

STATE OF MICHIGAN
COURT OF APPEALS

TROY ORLANDO BRASSELL,
Plaintiff-Appellee,

UNPUBLISHED
March 28, 2006

v

No. 252749
Wayne Circuit Court
LC No. 02-242387-NI

OFFICER LABAN,
Defendant-Appellant,

and

CITY OF TAYLOR and OFFICER TED
MICHOWSKI,
Defendants.

Before: Whitbeck, C.J., and Saad and O’Connell, JJ.

O’CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority’s reasoning regarding Officer Laban’s use of his squad car. However, the majority and the trial court failed to acknowledge that the trial court was authorized, in fact required, to find that plaintiff’s total lack of credibility prevented him from raising a material issue of fact. Therefore, I respectfully dissent.

“In a suit against an officer for an alleged violation of a constitutional right,’ . . . the officer may invoke the defense of qualified immunity to avoid the burden of *standing trial*.” *Hojeije v Dep’t of Treasury*, 263 Mich App 295, 303; 688 NW2d 512 (2004) (emphasis added), quoting *Saucier v Katz*, 533 US 194, 200; 121 S Ct 2151; 150 L Ed 2d 272 (2001). For this reason, the United States Supreme Court has often correctly emphasized “the importance of resolving immunity questions at the earliest possible stage in litigation.” *Hunter v Bryant*, 502 US 224, 227; 112 S Ct 534; 116 L Ed 2d 589 (1991). Immunity from trial provides only superficial protection if a criminal plaintiff may levy any unsupported and unbelievable allegation against his arresting officer and still obtain a full jury trial on the basis of preposterous abuse claims.

After a failed attempt to steal a television, plaintiff led police on a high-speed car chase, during which he caused collisions with several other vehicles but continued to speed away. After he jumped the curb, lost control of his car, reentered the roadway, and ran another car into a

telephone pole, his car spun to a stop in the middle of the road. He followed his uncle out the passenger side door and tried to run away, but when he tried to cut in front of the pursuing squad car, he hit the car's panel on the front right quarter. Although he claims disorientation after hitting his head, he vaguely remembers struggling to his feet, only to be tackled by Officer Laban and slammed again to the ground. At this point, his recollections crystallize, and he claims that he instantly said, "All right. You've got me. You've got me." Nevertheless, he also claims, "I turned my head over my shoulder behind me, and he punched me in my face, in my right jaw, telling me – I was saying, 'Help me. Help me.' He was saying, 'We don't help n-----s.'" According to plaintiff, Officer Laban then handcuffed him, and plaintiff inexplicably turned his head again toward the officer and said, "Hey." At this point in plaintiff's narrative, he recalls that Officer Laban punched him again in the back of the head before lifting him to his feet by the handcuffs.

To believe plaintiff is to believe that while he was saying, "You've got me," he was also shouting, "Help me," which occasioned Officer Laban to punch him in the face and use a racial epithet. One would also have to believe that plaintiff's reaction to being hit was to allow himself to be handcuffed and only then raise the complaint that preceded the second blow. According to plaintiff, none of the punches or other mistreatment caused him visible injury or persuaded him to complain to hospital personnel. Interestingly, plaintiff's account does not even mention that he submitted his wrists to Officer Laban, but instead relies totally on allegations regarding Officer Laban's malicious demeanor and clear misconduct. While absolutely unbelievable under the circumstances, the trial judge found that the allegations sufficed to create a credibility contest, which he had no authority to resolve. I disagree.

Although a trial court is ordinarily restricted from making any factual findings or resolving any credibility disputes, *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994), a trial court should never lose track of the central issue: Does a genuine issue of material fact exist? MCR 2.116(C)(10). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). Therefore, a court is never required to abandon reason for a plaintiff's sake or turn a blind eye to critical facts that utterly destroy a plaintiff's credibility, especially when the real issue before the court is whether allowing the baseless claim to continue contravenes the defendant's immunity. Moreover, the trial court must consider all the factual evidence in the record, even the undisputed (or unreasonably disputed) evidence that undermines plaintiff's claim. In the case at bar, the only way the trial court could find a genuine issue of material fact was to disregard the countless absurdities to which plaintiff testified.¹

¹ Plaintiff's testimony lands far afield of common sense and even bends a few laws of nature. For example, he testified that while his car was spinning in an intersection from one collision, Officer Laban rammed it with his squad car and spun it the other way. Nevertheless, as plaintiff scrambled out of the passenger side of his car, Officer Laban was able to back up, drive around plaintiff's car, and run down the uninjured plaintiff from behind, roughly five feet away from his car. When opposing counsel sought clarification of this odd set of circumstances, plaintiff
(continued...)

Because any doubt of Officer Laban's veracity would be unreasonable in this case, and no reasonable mind could accept plaintiff's version of events as truth, I would recognize defendant-appellant's immunity and remand for dismissal of all counts.

/s/ Peter D. O'Connell

(...continued)

stated, "I don't know how they did it, but they were still behind me when I got out and tried to run." Although he claims Officer Laban hit both his ankles from behind, he did not land on the squad car's hood, but flipped up into the air, landing on his face while trying to break his fall with his outstretched hand. He also claimed that he scarred both shoulders in the incident because he "had to tumble." Turning to damages, he claimed that he could not bend the thumb he used to break his fall and could not grip anything. He also could not play any basketball because his ankles caused him "excruciating" pain. Nevertheless, he never went to a doctor to resolve the issue and has worked in construction "under the table" for a relative's company while he lives with his mother and stepfather. According to plaintiff, the scars on his forehead and shoulders prematurely extinguished his promising modeling career, even though he failed to demonstrate any earned income or anticipated opportunity in that profession. Most emphatically, plaintiff asserts that the crack pipe found in his back seat was not his. In sum, with a few choice words plaintiff is successfully parlaying a clumsy, fruitless, and costly attempt to steal a television into a grand heist of Taylor's treasury.