

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2010-CP-40-5214
Appellate Case No. 2022-000506

Demetrius Mack,.....Respondent,

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. THE COURT OF APPEALS CORRECTLY HELD THE TRIAL COURT PROPERLY CONSIDERED THE EVIDENCE PRESENTED AS SUPPORT FOR PROBABLE CAUSE AND FOUND THERE WAS NO PROBABLE CAUSE FOR MACK'S ARREST.

- II. THE COURT OF APPEALS CORRECTLY RULED THE TRIAL COURT WAS NOT REQUIRED TO FIND 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. The verdict was rendered over a decade ago.

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. (R. p.150, lines 1-6). Club Essence was a hip-hop club frequented by young people. (R. p.151, lines 12-14). Mack described the club as a dangerous place, frequented by hostile gang members who drank cheap liquor. (R. p.151, lines 15-21).

On the night of the incident, Mack encountered 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. (R. p.152, line 15 – p.153, line 2). According to Mack's observations when he arrived in the foyer, Williamson tried to walk right past the lady collecting entrance fees without paying. (R. p.152, lines 19-20). The lady pointed Williamson out to Mack and told Mack he had entered without paying. (R. p.152, lines 19-20). Mack told Williamson to leave if he was not going to pay the entrance fee, and he did. (R. p.152, line 24 – p.153, line 1).

Later, Williamson tried to sneak into the club for free again. (R. p.153, lines 3-9). He was caught once again, and Mack escorted him off the premises. (R. p.153, lines 8-13). Failing to get the message, Williamson tried to sneak into the club for free a third time. (R. p.153, lines 17-20). A different security guard caught him and began to escort him out of the club. (R. p.153, lines 18-20).

Williamson became belligerent. (R. p.153, line 22). He stood in the middle of Weir Avenue, a street next to Club Essence, and started throwing gang signs at the security guards. (R. p.153, lines 22-24). Mack was standing at the door to the club with the owner and watched Williamson making a scene. (R. p.154, lines 1-3). In addition to gang signs, Williamson began making threatening gestures about shooting at the club. (R. p.154, lines 6-11).

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. (R. p.154, lines 15-16). 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. (R. p.154, lines 23-25). Mack had warned Williamson earlier that he would arrest him if he came back to Club Essence. (R. p.155, lines 1-3).

Williamson took off running down Weir Avenue. (R. p.155, lines 4-13) Mack saw him change direction when he realized sheriff's deputies were at the end of Weir Avenue. (R. p.155, lines 14-18). As he changed direction, he hit a car, slipped, and fell under the car. (R. p.155, lines 19-24). Williamson fell on the property located at 109 Weir Avenue, which was also under his jurisdiction as a security guard that night. (R. p.156, lines 19-21). Mack was only able to catch Williamson because of the fall. (R. p.156, lines 22-25).

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. (R. p.157, lines 11-12). 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. (R. p.157, lines 14-15; 23-25). He

told Parish he wanted Williamson on trespass notice so he could be arrested if he insisted on returning to the club. (R. p.157, lines 15-18).

Deputy Gore then arrived on the scene and asked what was happening. (R. p.158, lines 11-13). Gore immediately told Mack that he and the sheriff's department were tired of private security guards not showing up for court hearings. (R. p.158, lines 14-18). Mack was confused about Gore's attitude and told Gore he was just trying to let them know what happened with Williamson. (R. p.158, lines 19-24). Mack described Williamson's earlier behavior to Gore. (R. p.159, lines 1-2). 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. (R. p.159, lines 4-9).

As the scene calmed down, Gore walked off to talk privately with Parish. (R. p.159, lines 16-17). He returned and told Mack it was Mack who was going to be arrested. (R. p.159, lines 17-19). Obviously surprised, Mack asked what he had done to result in him being the one under arrest, rather than Williamson. (R. p.159, lines 20-22). Gore claimed Mack was out of his jurisdiction and had committed a simple assault when he handcuffed Williamson. (R. p.159, lines 23-25).

Mack was shocked at this turn of events, considering the fact he detained Williamson on property over which he had jurisdiction as a private security guard. (R. p.160, lines 1-8). Mack attempted to have Gore talk with someone from his company, but Gore refused. (R. p.160, lines 9-14). Mack called his supervisor, who wanted Gore to wait until he arrived before arresting Mack and taking him to jail. (R. p.160, line 19 – p.161, line 2). After talking to Williamson, Gore handcuffed Mack and placed him in the back of a patrol car. (R. p.161, lines 13-24)

Mack was taken to jail, where he remained for the night and most of the rest of the day. (R. p.162, line 2 – p.165, line 14).

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

ARGUMENTS

I. THE COURT OF APPEALS CORRECTLY HELD THE TRIAL COURT PROPERLY CONSIDERED THE EVIDENCE PRESENTED AS SUPPORT FOR PROBABLE CAUSE AND FOUND THERE WAS NO PROBABLE CAUSE FOR MACK'S ARREST.

The Court of Appeals 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. (R. p.76, lines 21-23; p.80, lines 2-5). 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. (R. p.217, lines 9-17, p.358).

Sheriff Lott has repeatedly argued that the trial court's finding that 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 probable cause for the arrest.”

Petition for Writ of Certiorari, p.11. 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’ stories leave nothing to support their claim of probable cause.

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 Mack 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 Sheriff Lott’s position, the judge correctly applied the proper standard for determining probable cause in this case. The Petitioner 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 this is incorrect.

The trial court cited the Court of Appeals 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 this 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).

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. (R. p.17) The trial court found Deputy Parish did not see the arrest and could not offer credible testimony as to where the arrest took place. (R. p.16). Parish testified Williamson was in the street when she arrived. (R. p.217, lines 7-17). The trial court specifically found the objective evidence was contrary to her testimony. Logically, a court should not rule on facts it finds did not occur.

The trial court viewed the videotape from Parish's dashcam, as well as several pictures introduced at the remand hearing. (R. p.16) As she clearly stated in her order, none of those exhibits supported the argument for probable cause. 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. (R. p.16)

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 Petitioner 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.

The second prong of the *Ornelas* test, as the Petitioner correctly states, is simply whether the historical facts, viewed by an objectively reasonable police officer, would support probable cause. *Ornelas v. United States*, 517 U.S. 690, 696 (1996). The Court of Appeals correctly analyzed the trial court's ruling, noting that the only objective historical facts were the events described by Mack. *Mack v. Lott*, 2022 S.C. Unpub. LEXIS 36, *10-11 (2022). This is clearly set out in the trial court's order. (R. 18).

The Petitioner seems to ask this Court to order the trial court to say the exact same thing it said in its order, but to use the exact quote “from the standpoint of an objectively reasonable police officer,” which is entirely unnecessary. When the trial court uses the term “objective information the officer possessed” there is nothing unclear about its statement, contrary to Petitioner’s argument. The facts claimed by the Petitioner were disregarded as not credible. All that was left for the probable cause determination were the facts relayed by Mack, which did not support probable cause.

The trial court examined all the facts, determined which facts were credible and objective, and reached the correct conclusion. The Court of Appeals properly affirmed that decision and there is no need for this Court to grant a writ of certiorari, as there was no error in the trial court’s ruling or the opinion by the Court of Appeals.

II. THE COURT OF APPEALS CORRECTLY RULED THE TRIAL COURT WAS NOT REQUIRED TO FIND 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 Petitioner also claims the existence of probable cause should have been determined as a matter of law. This case has been tried, appealed all the way through the appellate system, argued in both the Court of Appeals and the Supreme Court, heard again in the Court of Common Pleas, and decided once more by the Court of Appeals. 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 Petitioner is arguing that the judge should have granted a motion for an involuntary nonsuit. Though the motion was made as one for a directed verdict, there is no real difference between the analysis. A motion for nonsuit “admits the truth of the evidence of the party against whom the challenge is made and all inferences reasonably

drawn therefrom and requires that the evidence must be interpreted most strongly against the challenger and in the light most favorable to the opposing party.” *Hanselmann v. McCardle*, 275 S.C. 46, 48 (1980).

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.* There is no real difference between a nonsuit and a directed verdict motion in this case, as the analysis is the same.

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. Even if considered as a “nonsuit motion” the same result is reached; the very motion concedes the truthfulness of Mack’s testimony. *Hanselmann, supra*. This Court is bound by the same rule. If there is any evidence to support the judge’s denial of a directed verdict or a nonsuit, it should be upheld. The testimony of Mack alone precluded the trial judge from granting a directed verdict or a nonsuit.

The Petitioner 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 questioning of the officers on cross-examination, cited in the petition, is irrelevant to this decision. Petitioner cites cross-examination by Mack's counsel as somehow creating a factual concession that defeats Mack's position. Counsel is unable to find a case where an evidentiary ruling was made on the basis of a lawyer's questioning, as opposed to actual evidence. There is no factual concession here and nothing to change the outcome of the Court of Appeals' opinion.

The Petitioner 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. 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 deputies who testified at trial. 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.

The Petitioner's story in this case was blatantly contradicted by the record. Nothing in the dashcam video changes that fact. The Court cannot endorse a nonsuit motion (or a directed verdict) in favor of a party that elected to lie during a trial.

The facts of the case not only warranted rejection of the motion for directed verdict, they clearly support the judge's verdict. 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 deputies' version was not.

Contrary to the Petitioner'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

Mack's argument has not changed over the decade this case has been on appeal: the deputies' testimony lacked credibility. The trial court was within its power to make that finding. There is nothing to correct in the Court of Appeals' opinion. It reached the right conclusion, as did the trial court.

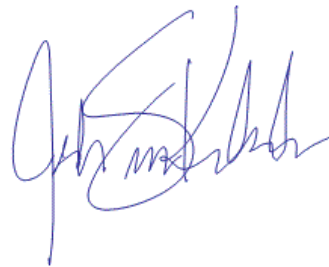
Demetrius Mack was faced with an unruly and threatening gangster the night of December 6, 2008. Williamson had no respect for Club Essence or those charged with protecting it, as evidenced by his repeated attempts to evade the entrance fee and his implicit threats of gangland retaliation and explicit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

Rather than arrest the real troublemaker, the Respondent'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 does not support probable cause.

Both the trial court and the Court of Appeals reached the correct decision, supported by credible evidence, and in line with applicable South Carolina law. The petition for a writ of certiorari should be denied.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Joshua Snow Kendrick".

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