMANN #13030  
5 Calendar Court, Suite 202  
Post Office Box 6923  
Columbia, South Carolina 29260  
(803) 881-8921

ROBERT D. GARFIELD #6557  
Crowe LaFave, LLC  
500 Taylor Street , Suite 401  
Post Office Box 1149  
Columbia, South Carolina 29202  
(803) 724-5728

*Counsel for Appellant Leon Lott*

Columbia, South Carolina

April 30, 2018

---

CERTIFICATE OF COUNSEL

---

RECEIVED

APR 30 2018

SC Court of Appeals

The undersigned counsel for the Appellant Leon Lott certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

LINDEMANN, DAVIS & HUGHES, P.A.

BY: 

ANDREW F. LINDEMANN #13030  
5 Calendar Court, Suite 202  
Post Office Box 6923  
Columbia, South Carolina 29260  
(803) 881-8921

ROBERT D. GARFIELD #6557  
Crowe LaFave, LLC  
500 Taylor Street, Suite 401  
Post Office Box 1149  
Columbia, South Carolina 29202  
(803) 724-5728

*Counsel for Appellant Leon Lott*

Columbia, South Carolina

April 30, 2018

---

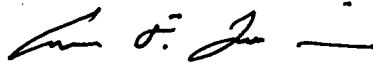
CERTIFICATE OF COMPLIANCE

---

**RECEIVED**  
APR 30 2018  
SC Court of Appeals

The undersigned counsel for the Appellant Leon Lott certifies that the Final Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

LINDEMANN, DAVIS & HUGHES, P.A.

BY:   
ANDREW F. LINDEMANN #13030  
5 Calendar Court, Suite 202  
Post Office Box 6923  
Columbia, South Carolina 29260  
(803) 881-8921

ROBERT D. GARFIELD #6557  
Crowe LaFave, LLC  
500 Taylor Street , Suite 401  
Post Office Box 1149  
Columbia, South Carolina 29202  
(803) 724-5728

*Counsel for Appellant Leon Lott*

Columbia, South Carolina

April 30, 2018