
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RONALD REEVES

Plaintiff-Appellee,

v.

BRUCE UDOLF

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA, GAINESVILLE DIVISION

BRIEF OF APPELLEE
RONALD REEVES

DIRECT APPEAL FROM A FINAL JUDGMENT
IN A CIVIL CASE PURSUANT TO 28 U.S.C. § 1291

COUNSEL FOR APPELLEE
RONALD REEVES

JAMES F. WYATT, III
730 East Trade Street
Charlotte, North Carolina 28202
(704) 331-0767

BOBBY LEE COOK
Cook & Palmour
128 South Commerce Street
Summerville, Georgia 30747
(404) 857-3421

NORMAN G. JOHNSON
HOWARD MANCHEL
Manchel, Johnson & Wiggins
Suite 3612
101 Marietta Tower
Atlanta, Georgia 30303
(404) 522-1701

BILLY L. SPRUELL
6445 Powers Ferry Road
Suite 265
Atlanta, Georgia 30339
(404) 257-0777

CERTIFICATE OF INTERESTED PERSONS

The Plaintiff-Appellee hereby certifies that the following individuals or corporations are "interested persons" within the purview of Local Rule 28-2(b): (1) the Plaintiff, Ronald Reeves; (2) the Defendant, Bruce Udolf; (3) the United States District Court Judge, Honorable William C. O'Kelley; (4) counsel for the Plaintiff, James F. Wyatt, III; Norman Johnson; Bobby Lee Cook; Howard Manchel; and Billy L. Spruell; (5) counsel for the Defendant, John C. Jones; and (6) the insurer of the Defendant, the Liability Trust Fund for the State of Georgia.

STATEMENT REGARDING ORAL ARGUMENT

The Plaintiff-Appellee respectfully requests that the Court hear oral argument in this case.

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I. STATEMENT OF JURISDICTION

The Court of Appeals for the Eleventh Circuit has jurisdiction over this case because the Defendant-Appellant is appealing the entry of an adverse verdict rendered in the United States District Court for the Northern District of Georgia, Gainesville Division. See 28 U.S.C. §1291 (1984).

II. STATEMENT OF THE ISSUES

A. Whether Bruce Udolf, a District Attorney, who himself testified that he acted solely in an investigatory capacity at all times relevant to this case, should be insulated from liability pursuant to the doctrine of absolute prosecutorial immunity set forth in Imbler v. Pachtman, 424 U.S. 409 (1976).

B. Whether Udolf, who violated Ronald Reeves' clearly established statutory and constitutional rights to reasonable bail and his clearly established constitutional right to be free from an unreasonable seizure or detention, should be insulated from liability pursuant to the doctrine of qualified immunity set forth in Harlow v. Fitzgerald, 457 U.S. 800 (1982).

C. Whether sufficient evidence supports the jury's verdict, an issue which should be reviewed pursuant to the "any evidence" standard of review.

D. Whether this Court need even address Udolf's contention that Reeves' waived his eighth amendment right to reasonable bail, as the jury's verdict can be affirmed on other grounds.

III. STATEMENT OF THE CASE

A. The Course of Proceedings.

On 22 July 1985 Ronald Reeves, a carpenter from Dawsonville, Georgia, filed the instant action against Bruce Udolf and Dillard Head pursuant to 42 U.S.C. §1983 (1984). Udolf was the District Attorney for the Northeastern Judicial Circuit of the State of Georgia¹ at all times relevant to this lawsuit,² and Head was a Deputy Sheriff for the Dawson County Sheriff's Office at all times relevant to this lawsuit.³ In his Complaint, as amended, Reeves alleged two claims: that Udolf and Head, individually and/or conspiratorially, falsely and maliciously arrested him on a misdemeanor charge in violation of the fourth, fifth, eighth and fourteenth amendments to the United States Constitution; and that Udolf and Head, individually and/or conspiratorially, caused him to be unreasonably detained in jail on this charge in violation of these same amendments. See R-1-1 & 18.⁴

¹The Northeastern Judicial Circuit of the State of Georgia consists of Dawson, Hall, Lumpkin and White Counties.

²Udolf's tenure as a duly elected District Attorney began on 1 January 1983. Udolf served a four-year term and ran for re-election. He was soundly defeated in his re-election bid, and his last day as the acting District Attorney was 31 December 1986. See R-4-249. As of the date of trial, Udolf was self-employed. Id.

³Head left the employment of the Dawson County Sheriff's Office after the incidents involved in this Complaint occurred for reasons which do not appear in the record of this case. See R-3-133. At the time of trial, Head was self-employed as a painter. Id. R-4-281.

⁴In his Statement of the Course of Proceedings, Udolf characterizes Reeves' claims as being based upon the fact that Udolf and Head "caused [Reeves] incarceration beyond seventy-two hours after arrest." Brief of Udolf at 2. Udolf, in this characterization, is undoubtedly referring to the Georgia statute which requires an arresting officer to bring an arrestee before a magistrate for a bond hearing within 72 hours of arrest. See O.C.G.A. §17-4-26 (Michie 1981); Section III(b) at 18 infra. This characterization is misleading. Reeves' claims are based on constitutional violations, not statutory violations. The violation of any Georgia statutes is relevant only to Udolf and Head's trial defense of qualified immunity. See Section V(B) infra.

On 9 December 1985 Udolf filed his first motion for summary judgment. See R-1-6. Head did not join in this motion. In his motion, Udolf contended that he was entitled to the entry of a judgment in his favor because (1) he was immunized from liability in this case pursuant to the doctrine of absolute prosecutorial immunity set forth in Imbler v. Pachtman, 424 U.S. 409 (1979); (2) he was immunized from liability in this case pursuant to the doctrine of qualified immunity set forth in Harlow v. Fitzgerald, 457 U.S. 800 (1982); and (3) Reeves failed to state any claims that could withstand summary judgment. Reeves replied to this motion and filed a cross-motion for summary judgment. See R-1-7. On 31 March 1986 the district Court denied Udolf's motion for summary judgment, as well as Reeves' cross-motion for summary judgment.

In its Order, the District Court held that a disputed factual question existed with regard to whether Udolf "stepped outside his prosecutorial role" in this case, which, if true, would negate his defense of absolute prosecutorial immunity. See R-1-19-4. The District Court also held that disputed factual issues existed with regard to all other matters raised in the motions for summary judgment. Id., at 4-5. The District Court further noted that discovery was ongoing and should be completed before the Court made a dispositive pretrial ruling. Id.

Prior to the entry of the aforementioned Order, Reeves was allowed to add Fran Wiley, a Georgia Bureau of Investigation Agent, as a party-defendant. Reeves sought to add her as a party-defendant as a result of information obtained when Head was deposed. See R-1-14.

On 17 December 1986 Udolf filed his second motion for summary judgment. See R-1-24. Wiley joined in this motion, but Head did not. Udolf asserted the same arguments in this motion that he asserted in his first motion for summary judgment.

On 30 January 1987 the District Court denied Udolf's motion for summary judgment, but granted Wiley's motion. See R-1-28. In this Order, the Court held that disputed factual issues existed with regard to Udolf's substantive liability for each of the claims raised by Reeves. Id. at 4. And, with regard to the immunity arguments raised by Udolf, the Court specifically concluded that

Udolf's conduct regarding the incarceration . . . of the plaintiff does not fall within (1) the absolute immunity given a prosecutor when engaging in activities intimately associated with the judicial process, i.e. the conduct was investigative in nature, or (2) the qualified immunity given a government official performing discretionary functions insofar as his conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Id. (citations omitted).

On 10-12 March 1987 the instant case was tried before a jury in the United States District Court for the Northern District of Georgia, Gainesville Division, with Honorable William C. O'Kelley presiding. Prior to trial, Reeves dismissed his false arrest claim and proceeded at trial upon only one claim: that Udolf and Head, individually and/or conspiratorially, caused him to be incarcerated for five days on a misdemeanor charge, thus causing him to be unreasonably detained in violation of his fourth, eighth and fourteenth amendment rights.

During the trial of this case, Head and Udolf moved for a directed verdict at the close of the Plaintiff's evidence. See R-4-274 to 280. When making his motion for a directed verdict, Udolf again set forth the arguments that he raised in his two motions for summary judgment. Udolf and Head's motions for a directed verdict were taken under advisement by the District Court. Id.

At the close of the Defendant's evidence, neither Head nor Udolf renewed their motion for a directed verdict. See R-5-368. The District Court then held a charge conference. During this conference, Reeves voluntarily dismissed the conspiracy element of his claim. See R-5-412. After the charge conference, and after closing arguments were presented by all parties, see R-5-369 to 412, Udolf

and Head attempted to renew their motions for a directed verdict. See R-5-413.

Thereafter the District Court charged the jury, stating that the jury could predicate a finding of liability on the ground of a violation of Reeves' eighth amendment right to reasonable bail or upon his fourth and fourteenth amendment right to be free from an unreasonable seizure or detention. See R-5-421. After deliberating, the jury returned a verdict of \$50,000.00 against Udolf. See R-2-36. This verdict consisted of \$2,500.00 in compensatory damages and \$47,500.00 in punitive damages. The jury also returned a verdict in favor of Head.

After the foregoing judgment was entered, Reeves filed a Motion for Attorney's Fees and a Bill of Costs. See R-2-38 & 39. Udolf filed a Motion for a New Trial and for a Judgment Notwithstanding the Verdict ("JNOV"). See R-2-40. In this motion, Udolf, for the fourth time, argued the issues of Imbler immunity and the sufficiency of the evidence. Udolf also contended that the verdict rendered by the jury was excessive.

On 23 March 1988 the District Court denied Udolf's Motion for a New Trial and for a JNOV. In its Order, the Court first set forth the applicable standard of review for a motion for a new trial and the applicable standard of review for a motion for a JNOV, noting that, "when, as here, the moving party [Udolf] fails to move for a directed verdict at the close of all the evidence, a motion for JNOV will be denied if there is any evidence to support the jury's verdict." See R-2-55-2. The District Court then held that Udolf was not immunized from liability under Imbler because he was, by his own admission, acting in an investigative capacity, rather than in a prosecutorial capacity, at all times relevant to this case. Id. at 2-3. The District Court also held that ample evidence supported the jury's verdict, and that this evidence "supports a verdict against Udolf under a theory of direct liability" Id. at 3. The District Court finally

held that the verdict rendered on behalf of Reeves was not excessive. Id. at 3-4.⁵

In the same Order denying Udolf's motion for a new trial and for a JNOV, the District Court awarded costs of \$2,312.79 and attorney fees of \$27,150.00 to Reeves. Id. at 4-10. Udolf thereafter filed a timely notice of appeal. See R-2-57.

In summation, the proceedings in the District Court reveal that Udolf presented the issues of Imbler immunity and the sufficiency of the evidence to the Court on no fewer than four occasions, and on each occasion the Court ruled against Udolf.

B. Statement of the Facts

In his three-page "Statement of the Facts," which does not include a single citation to the trial transcript of this case, see Brief of Udolf at 3-5, Udolf does not, as he is required to do, set forth the facts of this case as construed most favorably to the Plaintiff. See Boeing Co. v. Shipman 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc). The facts of this case, so construed, reveal the following.

In March of 1985 Ronald Reeves was a resident of Dawsonville, Georgia; was married to Brenda Reeves; and had a five-year old son. He was employed as a carpenter, and had been doing carpentry work for Michael Kelleher, a resident of nearby Gainesville, Georgia, since the fall of 1984. Bruce Udolf was, in March of 1985, the District Attorney for the Northeastern Judicial Circuit of the State of Georgia, which encompasses the adjoining counties in which Dawsonville (Dawson County) and Gainesville (Hall County) are located. Udolf became

⁵The District Court stated: "Taking into consideration the seriousness of the affront to the plaintiff's constitutional rights by one charged with a duty to uphold and enforce the law, the court cannot say that a verdict of \$2,500 in compensatory and \$47,500 in punitive damages shocks its conscience. Although the punitive damage award is proportionately much higher than the compensatory award, it is not too stiff in an absolute sense, and it should serve the laudatory purpose of deterring this defendant from engaging such conduct in the future."

the duly elected District Attorney for the Northeastern Judicial Circuit on 1 January 1983. He was soundly defeated when he ran for re-election, and his last day in office was 31 December 1986. See R-4-249. At the time of trial, Udolf was self-employed as an attorney in Gainesville, Georgia. Id.

Dillard Head was, in March of 1985, employed as a Deputy Sheriff for the Dawson County Sheriff's Office. See R-3-132 to 133. Head's employment with this office was later terminated for reasons not contained in the record of this case, and Head was self-employed as a painter at the time of trial. See R-4-281.

On 17 March 1985, a Sunday, Fran Wiley, a Georgia Bureau of Investigation ("GBI") Agent, placed a telephone call from the GBI office in Gainesville to Head at the Dawson County Sheriff's Office and Jail, which is located in Dawsonville. Head, the only officer on duty that day, was out of the office at the time, but returned Wiley's call shortly after it was made. See R-3-154. Wiley told Head that the GBI had recovered a hunting rifle that was allegedly stolen; that the rifle belonged to Reeves; and that she wanted Head to contact the Magistrate for Dawson County and have him issue an arrest warrant for Reeves. See R-3-155; R-4-284. The rifle in question was a Remington 700 Hunting Rifle, and it was seized during a search of the residence of Michael Kelleher. See R-5-340.

Head called Paul Payne, the Magistrate for Dawson County, and met Payne at the latter's office. Both Payne's home and office are located within one-half of a mile of the Dawson County Sheriff's Office and Jail. See R-4-219 to 20. Head called Wiley from Payne's office, and Wiley provided the information for the issuance of an arrest warrant for Reeves. See R-3-156. Payne filled out the warrant in accordance with this information and signed it. See R-4-212. Wiley then instructed Head to arrest Reeves and to call her when he had accomplished this task. See R-3-157.

The arrest warrant alleged that Reeves committed a misdemeanor offense: tha he possessed a stolen gun valued at less than \$500.00. See O.C.G.A. §§ 16-8-7 and 16-8-12 (Michie 1981).⁶ The arrest warrant also was a Dawson County warrant, but Wiley instructed Payne to strike through the word "Dawson" and replace it with the word "Hall" in order to reflect the fact that the case was a Hall County case. See R-3-152 to 153. This procedure was highly unusual - - indeed, according to the witnesses in this case, it had never been used before in Hall or Dawson Counties. See R-4-242 to 243.

Head drove to the Reeves' residence and, at approximately 5:00 p.m., he arrested Reeves. See R-3-49 to 52. Head then transported Reeves to the Dawson County Jail. Although Reeves' wife was present when Reeves was arrested, Head did not tell her where he was taking her husband. See R-3-48 to 49, 104 to 105.

During the trip to the jail, Reeves was allowed to ride in the front seat of Head's car and he was not handcuffed. See R-3-49 to 50. Reeves asked Head why he was being arrested, and Head showed him the arrest warrant. Reeves then told Head that the rifle in question was not stolen, and he told Head where

⁶Section 16-8-7 provides in part:

A person commits the offense of theft by receiving stolen property when he receives, disposes of, or retains stolen property which he knows or should know was stolen unless the property is received, disposed of, or retained with intent to restore it to the owner. "Receiving" means acquiring possession or control or lending on the security of the property.

Section 16-8-12 provides in part:

A person convicted of violation of Code Sections 16-8-2 through 16-8-9 shall be punished as for a misdemeanor except:

(1) If the property which was the subject of the theft exceeded \$500.00 in value, by imprisonment for not less than one nor more than ten years or, in the discretion of the trial judge, as for a misdemeanor;

the gun was purchased (the Gibson's Big G Store in Gainesville); who purchased it (Brenda Reeves); and when it was purchased (1978). See R-3-51 & 52, 158. Head replied that he "didn't know anything" about the charge and that "his orders came from Hall County." See R-3-51.

Sometime during the afternoon of 17 March 1985, Wiley called Udolf at his home and told him about Reeves' impending arrest. Udolf told Wiley that a GBI agent or other investigative officer should interrogate Reeves. Wiley stated that none were available for this task, and Udolf then stated that he would perform this investigative task for Wiley. See R-4-267 to 69; R-5-340-41.

When Head and Reeves arrived at the Dawson County Jail, Head took Reeves in through a side door and placed him in a solitary cell. This cell had no windows; no access to a telephone; had only a bed and a commode; and it smelled like a "men's room." See R-3-57 to 58. Head could have placed Reeves in a dormitory cell with several other inmates, but he did not. In a dormitory cell, Reeves could, of course, ask another inmate to make a telephone call for him if he were denied access to a telephone. See R-4-314 to 315.

When Reeves was incarcerated, he was not booked-in; he was not fingerprinted; he was not allowed to make any telephone calls; and no bond was set for him. See R-3-54 to 57, 158 to 160. Only after he asked a deputy sheriff about his bond during the evening of the 17th was he informed that his bond was set at \$100,000.00, an astronomical figure for a misdemeanor offense. See R-3-57.

In October of 1984, five months prior to the incidents involved in this case, Reeves was arrested by Head on a DUI charge in Dawson County. On this occasion, Reeves was promptly taken before Magistrate after his arrest for a bond/probable cause hearing. See R-4-291 to 293, 317.

After Head incarcerated Reeves on the 17th, he called Wiley. Head and Wiley thus conversed for the third time on a Sunday afternoon regarding the arrest of an individual on a misdemeanor charge. Head told Wiley that Reeves

had been incarcerated, and Wiley told Head that "Udolf will be up to 'talk to' Mr. Reeves." See R-3-160. Until Udolf's arrival at the Dawson County Jail, which occurred during the afternoon of the 18th, Reeves was not allowed to make any telephone calls; was not allowed out of his solitary cell; and was not afforded -- or even given notice of -- a probable cause hearing. See R-3-55 to 61, 163 to 164.

The manner in which Reeves' bond was set, and the manner in which his arrest warrant was issued -- i.e. the issuance of a Dawson County warrant (with the word Dawson struck out and the word Hall written in) for an offense committed in Hall County -- was highly unusual. A review of the usual arrest and bond procedures for Hall and Dawson Counties reveals why these unusual procedures were employed in this case.

In Hall County when an individual is arrested on a misdemeanor charge issued by the Hall County Magistrate, his bond is set immediately upon his incarceration, and the amount of the bond is determined in accordance with a standardized schedule posted at the Hall County Jail. See R-4-235; R-5-328 to 329. Usually, in a possession-of-stolen-goods charge, the amount of the bond is twice the value of the property that was allegedly stolen. Id. Thus, in this case, Reeves' bond would have been approximately \$700.00 in Hall County. Id.; see R-4-205. Furthermore, the Hall County Magistrate is extremely punctual in holding probable cause hearings for arrestees. As Udolf himself testified:

The Magistrate of Hall County encourages it [i.e. probable cause hearings] and he -- he even goes down to the jail and signs people up as soon as they are arrested... [the Magistrate] is the most active Magistrate in the State [with regard to holding probable cause hearings immediately upon an arrest].

R-5-336, 367.

In Dawson County, after an individual's arrest on a misdemeanor charge issued by the Dawson County Magistrate, the arrestee's bond is set by either of the

senior deputy sheriffs -- Head or Russell Matthews.⁸ Misdemeanor bonds are usually set immediately upon an individual's incarceration. See R-3-151. No pre-set bond schedule is used to set these bonds, but they are usually set at a reasonable amount, and a reasonable amount for the misdemeanor charge brought against Reeves was established at trial to be \$1,000.00. See R-4-235 to 36.

The Dawson County Magistrate, Paul Payne, usually does not set misdemeanor bonds, nor does he hold probable cause hearings for an arrestee unless he is notified of the need for such a hearing. See R-4-220.

With regard to arrest/bond procedures when one county, such as Hall County, issues an arrest warrant and the arrest is made by another county, such as Dawson County, the most common procedure for the posting of bond is that the county issuing the arrest warrant sets the bond and allows the arrestee to post the bond in the county in which he is arrested.⁹ See R-4-241 to 242. This procedure allows an arrestee to be released almost as soon as he is arrested.

In light of the aforementioned bond procedures for Hall and Dawson counties, and in light of the alacrity with which probable cause hearings are held in each county, it becomes apparent why Reeves was arrested on a Dawson County warrant

⁸In March of 1985 the Sheriff of Dawson County was Ford Bannister. He was a coroner who was filling the position temporarily until a new sheriff could be elected. The former Sheriff, Jack Davis, was forced to resign from office because of his conviction on cocaine charges. Bannister did not actively participate in the day-to-day operations of the Dawson County Jail. See R-3-134 to 136; R-4-210 to 211.

⁹Two other arrest/bond procedures are sometimes used: (1) the arresting officer brings the arrestee to the county line and places the arrestee in the custody of officers from the county issuing the arrest warrant, who then take the arrestee to jail and allow him to post a bond; (2) officers from the county issuing the arrest warrant travel to the arresting county's jail, pick-up the arrestee, transport the arrestee to the jail for the issuing county and allow the arrestee to post bond there. See R-4-241 to 242.

(with the word Dawson struck through and the word Hall written) and why he was transported to the Dawson County Jail: this unusual procedure allowed Udolf, Wiley and Head to place Reeves in a jail where he would not receive an immediate probable cause hearing. Furthermore, this unusual procedure allowed Reeves to be placed in a jail where the posting of bond could be controlled by Udolf and Head.

Udolf arrived at the Dawson County Jail for the purpose of interrogating Reeves during the afternoon of 18 March 1985 (a Monday). A Hall County Investigator, Steve Cronic, accompanied him. Udolf and Cronic entered Reeves' cell, and Udolf interrogated Reeves for approximately 30 minutes.¹⁰ See R-3-61 to 62. This interrogation did not concern the misdemeanor gun charge brought against Reeves; rather, it concerned Michael Kelleher, the individual who employed Reeves as an independent contractor/carpenter. Id. Udolf intimated during this interrogation that Kelleher was the subject of a drug investigation and he asked Reeves questions about Kelleher's activities. Reeves answered every question about Kelleher that was asked by Udolf. Id.

Udolf and Cronic then left Reeves' cell, and Reeves was taken into Head's office. Udolf interrogated Reeves for another two hours in this office. See R-3-63.¹¹ Cronic and Head were present during this interrogation, but asked few questions. Udolf's interrogation again did not concern the misdemeanor gun charge brought against Reeves, but rather concerned Michael Kelleher and his activities. Indeed, Udolf told Reeves during this interrogation that "he knew all about the gun, and he wasn't interested in the gun." R-3-66; see also

¹⁰ Reeves was never read his Miranda rights at any time during any of interrogations that occurred on 18 March 1985. See R-3-63.

¹¹ Head described Udolf's demeanor during this interrogation as "aggressive." See R-4-310.

R-5-345, 361. And Cronic recalled that, when Reeves brought the gun charge up during the interrogation, Udolf "advised [Reeves] that he wasn't there to talk to him about the gun charge, that he wasn't interested in that ... he was there to talk to him about [Kelleher]." R-4-189.

During his interrogation of Reeves, Udolf called Reeves a liar and a mule on several occasions. See R-3-65 to 66. Additionally, Udolf offered to "fix" the probation that Reeves was serving on a DUI charge and to ensure that Reeves' misdemeanor gun charge would be dropped if Reeves would provide him with information about Kelleher. Id. Reeves told Udolf, in response to this offer, that he did not know anything about Kelleher. Id.

Udolf and Cronic then left Head's office, and Head questioned Reeves about Kelleher for approximately 30 minutes. See R-3-68. After this interrogation, Reeves was placed back in his solitary cell. Id.

Shortly after Udolf and Head interrogated Reeves, GBI Agent Paul Loggins came to the Dawson County Jail and interrogated Reeves concerning Kelleher. Id. Reeves initially answered these questions, but then refused to answer any further questions because "they wasn't treating me right at all . . ." Id. Reeves was then booked and fingerprinted.

Sometime after this interrogation, Reeves was allowed to make his first telephone call by a female deputy sheriff, even though she "wasn't supposed to" let Reeves use the telephone. See R-3-101. Reeves called his wife and told her to come to the jail. She did, and he told her about his predicament; told her to try to get him out of jail; and asked her to go to Gibson's Big G Store ("Big G") and obtain some papers showing that the gun was lawfully purchased. See R-3-70. On her way out of the jail, Brenda Reeves saw Head. He instructed her to go to Big G and obtain the serial number for the gun in question. See R-3-107 to 108. Brenda Reeves did so, and also obtained a note from Herb

McClure, an employee of Big G, stating that the gun in question was lawfully purchased from Big G. See R-3-108 to 112.

Brenda Reeves returned to the Dawson County Jail with the foregoing information and showed it to Head. He compared the serial number of the gun on the arrest warrant to the serial number obtained by Brenda Reeves. These numbers matched. See R-3-109. Brenda Reeves then asked if her husband could be released on bond. Head replied in the negative, stating that "I have orders from Udolf to hold him here." R-3-109 to 110. Brenda Reeves then went home.

Beginning on 18 March 1985 (a Monday), and continuing until Reeves' release from jail on 21 March 1985 (a Thursday), Brenda Reeves would contact Head at least twice daily. On each of these occasions, she would ask Head if her husband could be released. On each occasion, Head stated that he could not release Reeves because of orders from Udolf. As Brenda Reeves testified:

Q. Do you recall how many times you went to the jail, how many days?

A. About three days. Sometimes it was like twice a day.

Q. Did you ask him [Head] to let your husband out of jail every time?

A. Just about it.

Q. What did he say to you?

A. He always said he had orders to hold him in there.

Q. Order from who?

A. Udolf.

R-3-116 to 117.

On 19 March 1985 (a Tuesday), the third day of Reeves' incarceration on a misdemeanor charge, Brenda Reeves drove to the jail and saw Head. He instructed her to obtain an ATF Form 4473 for the gun in question from Big G. See R-3-111. This form is filled out whenever a gun is sold by a business and demonstrates the lawful nature of the sale. Brenda Reeves went to Big G, ob-

tained this form, returned to the jail and presented it to Head. See R-3-112. She then asked Head if her husband could be released from jail. Head stated that he could not release Reeves because of "orders from Udolf to hold him [t]here." R-3-113.

Brenda Reeves then called Robert Thompson, a Gainesville attorney. She told him about her husband's dilemma, and Thompson agreed to visit Reeves at the jail that evening. Thompson met Reeves at the jail at approximately 7:30 p.m. Reeves told Thompson that he "was being held,...what [his] bond was [i.e. \$100,000.00],...[that he] wasn't guilty of it [i.e. the misdemeanor gun charge]...[and that he] wanted to get out." R-3-73. Thompson also was shown information obtained by Reeves' wife concerning the lawful purchase of the gun from Big G. See R-4-228 to 230. As a result of Thompson's discussion with Reeves, Thompson clearly understood what Reeves wanted him to do:

Q. Did he [Reeves] state anything relating to wanting to get out of jail?

A. Well, that's what I was doing there. I was supposed to try to get him out of jail. He did not know why he was still in jail.

R-4-228 to 229.

During their meeting, Thompson and Reeves did not discuss the propriety of moving for a probable cause hearing as opposed to moving for a bond hearing as the most effective means of securing Reeves' release. See R-4-245. Sometime after his meeting with Reeves, Thompson made the decision to move for a probable cause hearing in order to effectuate Reeves' release instead of moving for a bond hearing. He made this decision because (1) Reeves' bond was set at the astronomical amount of \$100,000.00, which made the likelihood of getting Reeves' bond reduced to a makeable amount remote; (2) Thompson had already seen evidence concerning the lawful purchase of the gun in question, which rendered the State's chances of establishing the requisite probable cause minimal; and

(3) Thompson felt that a favorable ruling at the probable cause hearing would in all likelihood result in the gun charge not being prosecuted or reinstated at a later date, whereas the release of Reeves on bond would likely result in the continuation of the prosecution of Reeves on the gun charge. See R-3-78; R-4-228 to 229; R-4-245 to 46.

After his meeting with Thompson, Reeves was transferred from his solitary cell to a dormitory cell, where he was able to take his first shower since his incarceration. See R-3-73 to 74.

During the evening of 19 March 1985 Head travelled to the Hall County Jail in connection with another case. He saw Udolf there, and asked Udolf about Reeves bond. Udolf set Reeves' bond at \$20,000.00 in cash. See R-3-170 to 171.

On 20 March 1985, a Wednesday marking the fourth day of Reeves' incarceration on a misdemeanor charge for which bond was usually immediately available, Reeves asked Head about his bond, as he had on numerous earlier occasions. See R-3-76-167. Head replied that Reeves' bond had been reduced from \$100,000.00 to \$20,000.00. See R-3-76 to 77. Reeves thought that this \$20,000.00 bond was a property bond, and he called a friend to try to post this bond. He subsequently discovered, however, that this bond was a cash bond and that he would have to produce \$20,000.00 in cash in order to post it. As this task was clearly beyond his means, he discontinued his efforts to try to post this bond. See R-3-76 to 77, 114 to 115.

On the same day, Thompson went to Udolf's office which is located in the courthouse in Gainesville. Thompson requested that Udolf hold a probable cause hearing that day for Reeves, and Udolf replied that "he was too busy." See R-4-231 to 232. Udolf then told Thompson that he was now setting Reeves bond at \$150,000.00 in cash. Id. Udolf and Thompson then "talked about bond a little while," and Udolf asked Thompson if Reeves could make a \$100,000.00 property bond. Thompson replied that Reeves "wouldn't know what \$100,000.00

looks like." Id. Thompson then left Udolf's office. Later that day Thompson began to prepare a motion to obtain a probable cause hearing. See R-4-234.

Reeves remained incarcerated throughout Wednesday, 20 March 1985, and on Thursday morning he asked Head again about his bond. Head stated that "all of his orders was coming from Gainesville...[and] that he wouldn't release" Reeves. See R-3-78, 91.

At approximately 5:00 p.m. on Thursday, the 21st of March and the fifth day of Reeves' incarceration, he was released from jail on a \$1,000.00 property bond. See R-3-78 to 79. Reeves had the means and ability to make this bond from the moment his incarceration began. See R-3-47, 78 to 79. Reeves' bond was set at a \$1,000.00 property bond because Udolf called the Dawson County Jail -- after he was confronted about Reeves' situation by Thompson -- and instructed the officers at the jail to release Reeves on this bond. See R-4-261.

After Reeves' release from jail, the misdemeanor gun charge brought against him was dismissed and was never reinstituted. See R-3-79.

Certain Georgia statutes are relevant to Reeves incarceration. O.C.G.A. § 17-6-1 (Michie 1981) provides in part that, "At no time, either before a court of inquiry, when indicted, after a motion for a new trial is made, or while an appeal is pending, shall any person charged with a misdemeanor be refused bail." Section 17-4-26 provides as follows:

Every law enforcement officer arresting under a warrant shall exercise reasonable diligence in bringing the person arrested before the judicial officer authorized to examine, commit, or receive bail and in any event to present the person arrested before a committing judicial officer within 72 hours after arrest. The arresting officer shall notify the accused as to when and where the commitment hearing is to be held. An arrested person who is not notified before the hearing of the time and place of the commitment hearing shall be released.

Despite this statutory directive, Reeves was never taken before a Magistrate for a probable cause and/or bond hearing during the entire five-day period

of his incarceration, nor was he ever notified of such a hearing. See R-3-80.¹²

C. The Standard of Review

1. With regard to the immunity issues raised pursuant to Imbler v. Pachtman, 424 U.S. 409 (1976), and Harlow v. Fitzgerald, 457 U.S. 800 (1982), the standard of review is de novo as to the application of the immunity standard to the facts of this case, with these facts being construed most favorably to Reeves. See Mitchell v. Forsyth, 472 U.S. 511, 528-29 (1985).

2. With regard to the sufficiency of the evidence, the standard of review, in light of Udolf's failure to make a timely motion for a directed verdict at the close of the evidence, is whether any evidence supports the jury's verdict. See Thronson v. Meisels, 800 F.2d 136, 139-40 (7th Cir. 1986); Wilson v. Attaway, 757 F.2d 1227, 1237 (11th Cir. 1985). Additionally, all evidence is to be construed most favorably to Reeves. See Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

¹²As noted earlier, when Reeves was arrested by Head in October of 1984 on a DUI charge, he was, however, promptly taken to Magistrate Payne for a bond/probable cause hearing. See R-4-291 to 293, 317.

IV. SUMMARY OF THE ARGUMENT

A. Imbler v. Pachtman, 424 U.S. 409 (1976), denies absolute immunity to those injudicious prosecutors who engage in investigatory undertakings. Udolf's participation in the unconstitutional detention of Reeves was investigatory in nature. This fact is demonstrated by (1) Udolf's own admission that he was never involved in the prosecution of Reeves on the misdemeanor gun charge in question; (2) Udolf's own admission that the reason that he interrogated Reeves during the latter's incarceration was because a Georgia Bureau of Investigation Agent was unavailable to perform this task; and (3) the circumstance that none of the actions taken by Udolf in connection with Reeves' incarceration occurred in any judicial forum.

B. Udolf is not entitled to the reversal of the jury's verdict on the ground of qualified immunity because he violated Reeves statutory and constitutional rights to reasonable bail and his constitutional right to be free from an unreasonable seizure or detention.

C. Sufficient evidence supports the jury's verdict, an issue which is reviewable under the "any evidence" standard of review. Ample evidence demonstrates that Udolf personally caused Reeves to be detained for five days in violation of Reeves' fourth, eighth and fourteenth amendment rights. This evidence includes the fact that (1) Udolf left orders at the Dawson County Jail for Reeves to remain incarcerated until Udolf authorized his release; and (2) Udolf personally set Reeves' bond at the astronomical amounts of \$100,000.00 in property, \$20,000.00 in cash and \$150,000.00 in cash in order to ensure Reeves' continued incarceration.

D. Reeves did not, through his attorney, waive his eighth amendment right to reasonable bail. This Court, however, need not even address this contention in order to decide this case.

V. ARGUMENT

A. UDOLF IS NOT SHIELDED FROM LIABILITY IN THIS CASE UNDER THE DOCTRINE OF ABSOLUTE PROSECUTORIAL IMMUNITY SET FORTH IN IMBLER V. PACHTMAN, 424 U.S. 409 (1976), BECAUSE HE WAS ACTING IN AN INVESTIGATIVE CAPACITY AT ALL TIMES RELEVANT TO THIS CASE.

In Imbler v. Pachtman, 424 U.S. 409 (1976), the Supreme Court held that a district attorney is absolutely immune from liability for "activities [that are] intimately associated with the judicial phase of the criminal process." Id. at 430 (emphasis added). These activities involve decisions made by a district attorney in his role as an advocate. See Kadivar v. Stone, 804 F.2d 635, 637 (11th Cir. 1986). The Imbler Court did not address the issue of whether a district attorney is absolutely immune from liability for actions taken in "the role of an administrator or an investigative officer rather than that of an advocate." Imbler, supra, at 431 (emphasis added). Lower courts addressing this issue since Imbler have, however, overwhelmingly held that a prosecutor is not entitled to absolute immunity in connection with such activity. See, e.g., Rich v. Dollar, 841 F.2d 1558, 1562-63 (11th Cir. 1988) ("our cases establish that a prosecutor who himself engages in investigative work is not shielded from a 1983 claim for damages by absolute immunity"); Rex v. Teeples, 753 F.2d 840, 843-44 (10th Cir.) ("giving Miranda warnings to a general suspect and participating in his interrogation is 'police-related' work and does not fall within the category of a prosecutor's quasi-judicial functions"), cert. denied sub nom. Johnson v. Rex, 106 S.Ct. 332 (1985); McSurely v. McClellan, 697 F.2d 309, 318-20 (D.C. Cir. 1982) (the preliminary gathering of evidence which may blossom into a potential prosecution is investigatory activity not entitled to absolute immunity); Marrero v. City of Hialeah, 625 F.2d 499, 505 (5th Cir. 1980) ("a prosecutor who assists, directs or otherwise participates with the police in obtaining evidence prior to an indictment undoubtedly is functioning more in his investigative capacity than in his quasi-judicial capacit[y]...").

Three elements of the evidence in this case demonstrate with particular probity that Udolf was acting in an investigative capacity when he caused Reeves to be detained for five days on a misdemeanor gun charge. First, Udolf himself testified that he was never involved in the prosecution of the misdemeanor gun charge brought against Reeves. See R-5-345 (Udolf states to Reeves during the latter's interrogation that, "I'm not here to talk to you about [the gun charge], and I have nothing to do with the gun charge"); id. at 361 (Udolf states, "I had really no interest in the charges against Mr. Reeves as far as the gun charge goes").

Second, Udolf interrogated Reeves on 18 March 1985 only because a GBI Agent was unavailable to perform this task. As Udolf himself testified, when Wiley called him at his home 17 March 1985 and informed him about the arrest of Reeves, Udolf suggested to Wiley that she have have a GBI agent interview Reeves concerning the activities of Michael Kelleher. See R-4-267 to 269; 340-41. Wiley informed Udolf that no GBI agents were available to perform this task, and Udolf, rather than exercising prudent prosecutorial judgment, volunteered himself for the task. Id. Udolf then travelled to the Dawson County Jail the next day and interrogated Reeves for approximately three hours. Udolf brought a Hall County Investigator, Steve Cronic, with him when he conducted this interrogation, which further illustrates the investigatory nature of this trip. And when Reeves did not give Udolf any helpful information concerning Michael Kelleher, Udolf directly caused Reeves to be incarcerated for another three days in order to see if Reeves would change his mind. See Section V(C) infra.

Third, all actions taken by Udolf with regard to the detention of Reeves-- including having Reeves kept in isolation from the time of his arrest until Udolf interrogated him; personally setting Reeves' bond at the unmakeable amounts of \$100,000.00 in property, \$20,000.00 in cash and \$150,000.00 in cash; and

instructing Head not to allow Reeves to be released until Udolf authorized his release -- were committed outside of the presence of any judicial forum.¹²

In support of his Imbler argument, Udolf contends that, because "the setting of bond . . . is strictly a judicial function," he is immunized from liability for all of the actions that he took in connection with this case. Brief of Udolf at 25-27. Udolf cites a number of cases in support of this proposition. Udolf's argument, however, fails for two reasons. First, because Udolf took several actions in this case--other than setting Reeves' bond at astronomical amounts--that directly caused Reeves' incarceration, this Court need not even address Udolf's bond/Imbler argument to decide this case. Udolf, for example, left explicit and continuing orders with Head not to release Reeves unless Udolf himself authorized this release. As Brenda Reeves testified:

Q. Do you recall how many times you went to the jail, how many days?

A. About three days. Sometimes it was like twice a day.

Q. Did you see Tinker Head there every time?

A. Just about every time.

¹²The nexus between a judicial forum and a prosecutor's activities--i.e. whether the prosecutor's activities were intimately related to a judicial forum and were a part of his necessary role as an advocate in this forum or whether the prosecutor's activities were attenuated from a judicial forum--has often been a distinguishing consideration in cases applying Imbler. Compare Harris v. Menendez, 817 F.2d 737, 738 & 741 (11th Cir. 1987) (prosecutor immune from liability for his advocacy during a probation revocation hearing) and Mullinax v. McElhenney, 817 F.2d 711, 714-15 (11th Cir. 1987) (prosecutor's offer of immunity to a witness) and Allen v. Thompson, 815 F.2d 1433, 1434 (11th Cir. 1987) (prosecutor's submission of information to the parole commission) with Mullinax, supra (prosecutor not immune from liability for his direct participation with the police in conducting a search and for entrapping an individual into committing an offense) and Rex, supra (participation in interrogation) and McSurely, supra (participation in preliminary gathering of evidence) and Marrero, supra (participation in search).

Q. Did you ask him to let your husband out of jail every time?

A. Just about it.

Q. What did he say to you?

A. He always said he had orders to hold him in there.

Q. Order from who?

A. Udolf.

R-3-116 to 117; see also R-109 to 110, 113.

Second, the cases cited by Udolf in support of his bond/Imbler argument hold only that a prosecutor is immune from liability for making bond recommendations in a judicial forum for a case which he is prosecuting. See Lerwill v. Joslin, 712 F.2d 435, 437-38 (10th Cir. 1983) (prosecutor's action in requesting bail of \$1,500.00 while appearing before a judicial officer is immunized); Slavin v. Curry, 574 F.2d 1256, 1263-65 (5th Cir. 1978) (district attorney who requests, while appearing before a judicial officer, that a defendant's bond be cancelled is immunized); Harris v. Friedline, 585 F. Supp. 734, 738 (E.D. Va. 1983) (district attorney's action, when appearing before a magistrate, in requesting that a defendant's bail not be reduced is immunized).¹³ None of these cases hold that a prosecutor can, as a supplemental investigatory tactic, (1) circumvent the normal bond procedures of two counties on a case

¹³The remaining cases cited by Udolf are similarly inopposite to the facts of this case. See Lee v. Willins, 474 F. Supp. 970, 970-71 (E.D.N.Y. 1979), aff'd 617 F.2d 320, 321-22 (2d Cir. 1980) (prosecutors immunized for actions directly involved in prosecution of pro se plaintiff on the same murder charge five times, and pro se plaintiff has no standing to bring an action against a prosecutor for allegedly threatening and imprisoning a witness in order to obtain perjured testimony); Halpern v. City of New Haven, 489 F. Supp. 841, 843 (D. Conn 1980) (prosecutor immunized when appearing before a judicial officer and recommending \$50.00 bond); Front Runner Messenger Service, Inc. v. Ghini, 468 F. Supp. 305, 309 (N.D. Ill. 1979) (a district attorney's action in obtaining an arrest warrant directly from a judicial officer is immunized); Davis v. Eddie, 343 N.W. 2d 11, 13-14 (Mich. App. 1983) (prosecutor's action in holding a preliminary hearing before a judicial officer is immunized.)

which he readily admits that he is not prosecuting, and (2) personally set an arrestee's bond at such extraordinary amounts as to ensure the arrestee's continued incarceration. Accordingly, Udolf's bond/Imbler argument is wholly without merit.¹⁴

B. UDOLF'S VIOLATION OF REEVES' STATUTORY AND CONSTITUTIONAL RIGHTS TO REASONABLE BAIL AND HIS CONSTITUTIONAL RIGHT TO BE FREE FROM AN UNREASONABLE SEIZURE OR DETENTION NEGATES UDOLF'S DEFENSE OF QUALIFIED IMMUNITY.

In Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Supreme Court held that governmental officials, including prosecutors, are entitled to qualified immunity from liability only when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id. at 818. In this case Udolf violated no fewer than three of Reeves' clearly established constitutional and statutory rights: (1) Reeves' constitutional right to be released on reasonable bail, see U.S. Const. Amend VIII; Stack v. Boyle, 342 U.S. 1, 5 (1951); (2) Reeves' statutory right to reasonable bail, see O.C.G.A. § 17-6-1 (Michie 1981); and (3) Reeves' constitutional right to be free from an unreasonable seizure or detention. See U.S. Const. Amend IV; see generally Gilmere v. City of Atlanta, 774 F.2d 1495, 1502 (11th Cir. 1985) (en banc). Udolf accomplished these violations by personally setting Reeves' bond at astronomical amounts, thereby ensuring his continued incarceration, and by leaving orders at the Dawson County Jail which prohibited Reeves from being released from jail for five days. See Section V(C) infra. Udolf accordingly is not insulated

¹⁴In his brief, Udolf also contends that his activity in unconstitutionally detaining Reeves for five days on a misdemeanor charge is immunized under Imbler because Udolf was simply preparing a case against Michael Kelleher. See Brief of Udolf at 28-29. The investigatory nature of Udolf's actions and the absence of any nexus between Udolf's actions and any judicial forum renders, however, this argument meritless. See note 12 supra.

from liability in this case pursuant to the doctrine of qualified immunity.

C. THE VERDICT RENDERED AGAINST UDOLF IS AMPLY SUPPORTED BY SUFFICIENT EVIDENCE.

In his brief, Udolf contends that the verdict rendered on behalf of Reeves is not supported by sufficient evidence because (1) there was no causal connection between Reeves' injury and the actions of Udolf; and (2) because a verdict was rendered in favor of Head, the verdict against Udolf cannot stand. See Brief of Udolf at 35-41. The District Court quickly dispatched this argument, see R-2-55-3 to 4, and the evidence of this case steadfastly supports such a disposition.

The standard for reviewing Udolf's contention that insufficient evidence supports the verdict rendered against him is whether any evidence supports this verdict. This standard applies because Udolf failed to make a timely motion for a directed verdict at the close of all of the evidence in this case. See Thronson v. Meisels, 800 F.2d 136, 139-40 (7th Cir. 1986); Wilson v. Attaway, 757 F.2d 1227, 1237 (11th Cir. 1985). Even if, however, this Court applies the standard of review for the sufficiency of evidence when a timely motion for a directed verdict is made -- i.e. whether the evidence, when construed most favorably to the nonmoving party, so strongly and favorably points in favor of one party that reasonable men would not arrive at a contrary verdict, see Jackson v. Magnolia Brokerage Co., 742 F.2d 1305, 1307 (11th Cir. 1984) -- there is more than enough evidence to refute Udolf's challenge to the sufficiency of the evidence.

Udolf's claim that there is no casual connection between his actions and Reeves incarceration is contradicted by the following evidence. Individuals who are arrested on misdemeanor charges in Hall or Dawson Counties are usually released immediately upon arrest. See R-3-151; R-4-235 to 236; R-5-328 to 329.

Reeves, however, was incarcerated for five days on a misdemeanor charge. The reason that Reeves remained in the Dawson County Jail for this time period is because Udolf gave orders to Head not to release Reeves from the jail until Udolf authorized his release. Thus, when Brenda Reeves asked Head on numerous occasions during Reeves incarceration if he (Head) would release Reeves, Head repeatedly replied that he could not release Reeves because of orders from Udolf. See R-3-109 to 110, 113 & 116 to 117.

Additionally, Udolf directly caused Reeves' incarceration by unofficially setting Reeves' bond at the astronomical amounts of \$100,000.00 in property, \$20,000.00 in cash and \$150,000.00 in cash. See R-3-57, 76 to 77, 170 to 71; R-4-231 to 232. By setting bonds at these amounts, Udolf effectively precluded Reeves from being released from jail. Indeed, Reeves was not released from jail until Udolf himself set Reeves bond at \$1,000.00 in property. See R-3-78 to 79; R-4-261.

The foregoing evidence also demonstrates that, even though a verdict was entered in favor of Head, Udolf was personally responsible for Reeves' incarceration. Udolf's challenge to the sufficiency of the evidence in this case is thus without merit.

D. ALTHOUGH REEVES DID NOT FREELY AND VOLUNTARILY
WAIVE HIS CONSTITUTIONAL RIGHT TO REASONABLE BAIL, THIS
COURT NEED NOT EVEN ADDRESS THIS CONTENTION TO DECIDE
THIS CASE.

In his brief, Udolf contends that Reeves waived, through the actions of his attorney, "his right to a bond hearing within the statutory requirement of seventy-two hours," and that he therefore "knowingly and intelligently waived his right [to be] release[d]." Brief of Udolf at 42. As the following recitation of the relevant facts reveals, Reeves did not freely, knowingly and voluntarily waive his constitutional right to be released on a reasonable bail. Moreover, as the ensuing discussion demonstrates, even if Reeves did waive his eighth amendment right to be released on a reasonable bail, this fact is inconsequential, because the jury found that Udolf not only violated Reeves' eighth amendment

right to reasonable bail, but also Reeves' fourth and fourteenth amendment right to be free from an unreasonable seizure or detention. The jury's verdict can, accordingly, be affirmed based upon these latter grounds.

The relevant facts show that Reeves' attorney, Robert Thompson, met with him at the Dawson County Jail during the evening of 19 March 1985, a Tuesday marking the third day of Reeves' incarceration. At that time Reeves told Thompson that he "was being held, ... what [his] bond was [i.e. \$100,000.00], ... [that he] wasn't guilty of [the charge brought against him, and that he] wanted to get out." See R-3-73 (emphasis added). Thompson was also shown an affidavit documenting the lawful purchase of the gun in question when he met with Reeves. See R-4-228 to 230. As a result of his discussion with Reeves, Thompson clearly understood what Reeves wanted him to do:

Q. Did he state anything relating to wanting to get out of jail?

A. Well, that's what I was doing there. I was supposed to try to get him out of jail. He did not know why he was still in jail.

R-4-228 to 229. During their meeting at the jail, Reeves and Thompson did not discuss the propriety of moving for a probable cause hearing as opposed to moving for a bond hearing as the most effective means of securing Reeves' release. See R-4-238, 245.

Sometime after his meeting with Reeves, Thompson decided that the most effective means of securing Reeves release was to move for a probable cause hearing. Thompson made this decision because (1) Reeves bond was set at the astronomical amount of \$100,000.00, which made the likelihood of getting Reeves' bond reduced to a makeable amount remote; (2) Thompson had already seen evidence concerning the lawful purchase of the gun in question, which rendered the States's chances of establishing the requisite probable cause minimal; and (3) Thompson felt that a favorable ruling at the probable cause hearing would in all likelihood result in the gun charge not being prosecuted or reinstated

at a later date, whereas the release of Reeves on bond would likely result in the continuation of the prosecution of Reeves on the gun charge. See R-3-78; R-4-228 to 229; R-4-245 to 46.

On 20 March 1985, a Wednesday, Thompson went to Udolf's office, which is located in the courthouse in Gainesville. Thompson requested that Udolf hold a probable cause hearing that day for Reeves, and Udolf replied that "he was too busy." R-4-232. Udolf then told Thompson that he was now setting Reeves' bond at \$150,000.00 in cash. See R-4-231 to 232. After discussing the issue of bond for a short while, Udolf asked Thompson if Reeves could make a \$100,000.00 property bond. Id. Thompson replied that Reeves "wouldn't know what \$100,000.00 looked like." R-4-232. Thompson then left Udolf's office. Later, Thompson began to prepare a motion for a probable cause hearing for Reeves. See R-4-234. Before this motion was filed, Reeves was released from jail on a \$1,000.00 property bond.

Thompson's action in requesting a probable cause hearing, instead of requesting a bond hearing, does not constitute a waiver of Reeves' eighth amendment¹⁵ right to reasonable bail. Under Johnson v. Zerbst, 304 U.S. 458, 464 (1938), a waiver of a constitutional right must be freely, knowingly and voluntarily made. In this case Thompson could not have made such a waiver of Reeves' right to reasonable bail by electing to move for a probable cause hearing, as

¹⁵In his brief, Udolf refers repeatedly to statutory provisions such as O.C.G.A. § 17-4-26 (Michie 1981). Although the statutory provisions involved in this case are relevant to the defense of qualified immunity, see Section V(B) supra, they are irrelevant to the issues of the sufficiency of the evidence and of the alleged waiver of the right to be released. The reason this conclusion obtains is because section 1983 concerns itself with constitutional violations, not statutory violations.

opposed to a bond hearing, because he made this decision only after he had been informed that Reeves had been effectively denied bail, i.e., that Reeves' bond was set at \$100,000.00 (and later at \$150,000.00 in cash) on a misdemeanor charge, which precluded any realistic attempt at getting Reeves released on a makeable bond. Thus, Thompson had no choice but to move for a probable cause hearing in order to secure Reeves' release. Moreover, this recourse contained the added benefit of possibly terminating the gun case altogether.

This Court, however, need not even address the foregoing issue. The jury in this case concluded that Udolf violated not only Reeves' eighth amendment right to reasonable bail, but also his fourth and fourteenth amendment right to be free from an unreasonable seizure or detention. See R-5-421; see generally Gilmore v. City of Atlanta, 774 F.2d 1495, 1502 (11th Cir. 1985) (en banc). Accordingly, even if this Court concludes that Thompson waived Reeves' eighth amendment right to reasonable bail, the jury's verdict is still supported by the evidence substantiating the violation of Reeves' fourth and fourteenth amendment right to be free from an unreasonable seizure or detention.¹⁶

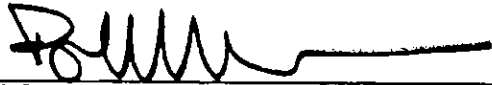
¹⁶Indeed, for the Court to reverse the jury's verdict on the ground of an absence of a violation of Reeves' fourth and fourteenth amendment rights, it would have to conclude that Reeves had absolutely no desire to leave the Dawson County Jail after he was incarcerated there, which is emphatically not what the evidence in this case demonstrates.

VI. CONCLUSION

For the foregoing reasons, the Plaintiff-Appellee respectfully requests that this Court affirm the verdict rendered in this case.

Respectfully submitted,

Cook & Palmour
128 South Commerce Street
Summerville, Georgia 30747
(404) 857-3421


BOBBY LEE COOK No. 183100 (w/permission)

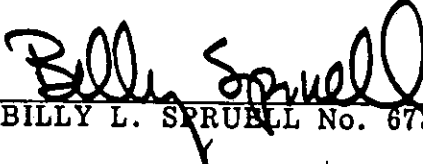
Manchel, Johnson & Wiggins
Suite 3612
101 Marietta Tower
Atlanta, Georgia
(404) 522-1701


NORMAN G. JOHNSON No. 395062 (wp)

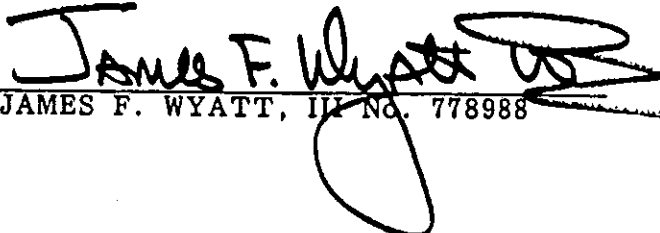
Manchel, Johnson & Wiggins
Suite 3612
101 Marietta Tower
Atlanta, Georgia 30303
(404) 522-1701


HOWARD MANCHEL No. 468550 (wp)

6445 Powers Ferry Road
Suite 265
Atlanta, Georgia 30339
(404) 257-0777


BILLY L. SPRUELL No. 673200 (wp)

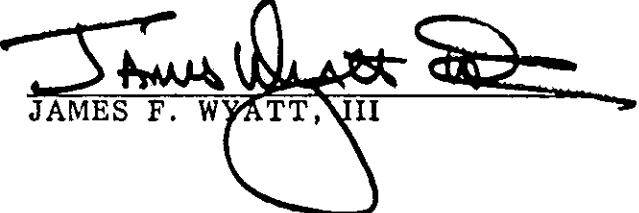
730 East Trade Street, Suite 716
Charlotte, North Carolina 28202
(704) 331-0767


JAMES F. WYATT, III No. 778988

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served an exact and complete copy of the Plaintiff's Appellate Brief upon counsel for the Defendant by placing a copy of the same in the United States mail, postage prepaid and properly addressed to Mr. John C. Jones, Assistant Attorney General, 132 State Judicial Building, 40 Capitol Square, S.W., Atlanta, Georgia 30334.

This the 29th day of August, 1988.


JAMES F. WYATT, III