

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed March 11, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-363

Lower Tribunal Nos. 03-11425; 03-11428; 03-11431

Miami-Dade County and Sergeant Patricia Sedano,
Appellants,

vs.

Ahmed Asad, Noel Rivera, and Tony Garcia,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Daryl E. Trawick, Judge.

R.A. Cuevas, Jr., Miami-Dade County Attorney and Eric K. Gressman, Assistant County Attorney; Teri Guttman Valdes, for appellants.

De Fabio and Fenn and Leonard P. Fenn, for appellees.

Before GERSTEN, C.J., and SUAREZ and ROTHENBERG, JJ.

SUAREZ, J.

Appellants, Miami-Dade County (“County”) and Sergeant Patricia Sedano (“Sergeant Sedano”), defendants below (collectively “the Defendants”), appeal

from a final judgment of false arrest entered in favor of appellees Ahmed Asad, Tony Garcia, and Noel Rivera, plaintiffs below. We affirm. The trial court did not abuse its discretion in admitting evidence where the probative value of the evidence was not substantially outweighed by any danger of its prejudicial effect. The Defendants' motion for directed verdict as to the false arrest claim was properly denied because there was competent substantial evidence for the jury to consider the factual question of whether circumstances existed to support probable cause. Finally, the Defendants cannot demonstrate any abuse of discretion in the trial court's refusal to grant a new trial.

When Shalresia Tomlin's bond was revoked, Albert Scaletti, a bondsman, informed police that he planned to apprehend her and surrender her to police custody. Tomlin learned of her impending arrest and asked a friend, Daniel Walker, to drive her away without telling him she was hoping to avoid arrest. Scaletti located Tomlin and Walker on a rural road in Miami-Dade County, forced them to pull over at gunpoint, and with two or three other men, savagely beat Walker and arrested Tomlin.

Sergeant Sedano, the lead investigator for this incident, interviewed Walker to identify the attackers. Walker positively identified Scaletti, but could not identify the other men. Sedano requested the names of all the bondsmen insured by Scaletti's insurance company from the Department of Insurance, believing that

they must work together. She then prepared photographic lineups using photos corresponding to the names provided by the Department of Insurance. The Plaintiffs' names were among the names provided, and even though both Walker and Tomlin failed to identify the other plaintiffs as participants in Walker's beating, Sergeant Sedano arrested them without warrant. Sergeant Sedano only spoke to witnesses who contacted her, failed to investigate, or even to note, any tips she received, and arbitrarily credited or ignored identifications of suspects. Following Sergeant Sedano's questionable investigation and filing of charges, all charges against the Plaintiffs were dismissed. The Plaintiffs then sued Miami-Dade County and Sergeant Sedano for violation of their civil rights, malicious prosecution and false arrest.

At trial below, the jury found that Sergeant Sedano had violated each Plaintiff's civil rights and maliciously prosecuted each, but also found that Sergeant Sedano was not liable for civil damages because these two violations were committed in good faith. The jury did find that Sergeant Sedano had no good faith defense to the false arrest claim, found her liable for false arrest, and awarded damages accordingly. Upon delivery of the verdict, the Defendants argued that the verdicts were inconsistent and requested that the trial court instruct the jury to re-deliberate. The trial court denied the request, as well as the Defendants' subsequent motions for post-verdict relief.

The Defendants now seek to reverse on grounds that the trial court erred by allowing the jury to consider irrelevant and prejudicial evidence, erred as a matter of law by denying their motion for directed verdict as to the false arrest claims, and erred by denying their motion for new trial. We disagree.

We first examine the Defendants' claim that the trial court erred by allowing the jury to consider irrelevant and prejudicial evidence. We find that the trial court did not err as the evidence was relevant and probative. We review the trial court's evidentiary rulings for abuse of discretion. Sims v. Brown, 574 So. 2d 131, 133 (Fla. 1991) ("Where a trial court has weighed probative value against prejudicial impact before reaching its decision to admit or exclude evidence, appellate courts will not overturn that decision absent clear abuse of discretion."); H&H Elec., Inc. v. Lopez, 967 So. 2d 345 (Fla. 3d DCA 2007). The Defendants argue that the trial court erred in failing to exclude the following evidence not relevant to the claim of false arrest: (1) the attorney's fees paid by the Plaintiffs in the criminal proceedings against them, (2) Asad's submission of alibi witnesses, and (3) the dismissal of criminal charges as to each Plaintiff. Defendants claim this evidence was irrelevant and unfairly prejudicial as to the claim of false arrest and should have been excluded. This argument fails, however, because there were two claims before the jury in addition to that of false arrest, namely, violation of civil rights

and malicious prosecution. This evidence was relevant to the issue of malicious prosecution.¹

Section 90.403, Florida Statutes (2003), provides that “relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.” Additionally, relevant evidence may be “admissible as to one party or for one purpose, but inadmissible as to another party or for another purpose.” § 90.107, Fla. Stat. (2003). When such evidence is admitted, “the court, *upon request*, shall restrict [that] evidence to its proper scope and so inform the jury at the time it is admitted.” § 90.107 (emphasis added). Thus, if the contested evidence was relevant to any of the three claims against the Defendants, it could properly be admitted under sections 90.403 and 90.107.

All three of the Defendants’ examples of “irrelevant” evidence were relevant and had probative value in the claim of malicious prosecution, though perhaps not false arrest. Because of the limited admissibility of the contested evidence, the Defendants had the right to request a limiting instruction, but they failed to do so,

¹ The common law cause of action of malicious prosecution consists of six elements, all of which must be proven: (1) the commencement or continuation of an original civil or criminal judicial proceeding; (2) legal causation of the prosecution by the present defendant against the plaintiff; (3) the bona fide termination of the original proceeding in favor of the present plaintiff; (4) the absence of probable cause for prosecution of such proceeding; (5) the presence of malice; (6) and damages resulting to the plaintiff. Alamo Rent-A-Car, Inc. v. Mancusi, 632 So. 2d 1352 (Fla. 1994).

thereby waiving that right. We conclude that the record below demonstrates that the danger of unfair prejudice was insufficient to substantially outweigh the probative value of the contested evidence going to the claim of malicious prosecution. In the absence of clear abuse of discretion by the trial court, we affirm the trial court's evidentiary rulings.

Next, we address the Defendants' claim that the trial court erred by denying the motion for directed verdict on the claim of false arrest because there was evidence of probable cause to arrest. When reviewing a trial court's decision on a motion for directed verdict, appellate courts must view all the evidence in favor of the non-moving party. The grant of a directed verdict can be affirmed only where no proper view of the evidence could sustain a verdict in favor of the non-moving party. Owens v. Publix Supermarkets, Inc., 802 So. 2d 315 (Fla. 2001). By contrast, the *denial* of a motion for directed verdict must be sustained if it is supported by competent substantial evidence. Jones v. Rives, 680 So. 2d 450 (Fla. 1st DCA 1996). The record shows there was competent substantial evidence to support the denial. The question of whether Sergeant Sedano had probable cause to arrest the Plaintiffs was a question of fact for the jury because there were material factual disputes about the identification of the Plaintiffs and the reasonableness of Sergeant Sedano's investigation. Whether facts and circumstances exist to support probable cause is a pure question of fact that "must

necessarily be submitted to the jury when the facts are in controversy; the court instructing them what the law is.” City of Pensacola v. Owens, 369 So. 2d 328, 330 (Fla. 1979). It was the province of the jury to consider and weigh all the evidence regarding Sergeant Sedano’s pre-arrest investigation, with instruction from the trial judge on the law, before deciding whether Sergeant Sedano had probable cause to arrest the Plaintiffs. “Determinations regarding the weight of the evidence or the credibility of witnesses are peculiarly within the province of the finder of fact and will not be disturbed on appeal.” M.A.B. v. Dep’t of Health & Rehab. Servs., 630 So. 2d 1252, 1254 (Fla. 1st DCA 1994); see also Dreyfuss v. Dreyfuss, 701 So. 2d 437, 440 (Fla. 3d DCA 1997). We will not set aside the jury’s finding of fact on appeal by reversing the trial court’s denial of the Defendants’ motion for directed verdict. The trial court’s decision was based on competent substantial evidence, so we must affirm.

We turn now to the Defendants’ argument that the trial court erred by denying their motion for new trial. The standard of review for the denial of a motion for new trial is whether the trial court abused its discretion. Barkett v. Gomez, 908 So. 2d 1084 (Fla. 3d DCA 2005). If reasonable people could differ concerning the propriety of the trial judge’s decision, then no abuse of discretion is demonstrated. Southwin, Inc. v. Verde, 806 So. 2d 586 (Fla. 3d DCA 2002). The Defendants claim that the discovery of new evidence and inconsistent verdicts

justify a new trial. However, whether new evidence has been discovered is questionable, as the Defendants have not demonstrated that the new evidence could not have been discovered before trial by the exercise of due diligence. Dade Nat'l Bank of Miami v. Kay, 131 So. 2d 24 (Fla. 3d DCA 1961).

The Defendants also claim that the verdicts finding that Sergeant Sedano acted in good faith and yet is liable for false arrest are inconsistent and thus require a new trial. We disagree. The jury never made a blanket determination that Sergeant Sedano acted in good faith. The Defendants chose to define *all defenses* to each individual claim as “good faith” in both the jury instructions and in the verdict forms. By asking the jury whether Sergeant Sedano had acted in good faith with respect to each individual claim, the verdict form actually asked whether a defense to Sergeant Sedano’s behavior was available for each claim according to appellants’ definition of good faith. The jury decided that Sergeant Sedano had a defense to liability for violation of civil rights and malicious prosecution, but not a defense to false arrest. Such a determination was not inconsistent within each individual cause of action, and thus a new trial is unwarranted.

The dissent is concerned that actual malice was not proven at trial. Proof of malice is not an element of false arrest.² See DeMarie v. Jefferson Stores, Inc., 442 So. 2d 1014 (Fla. 3d DCA 1983) (holding that lack of probable cause is an

² False arrest and false imprisonment are different labels for the same cause of action. Weissman v. K-Mart, 396 So. 2d 1164 (Fla. 3d DCA 1981).

essential element to be presented by the plaintiff in a malicious prosecution action but the existence of probable cause is a defense to false arrest and must be proven by the defendant); Toomey v. Tolin, 311 So. 2d 678 (Fla. 4th DCA 1975) (finding that neither malice nor want of probable cause is an element of an action for false arrest). Therefore, the plaintiffs were not required to prove actual malice in order to prove their claim of false arrest.

Although malice is not an element of a false arrest claim, it is a necessary element to be proven by the plaintiff in a malicious prosecution claim. The necessary element of malice required for a malicious prosecution may be proven one of two ways, either by showing actual malice in fact or by inferring legal malice. Olson v. Johnson, 961 So. 2d 356 (Fla. 2d DCA 2007) (holding that in an action for malicious prosecution it is not necessary for a plaintiff to prove actual malice; legal malice is sufficient). Legal malice is inferred when there is a finding of lack of probable cause even where actual malice is not shown. See Reed v. State, 837 So. 2d 366, 368-69 (Fla. 2002); Alamo Rent-A-Car, Inc. v. Mancusi, 632 So. 2d 1352, 1357 (Fla. 1994); Morgan Int'l Realty, Inc. v. Dade Underwriters Ins. Agency, Inc., 617 So. 2d 455 (Fla. 3d DCA 1993). The jury found a lack of

probable cause and, thus, legal malice is inferred as to the malicious prosecution action.³

The trial court had the discretion to decide whether or not to grant a new trial. Difference of opinion as to the propriety of that decision confirms that there was no abuse of discretion by the trial court; hence, we affirm.

Affirmed.

GERSTEN, C.J., concurs.

³ The dissent contends that Sergeant Sedano's testimony reveals her reliance on the state prosecutor's advice that she had probable cause to go forward with the prosecution of the Plaintiffs, which reliance would provide a complete defense to the claims of malicious prosecution and false arrest. However, it is not sufficient that the defendant only have sought advice from the State Attorney before initiating criminal proceedings; she must have been affirmatively advised by the State Attorney to initiate those proceedings. 52 Am. Jur. 2d § 107 (2008); 24A Fla. Jur. 2d § 32 (2008). Furthermore, the officer must have relied on advice of the State Attorney only after a full and fair statement of all the facts was given to the attorney. The record is ambiguous on these points. Regardless, the issue of whether Sergeant Sedano was affirmatively advised by the State Attorney that she had probable cause to proceed against the Plaintiffs was not raised at the motion for directed verdict. Thus, the issue was not preserved for appeal and cannot be considered. Smith v. Hooligans Pub & Oyster Bar, Ltd., 753 So. 2d 596 (Fla. 3d DCA (2000) (holding that the plaintiffs failed to raise the issue of comparative fault on motion for directed verdict, and thus did not preserve the issue for appellate review); Long v. Bogaert, 471 So. 2d 680 (Fla. 2d DCA 1985) (holding that, because the issue of whether a judicial finding of probable cause after the appellee's arrest foreclosed an action for malicious prosecution was not raised on the motion for directed verdict, the issue was not preserved for appeal).

Miami-Dade County and Sergeant Patricia Sedano v. Ahmed Asad, Noel Rivera
and Tony Garcia
Case No. 3D07-363

ROTHENBERG, J. (dissenting).

Ahmed Asad (“Asad”), Tony Garcia (“Garcia”), and Noel Rivera (“Rivera”) (collectively “the Plaintiffs”) were arrested based on probable cause that each had committed an assault with a firearm, and each was a principal to an armed burglary with a battery. Rivera was additionally arrested for doing business as a bondsman without a license.

These arrests stemmed from the vicious beating of Daniel Walker, an innocent victim, during the execution of an arrest warrant for Shalresia Tomlin by seven or eight bondsmen. It is undisputed that Mr. Walker, who was unaware that an arrest warrant had been issued against Ms. Tomlin, was providing transportation for Ms. Tomlin when the vehicle he was driving was stopped by the bondsmen, he was pulled out of his vehicle, and he was severely beaten by the bondsmen although he offered no resistance, presented no threat, and did not interfere with the execution of the warrant.

The Plaintiffs were arrested for their involvement in this attack, but the charges were ultimately dismissed. Thereafter, the Plaintiffs filed a civil lawsuit against Sgt. Sedano, a police officer with the Miami-Dade Police Department, and

her employer, Miami-Dade County (“the County”), asserting claims for false arrest, malicious prosecution, and violation of the Plaintiffs’ federal civil rights.

Prior to trial, the trial court granted summary judgment in favor of the County as to the Plaintiffs’ federal civil rights claims, and denied Sgt. Sedano and the County’s motions for summary judgment as to the remaining claims. The jury ultimately concluded that Sgt. Sedano acted in good faith with regard to the civil rights and the malicious prosecution claims, and therefore, returned verdicts in favor of the Defendants as to those claims. As to the false arrest claims, however, the jury returned verdicts in favor of the Plaintiffs, finding that Sgt. Sedano falsely arrested and did not act in good faith in arresting the Plaintiffs, awarding \$94,800 to Garcia, \$128,910 to Asad, and \$83,432 to Rivera.

After the verdicts were announced, the defense requested that the trial court instruct the jury to redeliberate, arguing that the verdicts were inconsistent because the jury found that while Sgt. Sedano acted in **good faith** with regard to the civil rights and malicious prosecutions claims, the jury found that Sgt. Sedano acted in **bad faith** in arresting the Plaintiffs as to the false arrest claims. The trial court denied the request, and subsequently denied the Defendants’ post-trial motions.

The Defendants contend that the trial court erred in allowing the jury to consider inadmissible and prejudicial evidence; erred, as a matter of law, in denying their motion for a directed verdict as to the false arrest claims where the

evidence demonstrated that Sgt. Sedano had probable cause to arrest the Plaintiffs; and erred in denying their motion for a new trial. I agree. The Plaintiffs presented no evidence of malice, an essential element of the crime of malicious prosecution, and in fact, the Plaintiffs' own expert admitted at trial that there was no evidence that Sgt. Sedano acted with malice. Thus, the trial court erred in denying the Defendants' motion for a directed verdict as to the malicious prosecution claims. Additionally, since much of the evidence introduced at trial was only admissible as to the malicious prosecution claims and irrelevant and inadmissible as to the false arrest claims, the trial court erred in failing to instruct the jury that it must not consider that evidence in reaching its verdict on the false arrest claims and in not granting the Defendants a new trial after the trial court improperly permitted the jury to reach its verdict on the false arrest claims on this irrelevant, inadmissible, and prejudicial evidence.

STANDARD OF REVIEW

The trial court's evidentiary rulings are subject to an abuse of discretion standard of review. See H & H Elec., Inc. v. Lopez, 967 So. 2d 345, 347 (Fla. 3d DCA 2007) ("We review discretionary issues involving the admission of evidence . . . for abuse of discretion."); Hayes v. Wal-Mart Stores, Inc., 933 So. 2d 124, 126 (Fla. 4th DCA 2006) (holding that the trial court's ruling on admissibility of evidence will not be reversed on appeal absent an abuse of discretion). In

reviewing a trial court's denial of a motion for a directed verdict, an appellate court must review the evidence in the light most favorable to the nonmoving party, and must reverse "if there is 'no evidence upon which the jury could legally base a verdict' in favor of the non-moving party." Posner v. Walker, 930 So. 2d 659, 665 (Fla. 3d DCA 2006) (quoting Floyd v. Video Barn, Inc., 538 So. 2d 1322, 1325 (Fla. 1st DCA 1989)); see also Schreidell v. Shoter, 500 So. 2d 228, 232 (Fla. 3d DCA 1986) ("A directed verdict is proper only when the record conclusively shows an absence of facts or inferences from facts to support a jury verdict, viewing the evidence in a light most favorable to the nonmoving party. Therefore, no factual determination is required, and judgment must be entered for the movant as a matter of law.") (citations omitted). The denial of the Defendants' motion for new trial is reviewed for an abuse of discretion. See Seaboard Sys. R.R., Inc. v. Peeples, 475 So. 2d 916, 917 (Fla. 2d DCA 1985) ("The standard for review of the denial of a motion for new trial is whether or not the trial judge abused his discretion."); Southwin, Inc. v. Verde, 806 So. 2d 586, 587 (Fla. 3d DCA 2002) ("The standard of review for the denial of a motion for new trial is whether or not the trial court abused its discretion.").

THE MALICIOUS PROSECUTION CLAIM

As stated earlier, the Defendants moved for summary judgment prior to trial and moved for a directed verdict during trial as to the Plaintiffs' malicious

prosecution claims. The trial court denied both motions and permitted: (1) the Plaintiffs to introduce evidence admissible as to the malicious prosecution claims, but inadmissible as to the false arrest claims; (2) the jury to improperly consider this inadmissible and prejudicial evidence in deciding the false arrest claims; and (3) the jury to improperly assign and calculate damages on the false arrest claims based upon evidence inadmissible as to these claims. These errors denied the Defendants their right to a fair trial.

The law in Florida is well settled that a malicious prosecution action requires the plaintiff to prove **all** of the following six elements: (1) a criminal or civil judicial proceeding was commenced against the plaintiff; (2) the proceeding was instigated by the defendant in the malicious prosecution action; (3) the proceeding ended in the plaintiff's favor; (4) **the proceeding was instigated with malice**; (5) the defendant lacked probable cause; and (6) the plaintiff was damaged. Kalt v. Dollar Rent-A-Car, 422 So. 2d 1031, 1032 (Fla. 3d DCA 1982); see also Adams v. Whitfield, 290 So. 2d 49, 51 (Fla. 1974). **“The absence of any *one* of these elements will defeat a malicious prosecution action.”** Kalt, 422 So. 2d at 1032 (emphasis added). Malice is a fact to be proven by the plaintiff as it is **“a necessary ingredient of the charge of malicious prosecution” and it is not synonymous with want of probable cause.** White v. Miami Home Milk Producers Ass’n, 197 So. 125, 126 (Fla. 1940) (emphasis added). **“Malice is not**

only an essential element of malicious prosecution but it is the gist of this cause of action.” Wilson v. O’Neal, 118 So. 2d 101, 105 (Fla. 1st DCA 1960) (emphasis added).

The Plaintiffs presented absolutely no evidence of malice. The Plaintiffs’ counsel, who represented the Plaintiffs’ at trial and on appeal, candidly admits in his answer brief that “[t]he State Attorney’s charging decision insulated Sgt. Sedano from liability for malicious prosecution.” Additionally, the Plaintiffs’ own expert admitted that Sgt. Sedano acted without malice. These admissions on appeal, while commendable, are troubling in light of the fact that the Plaintiffs’ expert, Philip Sweeting, unequivocally testified in his videotaped testimony, **well before the scheduled trial, that there was no evidence that Sgt. Sedano was malicious or that she hurried her investigation. Also prior to trial, Plaintiffs’ counsel was put on notice that Sgt. Sedano had consulted the Assistant State Attorney before she arrested the Plaintiffs to confirm that she had probable cause.**

Because counsel for the Plaintiffs knew prior to trial that he had no evidence to present at trial that Sgt. Sedano acted with malice, and, in fact, knew that his own expert would testify that Sgt. Sedano acted without malice and was aware that before Sgt. Sedano arrested the Plaintiffs she conferred with the State Attorney who concluded that there was probable cause, he should not, in good faith, have

pursued the malicious prosecution claims against Sgt. Sedano, and should not have introduced evidence he knew was only admissible as to the malicious prosecution claims and inadmissible regarding the false imprisonment claims.

THE PLAINTIFFS REVERSIBLY PREJUDICED THE DEFENDANTS BY PRESENTING EVIDENCE ADMISSIBLE IN A MALICIOUS PROSECUTION CASE AND INADMISSIBLE IN A FALSE ARREST CASE

In addition to the fact that counsel for the Plaintiffs knew that he had no evidence of malice, the record reflects that counsel for the Plaintiffs also was aware that Sgt. Sedano consulted with the State Attorney prior to making any arrests in this case, and that this insulated Sgt. Sedano as a matter of law in a malicious prosecution case. The majority, recognizing that the Plaintiffs' counsel admits that the State Attorney's charging decision insulated Sgt. Sedano as a matter of law from being held liable for malicious prosecution, attempts in footnote 3 of its opinion, to dismiss this dispositive fact by stating: (1) "[h]owever, it is not sufficient that the defendant only have sought advice from the State Attorney before initiating criminal proceedings; she must have been affirmatively advised by the State Attorney to initiate these proceedings"; (2) "the officer must have relied on advice of the State Attorney only after a full and fair statement of all the facts was given to the attorney"; and (3) "[t]he record is ambiguous on these points." The record, however, is not ambiguous. It clearly reflects that Sgt. Sedano not only consulted with the Assistant State Attorney, Sgt. Sedano disclosed

all of the facts to her, the Assistant State Attorney is the person who made the decision to file charges against the Plaintiffs, and Sgt. Sedano relied on the advice of the Assistant State Attorney.

The record reflects that counsel for Sgt. Sedano told the jury in his opening statement that it was the Assistant State Attorney, not Sgt. Sedano, who made the decision to prosecute the plaintiffs:

All the efforts from the get-go, Sergeant Sedano contacted the State Attorney's office.

Sergeant Sedano doesn't keep these gentlemen in jail for months. The prosecutor does.

The evidence will show that they're asking for all these monies, but the prosecutor made the decision to go forward, despite them having attorneys. She made the decision, the prosecutor in this case, to proceed.

....

They're suing her [Sgt. Sedano] for something called malicious prosecution. They got to prove she is malicious. They've got no evidence, so Sergeant Sedano shouldn't even be here.

The prosecutor made the decision to prosecute.

....

Now causation, that's something you have to prove: that Sergeant Sedano or the County caused damages.

No, again, the state attorney's office, separate from the County, completely separate from Sergeant Sedano, made the decision to keep them in for months.

All this tuberculosis, all this damages of attorney's fees and so forth, that is the prosecutor's decision, not Sergeant Sedano's, not the County's.

....

Sergeant Sedano again, in sum, conclusion, spoke to the state attorney, conferred with the state attorney. It was confirmed with them it was probable cause.

Sergeant Sedano isn't a judge, but the state attorney indicated there was probable cause and she proceeded accordingly.

Mr. Fenn presumes to know what in a hypothetical world a judge would do, but the state attorney who was on the case at that time indicated there was probable cause.

The evidence will be that Sergeant Sedano checked with the state attorney; that at all times she had probable cause.

....

There was no malice whatsoever on the part of Sergeant Sedano. State attorney's office made the decision to keep these people in jail.

Sgt. Sedano unequivocally testified that she conferred with the Assistant State Attorney "from beginning to end." The following excerpts are informative:

Q: Explain to the ladies and gentlemen of the jury what contact you had with the state attorney regarding this case, particularly in terms of reviewing the probable cause for arrest.

A: I spoke with the assistant state attorney regarding my case from beginning to end. I concurred with her. We reviewed the arrest prior to making the actual physical arrests, we reviewed it together.

Q: At any point in time did she indicate that you didn't have probable cause to make the arrests?

A: No.

Q: At any point in time did she indicate she wanted to terminate the prosecution to you?

A: No.

....

Q: Once Shalresia Tomlin signed the back of that [photo arrays] saying she was sure that these gentlemen, Mr. Asad, Mr. Rivera, Mr. Garcia, were involved in the beating, what's your obligation at that point as a police officer?

A: Based on her testimony and based on the victim's testimony and

based on her positive identification of the subjects, I have – that establishes probable cause to make a felony arrest.

Q: And you gave the original photo lineups and the arrest affidavits, all of that was turned over to the prosecutor?

A: That's correct.

Q: From then on it's the prosecutor's decision whether to go forward, is that correct?

A: Yes, that's correct.

Q: Did you review step by step everything you did with that state attorney?

A: Yes, I did.

....

Q: Tell us about your dealings with the state attorney in this case What kind of contact did you have with them regarding Mr. Asad, Mr. Rivera and Mr. Garcia?

A: When I initially received this investigation, usually we don't meet with the state attorney when we make an arrest on a case until they give us a subpoena for a pre-file conference, which is the time they review the case. It has to be within a certain time frame. But because of the totality of the case and the number of subjects involved, I called the state attorney's office and requested to speak to a state attorney to help me with the case, to review it before it even went to that stage.

Sgt. Sedano testified that even though she had taken a sworn statement from Ms. Tomlin at the jail on the day of the incident, she brought her to the State Attorney's Office prior to arresting the Plaintiffs, where Ms. Tomlin was interviewed by and provided the Assistant State Attorney with another sworn statement.

Kathryn Slye, the Assistant State Attorney who was assigned the case involving the beating of Mr. Walker, testified in the civil trial. Ms. Slye testified that she began working on this case prior to any charges being filed. Ms. Slye

explained that it was her responsibility as the prosecutor to review all of the evidence and make the charging decisions, and in this case she went over all of the documents “in detail, great detail,” before making the charging decisions. A copy of the document she generated reflecting her filing decisions was actually introduced into evidence as Defense exhibit “J,” and she explained,

[t]his is the document that comes when - - when all the paperwork finally comes in to the prosecutor and a filing decision has to be made, at that point this is one of the documents that, actually I choose which charges, the actual charges the State of Florida is going to file against a particular defendant.

Ms. Slye testified that the detective brought her all of the documents, reports, statements, and lineups, which she reviewed before making a charging decision, and that this was done earlier than in other cases. As a result, she testified that she spent “extra time with [Sgt. Sedano] and with others to make sure that [she] had all the appropriate information before things were charged.” She unequivocally stated, “I made the charging decision and filed the charges against the individuals.”

Lastly, Lt. Ivan Rodriguez was called as a witness by the defense and provided expert testimony, without objection, that Sgt. Sedano followed the policies and procedure of Miami-Dade County based upon Sgt. Sedano’s investigation and consultation with the State Attorney’s Office before making the arrests in this case. He testified that Sgt. Sedano was working with the State Attorney’s Office while investigating the case; when Sgt. Sedano concluded that

she had probable cause to make the arrests, she presented her case file to the State Attorney's Office; and the arrests were made after the State Attorney's Office found that there was probable cause.

Thus, contrary to the majority's statements, the record is abundantly clear, **not ambiguous**, that Sgt. Sedano consulted with the Assistant State Attorney throughout her investigation, and that the Assistant State Attorney reviewed all of the evidence, determined that probable cause existed to arrest the Plaintiffs in connection with the beating of Mr. Walker, determined whether there was sufficient evidence to prosecute the case and on what charges, filed the charges, and proceeded with the criminal prosecution of the case.

Also, contrary to the majority's claim that the issue was not raised on a motion for directed verdict and thus, not preserved for appeal, counsel for the defendants specifically argued in his motion for a directed verdict that the Plaintiffs failed to prove "any type of malice against Sergeant Sedano. That's critical as to all the claims against her. Their own expert says there was no malice. . . . He must prove by a preponderance of the evidence that there was - - the defendant acted with malice. There's no proof of that [T]hey've tried the case without showing malice, Judge." Counsel for the defendants additionally argued, citing to section 768.28(7), Florida Statutes (1999), that "the prosecutor was the cause of the damages." Because the Plaintiffs presented no evidence of

malice; the unrefuted evidence presented was that Sgt. Sedano consulted with the Assistant State Attorney prior to arresting the Plaintiffs; the Assistant State Attorney made the charging decisions in this case; and defense counsel moved for a directed verdict on the basis that there was no evidence that Sgt. Sedano acted with malice, the trial court erred in denying Sgt. Sedano's motion for directed verdict, and the issue was preserved for appeal.

The Plaintiffs' decision to present the malicious prosecution claims to the jury, despite the fact they had absolutely no evidence to support the claims, is reversible error because the malicious prosecution claims enabled the Plaintiffs to introduce otherwise inadmissible evidence and make otherwise improper arguments to the jury, and the jury to consider and allocate damages specifically precluded in a false arrest claim.

The Plaintiffs were permitted to introduce, over defense objection, that the Assistant State Attorney subsequently dismissed the charges against the Plaintiffs. While this evidence is relevant in a malicious prosecution action, because one of the elements the Plaintiffs must prove in a malicious prosecution claim is that the charge was terminated in the Plaintiffs' favor, it was not relevant in a false arrest action, which turns on whether the officer possessed probable cause to **make the arrest**. "Probable cause is evaluated from the viewpoint of a prudent cautious police officer on the scene **at the time of the arrest**." State v. Riehl, 504 So. 2d

798, 800 (Fla. 2d DCA 1987) (emphasis added). “It is axiomatic that **hindsight may not be employed** in determining whether a prior arrest or search was made upon probable cause.” McCoy v. State, 565 So. 2d 860, 861 (Fla. 2d DCA 1990) (emphasis added) (quoting 1 W.R. LaFare, Search and Seizure § 3.2(d) (2d ed. 1987)). **Events that occur subsequent to the arrest are irrelevant in a false arrest claim** because whether the plaintiff was falsely arrested turns on whether there was probable cause at the time of the arrest, and subsequent events cannot remove the probable cause that existed at the time of the arrest. McCoy, 565 So. 2d at 861; Dodds v. State, 434 So. 2d 940, 942 (Fla. 4th DCA 1983); see also United States v. Covelli, 738 F.2d 847, 853-54 (7th Cir. 1984) (finding that an arrest for passing a counterfeit bill was lawful notwithstanding the bill turned out to be legitimate).

The highly prejudicial error in admitting evidence that the criminal charges against the Plaintiffs were ultimately dismissed, was compounded when counsel for the Plaintiffs argued this evidence in his closing argument and the trial court improperly instructed the jury that they **could consider** this factor in determining whether probable cause existed. Also, compounding this error is the following evidence admitted which was only relevant and admissible as to the malicious prosecution claims and inadmissible and improperly considered by the jury regarding the false arrest claims: (1) Asad’s later submission of alibi witnesses;

and (2) the attorney's fees incurred by the Plaintiffs in defending the criminal cases.

The jury's consideration of Asad's post-arrest alibi defense to the charges and the attorney's fees incurred after the Plaintiffs were released from custody was error for the same reason the evidence of the State's dismissal of the charges was error: **events subsequent to the arrest are not relevant to a false arrest claim because the issue is whether probable cause existed at the time of the arrest.** See Brodnicki v. City of Omaha, 75 F.3d 1261, 1264 (8th Cir. 1996) (holding that even if the defendant asserts an alibi defense prior to arrest, a police officer is not required to investigate a defendant's alibi before making a probable cause determination).⁴ See also City of St. Petersburg v. Hackman, 672 So. 2d 42, 44 (Fla. 2d DCA 1996) (holding that while a plaintiff may recover reasonable expenses, including attorneys' fees incurred to secure his release from the illegal restraint, attorneys' fees incurred after being released and prior to the State Attorney's decision not to prosecute the case are not recoverable in a false arrest

⁴ While Sgt. Sedano was not required to investigate Asad's alibi defense, the record reflects that she investigated both his pre-arrest alibi defense and his post-arrest alibi defense. Pre-arrest, Asad claimed he was with his wife. Sgt. Sedano's investigation revealed that Asad was not married. Post-arrest, Asad's counsel provided Sgt. Sedano with a list of witnesses he claimed would provide her with evidence that Asad was not present during the events in question, but although Sgt. Sedano went to the homes of each listed witness, left her card, asked them to call her, and called them, they refused to speak with her or to provide her with any information.

claim). See also City of Miami Beach v. Bretagna, 190 So. 2d 364, 365 (Fla. 3d DCA 1966), wherein, this Court stated:

“It is well settled that plaintiffs, in actions for false imprisonment, where the damages are specially claimed, may recover for any reasonable and necessary expense incurred as a result of the unlawful imprisonment, including attorney’s fees for services in procuring his discharge. But such fees for defending the plaintiff against the prosecution of the charge, while recoverable in an action for malicious prosecution, are not recoverable in an action for false imprisonment, unless such services are necessary to secure the plaintiff’s discharge from the illegal restraint.

The evidence is without dispute that the plaintiff was admitted to bail soon after his confinement in jail, and the fee expended in procuring the bail and his discharge from imprisonment, on principles above stated, was proper element of damages, [b]ut attorney’s fees for defending him against the prosecution incurred after his discharge from imprisonment were not proper elements of damages, and the court erred in admitting such evidence over defendant’s objection.”

(quoting Fid. & Deposit Co. of Md. v. Adkins, 130 So. 552 (Ala. 1930)) (citation omitted).

Because the plaintiffs possessed no evidence of malice and admit that the State Attorney’s charging decision insulated Sgt. Sedano as a matter of law from being held liable for malicious prosecution, the evidence previously discussed was improperly introduced. The introduction of this inadmissible evidence; the trial court’s failure to grant a directed verdict as to the malicious prosecution claims; and the trial court’s failure to instruct the jury that it must not consider this evidence as to the false arrest claims, prejudiced the Defendants and denied them

their right to a fair trial. The prejudice was compounded by the trial court's instructions to the jury, over defense objection, that it could consider this evidence in determining the false arrest claim. Thus, the trial court erred in denying the Defendants' motions for a directed verdict and a new trial, and the Defendants are entitled, at a minimum, to a new trial.

THE FALSE ARREST CLAIMS

Although the Defendants are entitled to a new trial as to the Plaintiffs' false arrest claims because: (1) prior to trial, the Plaintiffs' own expert admitted that there was no evidence of malice; (2) the Plaintiffs' expert testified at trial that there was no evidence of malice; (3) there was no evidence of malice presented at trial; (4) there was evidence admitted by the trial court that was only admissible as to the malicious prosecution claims, and not admissible as to the false arrest claims; and (5) the trial court improperly instructed the jury that it could consider this irrelevant evidence as to the false arrest claims and base its determination of damages on this inadmissible evidence, a new trial is not required in this case because the undisputed evidence establishes, as a matter of law, that Sgt. Sedano possessed probable cause to arrest the Plaintiffs for aggravated assault with a firearm and as principals to armed burglary with a battery. I would, therefore, enter judgment in favor of the Defendants.

False arrest is "the unlawful restraint of a person against that person's will."

Willingham v. City of Orlando, 929 So. 2d 43, 48 (Fla. 5th DCA 2006). Probable cause is an affirmative defense to a false arrest claim. Maily v. Jenne, 867 So. 2d 1250, 1251 (Fla. 4th DCA 2004); Jackson v. Navarro, 665 So. 2d 340, 342 (Fla. 4th DCA 1995). Probable cause exists when the circumstances are sufficient to cause a reasonably cautious person to believe that the person accused is guilty of the offense charged. Maily, 867 So. 2d at 1251; Fla. Game & Freshwater Fish Comm'n v. Dockery, 676 So. 2d 471, 474 (Fla. 1st DCA 1996). **Probable cause, however, must be judged by the facts that existed at the time of the arrest, not evidence subsequently learned or provided to the prosecution.** Maily, 867 So. 2d at 1251 (“Probable cause is judged by the facts and legal state of affairs that existed at the time of the arrest.”); Fla. Game, 676 So. 2d at 474 (“**Hindsight should not be used to determine whether a prior arrest or search was made with probable cause. Events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest.**”) (citation omitted) (emphasis added); McCoy, 565 So. 2d at 861 (holding that hindsight should not be used to determine whether a prior arrest or search was made with probable cause); Dodds, 434 So. 2d at 942 (holding that events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest). **In addition, “an identification or a report from a single credible victim or eyewitness can provide the basis for probable cause.”** City of St.

Petersburg v. Austrino, 898 So. 2d 955, 960 (Fla. 2d DCA 2005) (emphasis added).

When the facts material to a probable cause determination are undisputed, the existence of probable cause is for the court to decide as a matter of law. Alamo Rent-A-Car, Inc. v. Mancusi, 632 So. 2d 1352, 1357 (Fla. 1994); Austrino, 898 So. 2d at 962. A review of the material facts which are not in dispute establish probable cause. The trial court, therefore, erred in submitting this case to the jury.

It is undisputed that prior to the arrest of the Plaintiffs, Sgt. Sedano's investigation revealed that Albert Scaletti ("Scaletti"), a licensed bondsman, sought and obtained the assistance of other bondsmen to effectuate the arrest of Ms. Tomlin, who had allegedly violated the conditions of her release on bail. Scaletti, with the assistance of his confederates, drove up in a burgundy car next to Mr. Walker's car as he was transporting Ms. Tomlin to her cousin's house. Scaletti, who was seated in the front seat of the burgundy car, pointed a 9mm firearm at Mr. Walker, and ordered Mr. Walker to pull over, saying "[p]ull the fucking car over, N-----!" The burgundy car then cut Mr. Walker off, forcibly causing him to stop in the middle of the street, while a second vehicle with the remainder of Scaletti's confederates pulled behind Mr. Walker's car blocking him in. Mr. Walker was not the subject of the warrant and the bonding company had no legal authority over Mr. Walker. All of the men in the two cars, seven or eight in total, exited the two vehicles with their guns drawn and pointed them at Mr. Walker. One of the armed

bondsman opened Mr. Walker's car door. Mr. Scaletti then reached into Mr. Walker's car, grabbed him by the neck, and hit him in the mouth with his gun "with all of his strength," dislodging eight of Mr. Walker's teeth. It is undisputed that Sgt. Sedano's investigation revealed that several of the bondsmen kicked and beat Mr. Walker, and made racial comments while Mr. Walker was being held at gunpoint by the other bondsmen. It is also undisputed that Mr. Walker was unarmed and provided no resistance; Ms. Tomlin was taken into custody by the bondsmen without her offering any resistance; the beating of Mr. Walker, who offered no resistance, continued after Ms. Tomlin had been taken into custody; and Mr. Walker was left bleeding in the street after the bondsmen left with Ms. Tomlin.

It is also undisputed that Ms. Tomlin told Sgt. Sedano that she could positively identify all of the men involved. In an attempt to identify the subjects, Sgt. Sedano obtained a copy of Ms. Tomlin's appearance bond. Her investigation revealed that James Viola owned the bonding company that was charged with executing the warrant, and Viola also owned the company that insured this bonding company and others. When Sgt. Sedano learned that Scaletti, a licensed bondsman, who worked for Viola, had called the police to inform them that he and other bondsmen were going to pick up Ms. Tomlin, she requested the names of all bondsmen insured by Viola's insurance company from the Department of Insurance. The Plaintiffs' names were among the names provided by the

Department of Insurance. Thereafter, Sgt. Sedano prepared photographic lineups that included photographs of the Plaintiffs and photographs of individuals unrelated to the bonding business. Both Ms. Tomlin and Mr. Walker positively identified Scaletti, and Ms. Tomlin positively identified, without any hesitation, the Plaintiffs.⁵ Sgt. Sedano's investigation also revealed that Rivera's bailbonds license had been revoked in 1996, and therefore, he was not a licensed bondsman at the time of these events.

Prior to making any arrests in this case, Sgt. Sedano spoke with the Assistant State Attorney assigned to the case, who agreed that there was probable cause to arrest Scaletti for armed burglary and the aggravated battery of Mr. Walker, and that based upon Ms. Tomlin's positive identifications of Asad, Garcia, and Rivera, and Mr. Walker's tentative identifications, probable cause existed to arrest the Plaintiffs and to charge them as principals in the first degree with armed occupied burglary with a battery under section 810.02, Florida Statutes (1999), and

⁵ Sgt. Sedano and Mr. Walker testified at trial that Mr. Walker also tentatively identified at least two of the Plaintiffs, and Mr. Walker testified that all of the men, including the Plaintiffs, beat him. Because the Plaintiffs called into dispute whether Mr. Walker, when interviewed by Sgt. Sedano, told her that all of the men participated in the beating and that he had tentatively identified the Plaintiffs, and because we must consider the evidence in the light most favorable to the Plaintiffs, we do not consider these factors in determining whether as a matter of law Sgt. Sedano possessed probable cause to arrest the Plaintiffs. Additionally, although Mr. Walker positively identified all three Plaintiffs at trial, because these identifications were made subsequent to the arrest of the Plaintiffs, these in-court identifications are also irrelevant to the issue of probable cause.

aggravated assault with a firearm under section 784.021, Florida Statutes (1999), because all of the bondsmen had their guns drawn and pointed at Mr. Walker while he was dragged from his vehicle and beaten by Scaletti and several of the bondsmen.

It should also be noted that Scaletti was positively identified and arrested on July 14, 1999, before any of the Plaintiffs had been identified. While being transported to the station to be interviewed, he told the detectives that the individuals involved “were all in the same line of work” and they were just doing their jobs. When he was advised of his rights at the station, he declined to speak to the detectives and, therefore, they were unable to obtain the names of the other bondsmen involved. Detective Sedano did, however, receive telephone calls from several lawyers who stated that they represented some of the bail bondsmen involved in the incident, but each refused to name their clients or to bring them in for questioning.

Although Mr. Walker testified at trial that all of the bondsmen beat him and he positively identified the Plaintiffs as active participants, and Sgt. Sedano clarified in her deposition and testified at trial that Ms. Tomlin positively identified the Plaintiffs as active participants, Mr. Walker’s positive identifications of the Plaintiffs occurred subsequent to their arrest. Furthermore, Sgt. Sedano’s notes and reports do not specifically state that all of the bondsmen beat Mr. Walker or

that Ms. Tomlin, in identifying the Plaintiffs, stated that they kicked or beat Mr. Walker. Because we must view the evidence in the light most favorable to the Plaintiffs, and because we may only consider the material **undisputed** evidence, our analysis is based upon the premise that all of the bondsmen were armed, they all held Mr. Walker at gunpoint while he was forcibly removed from his car and beaten (evidence Sgt. Sedano undisputably had at the time of arrest), not all of the bondsmen actively participated in the beating, Ms. Tomlin was the only one who identified the Plaintiffs, and she only identified the bondsmen as being present during these events.

In Florida, it is well-established that mere presence and knowledge that a crime is being committed are insufficient to prove participation in a criminal offense. The undisputed facts Sgt. Sedano relied upon in arresting the Plaintiffs, however, demonstrate that she had more than the Plaintiffs' mere presence at the scene and knowledge that an offense was being committed. All of the bondsmen were armed with firearms, every one of them exited their cars with their guns drawn, and all of them, including the Plaintiffs, continued to point their firearms at Mr. Walker while he was hit in the mouth by Scaletti with a firearm while Mr. Walker was seated in his vehicle. They continued to point their firearms at Mr. Walker while he was dragged out of his vehicle and beaten by Scaletti and some of the other bondsmen.

Under Florida law, both the actor and those who aid and abet in the commission of a crime are principals in the first degree. Staten v. State, 519 So. 2d 622, 624 (Fla. 1988). The principal statute provides as follows:

Whoever **commits** any criminal offense against the state, whether felony or misdemeanor, **or aids, abets**, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed, **is a principal in the first degree and may be charged, convicted, and punished as such**, whether he or she is or is not actually or constructively present at the commission of such offense.

§ 777.011, Fla. Stat. (1999) (emphasis added).

Although mere presence at the scene and knowledge that an offense is being committed does not equate to participation with criminal intent, West v. State, 585 So. 2d 439, 441 (Fla. 4th DCA 1991), the evidence Sgt. Sedano had at the time she arrested the Plaintiffs, when considered in the light most favorable to the Plaintiffs, demonstrates that she had probable cause to arrest each of the armed bondsmen, including the Plaintiffs, who accompanied Scaletti to pick up Ms. Tomlin and aided Scaletti when he committed armed burglary with a battery, and aggravated assault.

Mr. Walker was stopped and detained by Scaletti and the Plaintiffs, who had no legal authority over him. After Mr. Walker was stopped and while he was being restrained by all of the bondsmen, who exited the vehicles with guns drawn and pointed at him, he was attacked by Scaletti, forcibly removed from his vehicle,

and beaten severely by several of the armed bondsmen, while being taunted with racial epithets by the other bondsmen. Mr. Walker was unarmed, offered no resistance, and did nothing to interfere with the execution of the warrant. Whether the Plaintiffs personally kicked and beat Mr. Walker, or the Plaintiffs stood guard over Mr. Walker and Ms. Tomlin while: (1) one of the bondsmen reached into Mr. Walker's car and opened the door; (2) Mr. Scaletti hit Mr. Walker in the mouth with a gun, grabbed him by the neck, and pulled him from his car; and (3) several other bondsmen beat Mr. Walker, is immaterial, because in either event, the Plaintiffs were principals to these criminal acts. Because Sgt. Sedano's pre-arrest investigation revealed that the Plaintiffs assisted Scaletti in the stop of Mr. Walker, who they had no lawful authority over, and at a minimum, stood guard over Mr. Walker with guns drawn and pointed at Mr. Walker while Scaletti and several of the other bondsmen kicked and beat Mr. Walker, who was unarmed and offered no resistance, provided sufficient evidence to establish probable cause that the Plaintiffs did "some act to assist" Scaletti in committing these crimes. See Terry v. State, 668 So. 2d 954, 964-65 (Fla. 1996) (finding that while Terry did not commit the aggravated assault, robbery, and murder, because he provided the handgun used in the assault and the assault furthered the robbery and murder by keeping the victims separated, he was properly convicted as a principal to these offenses); Dayes v. State, 869 So. 2d 58, 59 (Fla. 3d DCA 2004) (finding that because Dayes

drove the co-defendant to the encounter with the victims and handed a gun to the co-defendant who shot the victim, Dayes was guilty as a principal to the shooting); A.D.W. v. State, 667 So. 2d 485 (Fla. 2d DCA 1996) (upholding the defendant's burglary conviction as a principal based upon his presence with the group who broke into the vehicle and the evidence that he accompanied the group as they went from car to car, burglarizing them); A.B.G. v. State, 586 So. 2d 445, 447 (Fla. 1st DCA 1991) (finding that although A.B.G. did not personally steal condoms from the store, because he entered the store with the other boys who proceeded directly to the condom display, stood elbow-to-elbow with the boy who stuffed the condoms into his pocket, and kept looking at the display and then towards the front of the store, there was sufficient evidence to support a finding that he intended that the crime be committed and assisted in its commission); Norris v. State, 360 So. 2d 476 (Fla. 3d DCA 1978); Owens v. State, 289 So. 2d 472, 473 (Fla. 2d DCA 1974) (upholding Owens' conviction as a principal to the beating of the victim even though there was no evidence to indicate that he was one of the individuals who struck the victim, where Owens entered the restroom with Lavon and Dicks, he was present when the beating by Lavon and Dicks took place, and he left with Lavon and Dicks thereafter).

The cases cited above demonstrate that there was sufficient evidence to support a **conviction** as a principal to the crimes charged, which requires proof

beyond a reasonable doubt. The evidence supporting Sgt. Sedano's decision to arrest the Plaintiffs as principals in the instant case, however, need not reach the elevated standard required to sustain a conviction, as the standard of proof for probable cause only requires a **probability** of criminal activity. Spinelli v. United States, 393 U.S. 410, 419 (1969). “[T]he nature of the [probable cause] determination itself . . . does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands.” Gerstein v. Pugh, 420 U.S. 103, 121 (1975). Probable cause “exists where an officer ‘has reasonable grounds to believe that the suspect has committed a felony. The standard of conclusiveness and probability is less than that required to support a conviction.’” Chavez v. State, 832 So. 2d 730, 747 (Fla. 2002) (quoting Blanco v. State, 452 So. 2d 520, 523 (Fla. 1984)). See also Maily, 867 So. 2d at 1251 (quoting Fla. Game, 676 So. 2d at 474), which held as follows:

To show probable cause in a false arrest situation, it is not necessary that the arresting officer know facts that would absolutely prove beyond a reasonable doubt the guilt of the person charged; probable cause exists when the circumstances are sufficient to cause a reasonably cautious person to believe that the person accused is guilty of the offense charged.

As the courts around this state have said: “[t]o establish probable cause, an officer is required to conduct a *reasonable* investigation, but the officer does not have to take every conceivable step to eliminate the possibility of convicting an innocent person[.]” City of Clearwater v. Williamson, 938 So. 2d 985, 990 (Fla. 2d

DCA 2006), and law enforcement officers are afforded some latitude for error. Austrino, 898 So. 2d at 958 (citing Lee v. Geiger, 419 So. 2d 717, 719 (Fla. 1st DCA 1982)). “[T]he receipt of information from someone who it seems reasonable to believe is telling the truth is adequate.” Williamson, 938 So. 2d at 991 (quoting Weissman v. K-Mart Corp., 396 So. 2d 1164, 1167 (Fla. 3d DCA 1981)).

Because Sgt. Sedano possessed credible evidence that Mr. Walker was forcibly stopped and restrained by seven or eight armed bondsmen who had no lawful authority over him; Mr. Walker was dragged from his vehicle and beaten by Scaletti and at least several of the bondsmen while the other bondsmen held him at gunpoint; Ms. Tomlin immediately and positively identified the Plaintiffs as among the armed bondsmen; and Scaletti and all of the Plaintiffs were insured by Viola, the trial court erred in denying the Defendants’ motion for a directed verdict because, as a matter of law, Sgt. Sedano had probable cause to arrest the Plaintiffs as principals to the beating of Mr. Walker.

CONCLUSION

Because the Plaintiffs possessed no evidence and presented no evidence of malice, the trial court erred: (1) in submitting the Plaintiffs’ claims of malicious prosecution to the jury; (2) permitting the jury to consider the evidence only admissible to the Plaintiffs’ malicious prosecution claims when considering the evidence regarding the false arrest claims; and (3) permitting the jury to apportion

damages based upon this inadmissible evidence. These errors were compounded by the trial court's instructions to the jury and denied the Defendants their right to a fair trial. At a minimum, the Defendants are entitled to a new trial. I, however, would find, that based upon the undisputed facts, Sgt. Sedano had probable cause to arrest the Plaintiffs as principals to aggravated battery, and thus, I would enter judgment in favor of the Defendants.