

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(St. Louis City)

William J. Gibbs, Plaintiff

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**VS**

Blockbuster, Inc., Defendant

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CASE NO. 0622-CC06785

DIVISION 19

June 9, 2009

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**COURT ORDER DENYING MOTIONS FOR  
JUDGMENT NOTWITHSTANDING THE VERDICT,  
OR IN THE ALTERNATIVE MOTION FOR NEW  
TRIAL, OR IN THE ALTERNATIVE MOTION FOR  
SUBSTANTIAL REMITTITUR ORDER**

The defendant files several post-trial motions in the alternative following a jury verdict in favor of Plaintiff on his false arrest claim, in the amount of \$1,500,000.00 compensatory damages and \$500,000.00 for punitive damages.

**FACTS**

The court reviews briefly facts supporting plaintiff's verdict, as the inquiry goes to whether or not the plaintiff adduced sufficient evidence to support the verdict; compensatory and punitive damages. The facts are to be viewed in the light most favorable to the prevailing party.

St. Louis Police Detectives Bertke and Tyson, went to the Blockbuster store on November 1, 2004, because Blockbuster's regional loss prevention manager John McBride called to tell them that Blockbuster's employee, night manager Jeron Brown, now knew who robbed him at gunpoint earlier in October. Jeron Brown had, earlier in October, claimed to have been robbed of the store's night deposit at gunpoint, by an unknown individual. But on November 1, he told McBride and the store manager that he himself had stolen quite a bit of merchandise from the store and that the alleged robbery was an inside job involving him and maybe or maybe not William Gibbs, but no gun

was involved. This conversation between McBride and Brown occurred immediately prior to McBride calling the detectives and informing them that Brown now knew who robbed him. Brown also signed a sworn statement for McBride, which McBride failed to show the police, which statement said that Brown had himself been involved in the theft of the money he earlier claimed he had been robbed of at gunpoint. McBride failed to tell the police that Brown had admitted to stealing from Blockbuster; that Brown claimed no gun was involved; that Brown was scheduled for termination because of dishonesty or that Brown had changed his story about the details of the robbery. The detectives were simply told that Brown now knew who robbed him and that Blockbuster wanted Brown to go with the detectives to tell them what he knew. McBride also gave police the identifying data on William Gibbs, which the store had in its computer because Gibbs had been a customer. When Brown sat down with the detectives, he told them that he had been robbed at gunpoint by William Gibbs. Neither Brown nor any Blockbuster employee shared with the police all that had transpired earlier with Brown's admissions to McBride.

Consequently, Gibbs was arrested and was the lone individual charged with armed robbery. He was incarcerated in the St. Louis Justice Center for 4.5 months. When the truth finally surfaced, Gibbs was released from jail and the charges against him dropped. Hence, this lawsuit.

### **Judgment Notwithstanding the Verdict**

The defendant claims there was insufficient evidence to support the jury's compensatory and punitive damage verdict and therefore, the court should have directed a verdict for defendant. Defendant first claims that plaintiff failed to make a prima facie case of false imprisonment. Defendant's primary argument is that once the police decide to recommend to the circuit attorney that a warrant be issued for Gibbs' arrest, and once lawful process is issued, either through Warrant or through Grand Jury indictment, no claim of false imprisonment may stand, because as a matter of law, the restraint was lawful. Defendant cites the cases of *Bramon v. U-Haul, Inc.*, 945 S.W.2d 676, 680 (Mo.App. E.D. 1997) and *Perry v. Dayton Hudson*, 789 S.W.2d 837, 840 (Mo.App. E.D. 1990) in support of its argument.

The court has reviewed these two cases and finds that they do not support the defendant's assertions. In *Bramon*, the court of appeals held that defendant is liable for false arrest if plaintiff

shows that defendant instigated, caused or procured the arrest. Indeed, merely providing information to the police is insufficient, even if that information is wrong. However, if plaintiff adduced sufficient evidence that the defendant knowingly provided false, incomplete or misleading information, and an illegal arrest results, it may be reasonably inferred that the defendant instigated the arrest. *Supra* at 680. In this case, there was sufficient evidence from which a jury could reasonably so infer.

The court finds that the facts in *Perry v. Dayton Hudson* are so unlike the facts in this case as to render the *Perry* case inapplicable to the case at bar. In the present case, the jury could have reasonably inferred from the evidence that the elements of false arrest were proved. The court will not review herein the extensive facts of record. Suffice to say that there is sufficient evidence to support the finding that Jeron Brown, while still employed by the defendant, was acting within the scope and course of his employment when he reported to police falsely that Plaintiff robbed him, without disclosing that he had confessed to his employer that he himself had participated in the theft and that there was no gun involved. And there was sufficient evidence that Blockbuster's Loss Prevention Manager John McBride was reckless in telling the police that Jeron Brown knew who robbed him, when McBride himself knew that Brown confessed to him that the alleged theft was an inside job in which Brown was involved, and which did not involve a weapon. The jury could have reasonably inferred malice from Brown's and McBride's communications or lack thereof to the police, leading the police to believe that Gibbs was the lone participant in the alleged robbery. Furthermore, McBride offered up to the police Mr. Brown, then currently employed as the night manager, as a witness against Gibbs, knowing that Brown had stolen from the company previously and that Brown had lied to the company about this particular robbery. It is what McBride did not tell the police which forms the evidentiary basis for a jury's finding that McBride and the company exhibited reckless disregard for plaintiff's rights, in not telling the police the whole story.

While an award of punitive damages does require clear and convincing evidence, the court finds that plaintiff adduced sufficient clear and convincing evidence that defendant's agents recklessly disregarded the rights of plaintiff resulting in his confinement in the maximum security local jail for several months.

The jury instruction on the claim of false imprisonment submitted by the court to the jury was based upon MAI 23.04 [1983 Revision] and upon MAI 18.01 with respect to the jury's determination of whether Jeron Brown was acting within the scope and course of his employment

when he spoke to the officers about Plaintiff's alleged involvement in an armed robbery. The instruction states that the verdict must be for plaintiff if the jury believes that defendant, through either Brown or McBride, intentionally instigated the restraint of plaintiff against his will. MAI's instruction on false arrest is surprisingly brief, however, that is because malice is not an element of false imprisonment. *Wilton v. Cates*, 774 S.W.2d 570, 573 (Mo.App. 1989). The court believes that it submitted the proper instruction for the facts of this case.

With respect to punitive damages, as noted previously, the court believes there was sufficient clear and convincing evidence from which the jury could reasonably infer that punitive damages were appropriate in this case.

### **NEW TRIAL**

Defendant alternately moves for new trial or substantial remittitur grounds additional to those raised above.

First, defendant claims that the verdict of \$1,500,000 in compensatory damages and \$500,000 in punitive damages was excessive and influenced by the admission of improper evidence and argument of plaintiff's counsel. The court has carefully reviewed defendant's arguments in support of these claims and finds them to be without merit.

Second, the defendant challenges whether Jeron Brown was an employee at the time he committed the alleged improper acts and whether he was acting within the scope and course of his employment when he told the police that William Gibbs robbed him should have been presented to the jury. The court finds that plaintiff adduced sufficient evidence to prove that Mr. Brown was still an employee of Blockbuster when he was offered up by McBride to the police to give a statement fingering Gibbs. Furthermore, Blockbuster's Loss and Prevention manager, John McBride, offered Brown to the police to give a statement identifying the alleged robber, therefore, Brown was arguably acting within the scope and course of his employment when he told the police that William Gibbs robbed him. There can be no other reasonable conclusion but that Brown was still employed by Blockbuster and that he was acting within the scope and course of his employment when he fingered Gibbs. Although he may have been suspended, he was not terminated at the time he gave his statement to the police. And the police knew nothing about Brown's employment status

at the time McBride called them to the store and informed them that Brown knew who robbed him and that Brown would be giving them a statement.

Third, defendant has claimed juror misconduct. The court does not find juror misconduct in this case for the reasons articulated in its Order of May 13, 2009.

Finally, the defendant claims reversible error in a number of the court's trial and evidentiary rulings as well as in the court's jury instructions. The court has carefully reviewed and considered defendant's arguments on these issues but finds the defendant's claims of error to be without merit.

### **RULING**

**The Defendant's Motions for Judgment Notwithstanding the Verdict; For New Trial or in the Alternative for Substantial Remittitur are therefore hereby denied.**

**SO ORDERED:**

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Lisa VanAmburg, Judge  
MBE 24758

cc: Attorneys of record