

STATE OF MICHIGAN
COURT OF APPEALS

ROYAL ALEXANDER,

Plaintiff-Appellant,

v

BRETT CASSIDY, ROBERT FROST, and
BLAKE HIBEN,

Defendants-Appellees,

and

NATE GUIGER,

Defendant.

UNPUBLISHED

November 29, 2012

No. 301860

Genesee Circuit Court

LC No. 09-092311-CZ

Before: MURPHY, C.J., and O'CONNELL and WHITBECK, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. The Michigan Supreme Court remand order in this case requires this Court to address the officers' claims of immunity against plaintiff Royal Alexander's claims of excessive force and assault and battery. The majority concludes that there are genuine issues of material fact on the immunity claims under state and federal law. I agree, but only with regard to the police officers' acts that allegedly occurred while plaintiff was on the ground. Accordingly, I would affirm the trial court's summary disposition order.

The trial court determined that the incident at issue had two phases: first, the arrest; and second, the police officers' actions after the arrest while plaintiff was on the ground. In essence, the trial court determined that the police officers have qualified immunity from plaintiff's claims arising from the first phase of the incident, but that there is a question of fact on whether the police officers have qualified immunity for plaintiff's claims arising from the second phase.

I agree with the trial court that the police officers have qualified immunity for claims arising from plaintiff's arrest, because the officers did not use excessive force to secure plaintiff for arrest. Police officers must be given some latitude in effectuating an arrest; otherwise, anyone arrested could claim excessive force in a myriad of ways. But, I also agree with the majority opinion, and the trial court, that questions of fact exist on whether the officers used

excessive force in the second phase of the incident, i.e., the phase while plaintiff was on the ground.

I would affirm the well-reasoned decision of the trial court.

/s/ Peter D. O'Connell