

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

ROLAND AYRES,)	
)	
Appellant/Plaintiff-Below,)	
)	
v.)	C. A. No. N13A-12-001 FSS
)	
TROOPER YELDELL,)	
Individually and as Agent)	
for the DELAWARE STATE)	
POLICE and the STATE OF)	
DELAWARE,)	
)	
Appellees/Defendants-Below.)	

Submitted: November 18, 2014
Decided: February 27, 2015

**CORRECTED¹
MEMORANDUM OPINION AND ORDER**

Upon Appeal from the Court of Common Pleas - *AFFIRMED*.

SILVERMAN, J.

¹Corrected as to page 8 only - date changed from November 13, 2014 to November 13, 2013.

Plaintiff was minding his own business, ordering breakfast in a fast-food restaurant when a police officer suddenly confronted him. With little warning, the officer took Plaintiff to the floor, handcuffed him and, in the process, allegedly injured him. As it happened, the police officer was searching for a suspect in an attempted armed robbery that had occurred shortly before and nearby. The officer, relying on a broadcast that the suspect had been seen entering the restaurant, incorrectly assumed Plaintiff was the robber. So, the officer acted first and asked questions later. Everyone now agrees, as Plaintiff puts it, “[Plaintiff] was simply in the wrong place at the wrong time.” Thus, on its face, Plaintiff’s complaint was hardly frivolous.

Plaintiff sued the police officer, the Delaware State Police, and the State of Delaware, alleging excessive force, assault and battery, intentional infliction of emotional distress, false imprisonment, and violation of Plaintiff’s civil rights under color of law.² The Court of Common Pleas granted partial summary judgment on the false imprisonment and civil rights claims. The rest were heard in a one day, bench trial ending in a verdict for Defendants, finding the officer’s use of force was reasonable under the circumstances and, therefore, justified. That finding eliminated

² 42 U.S.C. § 1983.

all of Plaintiff's claims as they allege, one way or another, that the police officer acted unreasonably. Plaintiff perfected a timely appeal.³

In summary, this is a textbook example where an appellate court is asked to re-weigh a lower court's verdict in a case that turned on its facts and could have gone either way. Having lost at trial, Plaintiff now presents the facts in a light favorable to him, arguing that his is the only reasonable way to view the evidence.

It is axiomatic, however, that on appeal the court views the record in a reasonable light most favorable to the party who won at trial. The court has reviewed the record carefully in the proper light. While Plaintiff is correct that there was sufficient evidence to support a verdict in his favor had the trier of fact seen it Plaintiff's way, the evidence also supported Defendants' verdict.

The core dispute concerns the police officer's hurried decision to manhandle and handcuff Plaintiff. Among others, the trial court saw Plaintiff and the officer testify. It decided who was more believable when the testimony was in conflict, and it concluded from all the evidence that the officer's conduct was in the line of duty and reasonable. As discussed in the trial court's opinion and below, the verdict was based on substantial evidence and a correct view of the law. Accordingly, the verdict is safe.

³ Super. Ct. Civ. R. 72(b).

I.

As mentioned, this unfortunate incident began with an attempted robbery at knife point on March 20, 2009 at 8:19 a.m., in the area around the Talleyville firehouse. The initial police broadcasts said the victim may have been stabbed at Chuck E. Cheese's® on Silverside Road, and the suspect was seen entering the nearby parking lot of the Arby's® across from the firehouse. A later broadcast from the fireboard also included a general description of the suspect and his clothing, including a white hat, dark pants, and tan Timberland® boots. There is, however, a disconnect between the description the victim called-in and the description on which Trooper Yeldell relied. The victim reported that the suspect "had a black hoodie on and blue jeans, and a white T-shirt underneath."

Based on the record, this court believes the description on which Trooper Yeldell relied came from someone at the firehouse who heard the initial police dispatch, saw Plaintiff entering the Arby's® and who then incorrectly assumed Plaintiff was the suspect. Thus, Trooper Yeldell correctly matched Plaintiff with the person incorrectly described as the suspect. That surmise, however, is not dispositive.

The dispositive facts are that in several, distinct ways, Plaintiff matched the suspect's description on which Trooper Yeldell relied. Plaintiff, for example, was wearing a white hat, dark pants, and the tan boots, as described. Trooper Yeldell's

belief that Plaintiff was the suspect was reenforced, albeit somewhat subjectively, by the officer's observations in the restaurant. Most significantly, no one else matched the description, and Plaintiff's behavior was "suspicious." His interaction with the counter-person looked "awkward." Also, the officer could not see Plaintiff's left hand. The officer's concern that Plaintiff may have been armed seems somewhat justified as the officer later found a box cutter knife with a "three or four inch" blade in Plaintiff's pocket.

As the uniformed officer entered the restaurant, he quickly walked directly to Plaintiff. At 20 feet, as he closed the gap between them, Trooper Yeldell announced, "Delaware State Police. Get on the ground." Plaintiff turned to him and "squared up." The officer grabbed Plaintiff by the right shoulder and the back of his arm. Using upper body strength, the officer took Plaintiff to the floor. The officer made Plaintiff unclench his left fist. As he stood over him, the officer had Plaintiff roll over, and putting his knee into Plaintiff's back, the officer handcuffed Plaintiff. Plaintiff was on the tile floor for 30 to 40 seconds. Then, after Plaintiff was back on his feet, he told the officer about the knife, which the officer took from him. (The fact that Plaintiff had a knife turned out to be yet another unfortunate coincidence.)

Within minutes of the confrontation, Plaintiff was removed in a marked police car. He was un-handcuffed, shown to the complaining witness, and promptly cleared as a suspect. Although it is unimportant here, it bears mention that once Plaintiff was cleared and he told the officer he was uninjured, Trooper Yeldell explained why Plaintiff had been taken into custody. Trooper Yeldell apologized for the inconvenience, offered to drive Plaintiff back to the restaurant, pay for his breakfast, and give him a ride to work, which Plaintiff declined. The officer also gave Plaintiff a bye for carrying a concealed dangerous instrument. On his own, Plaintiff jogged a block and a half back to the restaurant.

More to the point, the officer testified about his reasons for taking Plaintiff to the floor and handcuffing him with almost no warning and little resistance from Plaintiff. The officer suspected Plaintiff had just attempted an armed robbery. The officer did not want to draw his service weapon and risk shooting someone in the restaurant. Nor did he want to give a suspect the chance to take a hostage at knife point. On balance, even if it did not pan out, the officer had probable cause to believe Plaintiff had committed a violent felony minutes before the officer took him into custody using objectively reasonable and, therefore, justified force.

II.

The court appreciates that some evidence favors Plaintiff beyond the obvious. Plaintiff's appearance was not a perfect match to the suspect's actual description. Moreover, Plaintiff's testimony differed in some ways from Trooper Yeldell's, such as their somewhat differing descriptions of the takedown. More importantly, the police officer immediately got physical, and he applied considerable force to put Plaintiff on the floor and immobilize him.

Even so, the trial court carefully reviewed the evidence and made specific, reasoned credibility determinations in the few areas where the differences in testimony were potentially important. The trial court's decision also reflects a correct view of the law, which says that excessive force cases are intensely fact-driven, turning on questions of what was objectively reasonable under the circumstances confronting the police officer, and not through hindsight.

After hearing and weighing the evidence, the trial court concluded that Trooper Yeldell's contact with Plaintiff was entirely within the line of duty. The trial court further concluded, based on substantial evidence, that under the circumstances existing on-scene, Trooper Yeldell acted in an objectively reasonable way toward Plaintiff, and Plaintiff failed to meet his burden of proving otherwise. There is no reason to overturn the trial court's findings.

III.

For the foregoing reasons, the Final Order and Opinion After Trial, dated November 13, 2013, is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary (Civil)
Michael F. McTaggart, Deputy Attorney General
Joseph J. Longobardi, III, Esquire