

STATE OF MICHIGAN
COURT OF APPEALS

CARDELLE KENDRICKS,

Plaintiff-Appellee,

v

LIVONIA POLICE OFFICER JOHN REHFIELD,
LIVONIA POLICE OFFICER CHRISTOPHER
KOTT, and LIVONIA POLICE SERGEANT MCKEE,

Defendants-Appellants,

and

DETROIT POLICE OFFICER KEVIN COUNTS,
DETROIT POLICE OFFICER KEVIN REED,
DETROIT POLICE SERGEANT JOSEPH O'LEARY,
DETROIT POLICE INVESTIGATOR DIETRICH
LEVER, and DETROIT POLICE OFFICER HOYT,

Defendants.

FOR PUBLICATION
April 20, 2006
9:00 a.m.

No. 256693
Wayne Circuit Court
LC No. 03-340901-NO

Official Reported Version

Before: Cooper, P.J., and Jansen and Markey, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. The sole issue presented in this case is whether defendants' conduct amounted to gross negligence. This Court has held that police officers acting with probable cause¹ are not grossly negligent for arresting the wrong person as a result of mistaken identity. *Bell v Fox*, 206 Mich App 522, 525; 522 NW2d 869 (1994). Here, defendants mistook plaintiff for his brother. It is uncontested that plaintiff's brother had committed a crime. It is further undisputed that the brothers are twins. Moreover, plaintiff's first name, "Cardelle," is

¹ "Probable cause" is the quantum of evidence sufficient to cause a person of ordinary prudence and caution to reasonably entertain a belief of the accused person's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003).

remarkably similar to his twin brother's first name, "Carnelle." Finally, evidence indicated that Carnelle may have used his brother's name as an alias on past occasions. Under the circumstances of this case, defendants' mistake with respect to plaintiff's identity was a reasonable misunderstanding. Defendants were not grossly negligent in arresting plaintiff. *Id.*

Nor were defendants grossly negligent in failing to investigate plaintiff's claims of mistaken identity. Defendants' failure to conduct a more thorough investigation of plaintiff's true identity was not "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." See former MCL 691.1407(2)(c). While an "investigation's lack of thoroughness might support an inference of negligence," *Ahlers v Schebil*, 188 F3d 365, 373 (CA 6, 1999), mere evidence of ordinary negligence does not create a question of fact concerning gross negligence, *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999). The burden was on plaintiff to plead facts in avoidance of governmental immunity. *Michonski v Detroit*, 162 Mich App 485, 490; 413 NW2d 438 (1987). Nonetheless, plaintiff failed to identify how defendants' conduct rose to the level of recklessness required for gross negligence. I would reverse the trial court's denial of defendants' motion for summary disposition.

/s/ Kathleen Jansen