

Circuit Court for Baltimore City
Case No. 24-C-16-005761

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 224

September Term, 2018

CHARLES BAUGHER

v.

DEREK GLEN

Friedman,
Beachley,
Shaw Geter,

JJ.

Opinion by Beachley, J.

Filed: May 16, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Detective Charles Baugher, appellant, took part in the arrest of Derek Glen, appellee, on June 2, 2015, in Baltimore, Maryland. As a result of that arrest, Mr. Glen was charged with possession of heroin, possession of heroin with intent to distribute, and conspiracy to possess and distribute heroin. All charges against Mr. Glen were dismissed on September 10, 2015. On October 27, 2016, Mr. Glen sued Det. Baugher in the Circuit Court for Baltimore City alleging false imprisonment, malicious prosecution, violation of Articles 24¹ and 26² of the Maryland Declaration of Rights, false arrest, and battery. After a two-day trial, a jury found in favor of Mr. Glen on all counts and awarded him \$2,501 in compensatory damages and \$3,000 in punitive damages. Det. Baugher filed this timely appeal and presents one question for our review: “Did the circuit court err in allowing the question of punitive damages to go to the jury when Mr. Glen did not produce clear and convincing evidence that Det. Baugher’s actions were prompted by actual malice?” We answer this question in the affirmative and therefore reverse and vacate the judgment for punitive damages.

FACTS AND PROCEEDINGS

During the January 22-23, 2018 jury trial, Mr. Glen and Det. Baugher gave different

¹ “That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.”

² “That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.”

descriptions of the events that preceded Mr. Glen's June 2, 2015 arrest. For the purposes of our analysis, we accept Mr. Glen's version of the events. On the morning of June 2, 2015, Mr. Glen went to a friend's house. A few minutes later, another friend, Walter McCorr, arrived and asked Mr. Glen and his friend "to walk him to McDonald's."³ On the way there, Mr. Glen testified that "some unmarked cars" stopped them and that the police officers exited their cars, and "jumped up and just put handcuffs on us." The officers did not inform Mr. Glen and his cohorts why they were being arrested and took them to Central Booking. Mr. Glen remained there for "[a]bout 22, 23 hours." While there, he learned that he had been charged with possession with intent to distribute heroin and two related drug offenses. Mr. Glen denied possessing any drugs and testified that the charges "were all dismissed."⁴

Mr. Glen testified that he knew Det. Baugher before the June 2, 2015 arrest, but did not say how he knew the officer. However, Mr. Glen testified that Det. Baugher arrested him twice after June 2, 2015:

[MR. GLEN'S ATTORNEY]: And how had you seen him after [the June 2 arrest]?

[MR. GLEN]: I was arrested prior -- two more times prior to the June 2nd incident.

³ The testimony is inconsistent on this detail. During cross-examination, Mr. Glen read into evidence his deposition testimony that indicated he "was walking back from McDonald's with" his friends and that he "may have stopped by a different local food market . . . just prior to walking to McDonald's." This discrepancy, however, does not affect our analysis.

⁴ The record does not provide the State's reason for entering a *nolle prosequi* for these charges.

[MR. GLEN'S ATTORNEY]: Well, I'm talking about after June 2nd?

[MR. GLEN]: Yeah. I was arrested --

[MR. GLEN'S ATTORNEY]: Okay.

[MR. GLEN]: -- prior -- I mean, my fault -- afterwards, after June 2nd.

[MR. GLEN'S ATTORNEY]: Okay. The times that you were arrested after that, what were you arrested for?

[MR. GLEN]: Possession with the intent.

[MR. GLEN'S ATTORNEY]: And both of these times that you're talking about were arrests by Detective Baugher?

[MR. GLEN]: Yes.

[MR. GLEN'S ATTORNEY]: What happened with those charges?

[MR. GLEN]: They were also dismissed.

However, when asked if he saw Det. Baugher on June 2, Mr. Glen "d[id]n't recall[.]" Moreover, he made clear that he was not suing Det. Baugher for the two arrests subsequent to June 2. During cross-examination, Mr. Glen provided the following testimony concerning the officers who were present on June 2:

[DET. BAUGHER'S ATTORNEY]: All three of you were right next to each other when the police arrived, is that correct?

[MR. GLEN]: Correct.

[DET. BAUGHER'S ATTORNEY]: And the police arrived in unmarked cars, correct?

[MR. GLEN]: Correct.

[DET. BAUGHER'S ATTORNEY]: And there was more than one car?

[MR. GLEN]: Yes.

[DET. BAUGHER'S ATTORNEY]: You don't recall how many police got out of any given car, correct?

[MR. GLEN]: No. I don't recall.

[DET. BAUGHER'S ATTORNEY]: And the police were in plain clothes with police in bold letters on their vests, correct?

[MR. GLEN]: Correct.

[DET. BAUGHER'S ATTORNEY]: Is it your testimony that Officer Baugher was there that day among the officers who arrested you?

[MR. GLEN]: Yes. He came later on.

[DET. BAUGHER'S ATTORNEY]: I'm sorry?

[MR. GLEN]: Yes. He came later on.

[DET. BAUGHER'S ATTORNEY]: Okay. So you saw him out of the car, correct?

[MR. GLEN]: I'm (indiscernible) assuming he was out there, yes.

[DET. BAUGHER'S ATTORNEY]: You what?

[MR. GLEN]: I assume he was out there, yes.

[DET. BAUGHER'S ATTORNEY]: So you didn't actually see him?

[MR. GLEN]: Yes. I seen him.

[DET. BAUGHER'S ATTORNEY]: You did see him?

[MR. GLEN]: Yes.

[DET. BAUGHER'S ATTORNEY]: Okay. And that was [while] you were being arrested during that time, correct?

[MR. GLEN]: Yes.

[DET. BAUGHER'S ATTORNEY]: And you knew it was Officer Baugher because you saw the name on his name tag, correct?

[MR. GLEN]: Yes. And his face, yes.

[DET. BAUGHER'S ATTORNEY]: And he was in uniform, correct?

[MR. GLEN]: Yes.

[DET. BAUGHER'S ATTORNEY]: And the officers in plain clothes did not have nameplates on, correct?

[MR. GLEN]: No.

[DET. BAUGHER'S ATTORNEY]: And you had no conversations with Detective Baugher at the scene, correct?

* * *

[MR. GLEN]: No, I did not have no conversation.

* * *

[DET. BAUGHER'S ATTORNEY]: Officer Baugher never cuffed you, correct?

* * *

[MR. GLEN]: No.

Mr. McCorr, who was arrested along with Mr. Glen, mostly confirmed Mr. Glen's version of events. However, when asked about the arresting officers, he testified to the following:

[DET. BAUGHER'S ATTORNEY]: Mr. McCorr, of the officers who arrested you that day, you believe that an officer named Officer Mahan (phonetic) was a ring leader on the day of this incident, correct?

[MR. McCORR]: Right.

[DET. BAUGHER'S ATTORNEY]: Not Detective Baugher.

[MR. McCORR]: Sergeant Mahan.

* * *

[DET. BAUGHER'S ATTORNEY]: Okay. And you filed the complaint with internal affairs against Officer Mahan, correct?

[MR. McCORR]: Prior to these situations as coming up, yes.

Mr. Glen called Det. Baugher as an adverse witness. Det. Baugher affirmed that he “reported to this area because of complaints of a drug shop operating in that area.” From a covert location, Det. Baugher said he “witnessed individuals walking into the area that are known habitual drug users [and] buyers” and believed Mr. Glen, Mr. McCorr, and the third individual were engaged in drug activity “due to the number of gel caps that were recovered and how the three were working together orchestrating the activities.”⁵

At the close of Mr. Glen's case, Det. Baugher moved for judgment “as to the allegation of malice” on the ground that no “evidence has been presented to meet the higher standard of clear and convincing evidence that there [was] . . . personal animosity . . . against Mr. Glen.” He argued that “[t]he only evidence is [that Mr. Glen was] arrested, [the charges] were not pressed” and that “[t]here's just no evidence whatsoever of any personal ill will or hatred that is required to show malice.” The circuit court denied the motion.

Det. Baugher renewed his motion after the close of all the evidence. The court denied the motion saying, “I do believe that at this stage the evidence that has been presented a trier of fact needs to make a determination. It's not a legal decision at this

⁵ The police recovered gel caps from a car on the scene. A chemical analysis from the Baltimore City Police Department verified that the gel caps contained heroin.

stage, but more of a factual decision[.]” The jury found that Det. Baugher violated Mr. Glen’s rights under the Maryland Declaration of Rights and further found Det. Baugher liable for false arrest, false imprisonment, and malicious prosecution. The jury awarded Mr. Glen \$2,501 in compensatory damages on these counts. On the predicate questions for punitive damages, the jury found “by clear and convincing evidence that [Det. Baugher] acted with malice towards [Mr. Glen]” as to the Maryland Declaration of Rights violations, false arrest, and false imprisonment, and that “by clear and convincing evidence [Det. Baugher] acted with actual malice towards [Mr. Glen]” as to the malicious prosecution count.⁶ After the jury received instructions on punitive damages, it resumed deliberations. Less than fifteen minutes later, the jury returned with an award of \$3,000 in punitive damages.

On January 31, 2018, Det. Baugher filed a motion for judgment notwithstanding the verdict (“JNOV”), claiming that the court erred in submitting the punitive damages questions to the jury because there was insufficient evidence of actual malice. The circuit court denied this motion on March 8, 2018. On March 29, 2018, Det. Baugher noted this

⁶ Some confusion arose at trial because the pattern jury instruction for punitive damages generally (Maryland Pattern Jury Instructions (“MPJI-Cv”) § 10:14 (5th ed. 2018)) uses the term “malice” whereas the pattern jury instruction for malicious prosecution (MPJI-Cv § 10:19) requires “actual malice” as a predicate for punitive damages. *Compare* MPJI-Cv § 10:14 (“To award punitive damages, you must find by clear and convincing evidence the defendant acted with malice. . . . Malice is conduct motivated by evil motive, intent to injure, ill will, or fraud.”), *with* MPJI-Cv § 10:19 (“You may award punitive damages for malicious prosecution if you find by clear and convincing evidence that the defendant acted with actual malice in instigating the prosecution, that is, with an improper or wrongful motive.”). The trial court gave both pattern instructions to the jury.

timely appeal. On appeal, Det. Baugher only challenges the jury's award of punitive damages.

STANDARD OF REVIEW

Generally,

a court's denial of a motion for JNOV is the same as the standard of review of a court's denial of a motion for judgment at the close of the evidence, *i.e.*, whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence.

Univ. of Md. Med. Sys. Corp. v. Gholston, 203 Md. App. 321, 329 (2012) (citing *Wash. Metro. Area Transit Auth. v. Djan*, 187 Md. App. 487, 491-92 (2009)). In the context of punitive damage awards, "a judge must not allow the jury to consider the issue of 'actual malice' [to support a punitive damages award] unless the evidence could establish 'actual malice' *clearly and convincingly*." *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 270 (2004) (emphasis added).

DISCUSSION

Det. Baugher argues that, even viewing the evidence in a light most favorable to Mr. Glen, Mr. Glen did not establish the predicate "actual malice" required to support a punitive damages award under Maryland law. Det. Baugher asserts that Mr. Glen's attorney "invited the jury to improperly infer the actual malice necessary from the mere lack of probable cause . . . and to illogically infer malice from entirely neutral actions." According to Det. Baugher, because Mr. Glen did not show "an evil motive, ill will, or a specific intent to injure[,]" the circuit court erred when it allowed the jury to consider punitive damages and repeated that error when it denied his JNOV motion.

In Maryland, “[p]unitive damages are awarded ‘based upon the heinous nature of the defendant’s tortious conduct’ and they serve the purpose of punishing the particular tortfeasor and deterring conduct similar to that which underlay the tort.” *Darcars Motors*, 379 Md. at 263 (quoting *Owens-Illinois v. Zenobia*, 325 Md. 420, 454 (1992)) (internal citations omitted). In order to award punitive damages, the fact-finder must find by “clear and convincing evidence that the defendant acted with ‘actual malice.’” *Id.* at 264 (quoting *Zenobia*, 325 Md. at 460). Actual malice is defined as “conduct of the defendant characterized by evil motive, intent to injure, ill will, or fraud[.]” *Zenobia*, 325 Md. at 460.

Because “malice” is an element of the tort of malicious prosecution, a plaintiff seeking punitive damages as a result of a malicious prosecution must show actual malice *in addition to* the malice element of the tort. *Montgomery Ward v. Wilson*, 339 Md. 701, 735-36 (1995). The malice element of malicious prosecution is satisfied by a showing that “the defendant ‘was actuated by an improper motive,’ a purpose ‘other than that of bringing [the plaintiff] to justice[.]’” and may be inferred from the lack of probable cause. *DiPino v. Davis*, 354 Md. 18, 55 (1999) (quoting *Montgomery Ward*, 339 Md. at 719). However, lack of probable cause alone is insufficient to establish the actual malice necessary for punitive damages. *Montgomery Ward*, 339 Md. at 735-36. Put simply,

for punitive damages to be allowable in malicious prosecution actions, a plaintiff must establish by clear and convincing evidence the defendant’s wrongful or improper motive for instigating the prosecution. Although the jury may draw an inference of such motive from lack of probable cause for purposes of compensatory damages, *it may not rely on the inference in considering punitive damages.*

*Id.*⁷

In the present case, by awarding compensatory damages, the jury clearly believed that Det. Baugher either had an improper motive in instituting a criminal proceeding against Mr. Glen or lacked probable cause to arrest him. However, our review of the record reveals that Mr. Glen did not produce sufficient evidence to support the jury's determination that Det. Baugher acted with an "evil motive, intent to injure, ill will, or fraud" or anything beyond a lack of probable cause. *Zenobia*, 325 Md. at 460. Viewing Mr. Glen's testimony in a light most favorable to him, we discern that (1) Mr. Glen had some knowledge of Det. Baugher before June 2, 2015; (2) that Det. Baugher was likely present at some point during Mr. Glen's arrest, but the two never spoke to each other; (3) that the State dismissed the charges stemming from that arrest; and (4) that Det. Baugher arrested Mr. Glen two times *after* June 2, 2015. We hold that this evidence is facially insufficient for a fact-finder to conclude by clear and convincing evidence that Det. Baugher harbored the "actual malice" as defined by Maryland law, *i.e.*, "conduct of the

⁷ For examples of what Maryland courts have considered to be actual malice, *see Darcars Motors*, 379 Md. at 266-67 ("evidence of Darcars employees pretentiously dismissing Borzým's inquiries about his property, cursing, and then commenting, 'get lost' and 'call your attorney,' . . . combined with evidence of the heated exchange between Darcars personnel and Borzým . . . was sufficient to support the jury's finding of actual malice."); *Bowden v. Caldor, Inc.*, 350 Md. 4, 12-13 (1998) (upholding an award of punitive damages when a sixteen-year-old African-American employee "was detained and interrogated for over four hours in a small, windowless office" on suspicion of theft. When he returned the next day with his mother, the store manager shouted racial slurs, grabbed him by the arm, took him to the office, and demanded he and his parents pay restitution. When he refused, "he was handcuffed and paraded through the store in full view of his fellow employees and store customers.").

defendant characterized by evil motive, intent to injure, ill will, or fraud,” *Zenobia*, 325 Md. at 460, or instigating a prosecution with “wrongful or improper motive.” *Montgomery Ward*, 339 Md. at 735. Accordingly, because the evidence was legally insufficient to support a punitive damages award, the verdict as to punitive damages must be vacated.

JUDGMENT AS TO PUNITIVE DAMAGES AGAINST APPELLANT REVERSED AND VACATED. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLEE.