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Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001429-MR

HALEY BROWN APPELLANT

v.

APPEAL FROM MERCER CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 13-CI-00445

THOMAS R. FOURNIER APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CLAYTON, AND NICKELL, JUDGES.

ACREE, JUDGE: Haley Brown appeals the Mercer Circuit Court jury verdict and judgment rejecting her claims of battery and false imprisonment against Harrodsburg police officer, Thomas Fournier. Finding no error, we affirm.

FACTS AND PROCEDURE

On September 8, 2013, Officer Fournier was the first to respond to a two-vehicle injury accident at the intersection of U.S. 127 and the U.S. 127 Bypass

in Harrodsburg, Kentucky. The collision totaled both vehicles. Soon, more first responders, including police officers, firefighters, and emergency medical personnel, were dispatched to the scene. By then, Fournier had actively worked the scene by checking on the parties involved in the accident, identifying and treating injuries, interviewing witnesses, observing traffic, securing the scene, and gathering information.

Ten minutes after Fournier arrived, Haley Brown showed up. She had received a text message from a friend who was one of the accident victims. The friend told Brown of the wreck and asked her to help with a ride and in collecting personal belongings from the disabled vehicle in which the friend was riding.

What then happened between Brown and Officer Fournier would have to be determined by a jury. Generally, Brown believed Officer Fournier's conduct was both improper and tortious. She filed a "citizen's complaint" with the Harrodsburg Police Department against Officer Fournier. The complaint initiated an internal investigation. Disciplinary charges were referred against Officer Fournier, but, following a lengthy due process hearing, the City Commission found Officer Fournier not guilty on all charges.

Brown then filed suit in Mercer Circuit Court against Officer Fournier[1] asserting a variety of claims, including battery, false imprisonment, and punitive

[1] Brown also filed suit against certain city officials claiming negligent hiring and supervision of Officer Fournier. We address those claims by separate order in *Long, et al v. Brown*, Appeals No. 2014-CA-001757-MR, entered contemporaneously with this opinion.

damages. At trial, Brown and Fournier presented conflicting testimony describing their interaction on the day of the accident.

Brown testified that, while she was speaking with her friends, Officer Fournier began screaming at her to get off his accident scene. Claiming not to realize that the officer was addressing her, Brown continued her conversation. She testified that Officer Fournier used profanity and a demeaning tone and asked her to identify herself. He then instructed her to go back to her car. Brown tried to explain to Officer Fournier who she was and why she was there but, according to Brown, he refused to listen. Brown testified Officer Fournier then said if she "did not leave the scene, [she] would be in the back of his vehicle."

Brown said she turned from the scene in the direction of her own vehicle and began trying to telephone her brother, a Mercer County Deputy, who was also present at the scene. She further testified that, while her hands were in front of her body and as she was walking away, Officer Fournier grabbed her arms and forcibly pulled them behind her back. She said Officer Fournier had a tight hold on her arms such that it was not possible for her to break free. At this moment, Brown's brother intervened and asked Brown to return to her car. Brown testified that Officer Fournier still had a grip on her arms and, when her brother asked Brown to leave, Officer Fournier urged her forward by pushing on her back.

Brown left the scene. Upon arriving home, she discovered blood in her bra. She said Officer Fournier's contact with her caused a rip in a surgical incision under her breast when a suture dislodged, resulting in permanent scarring.

Officer Fournier's testimony differed. According to Officer Fournier,[2] as Brown approached the scene, he asked if she was a family member or otherwise involved in the accident. Learning Brown was neither, Officer Fournier asked her to leave. Brown refused. Officer Fournier repeated his command several times, but Brown repeatedly refused to leave. Officer Fournier described Brown as belligerent and testified that she yelled at him and cursed at him. He quoted her as saying such things as: "I'm going to do what I want"; "You can't make me leave"; and "I'm not leaving and you can't make me leave." Officer Fournier informed Brown that if she did not leave the scene, he was going to arrest her. Brown responded, "For what?"

Officer Fournier testified that, when Brown again refused to leave, he placed his right hand on the back of her right wrist and placed his left hand just above her right elbow in an effort to escort her from the accident scene. Brown responded by jerking out of his grip and drew back her fist, poised to strike. Believing he was about to be assaulted, Officer Fournier determined to place Brown under arrest but, at that moment, Brown's brother intervened and directed Brown to return to her vehicle. Brown complied.

Officer Fournier denied using profanity when dealing with Brown. He also denied grabbing Brown's arms or touching her in any manner other than as previously described.

[2] Fournier, due to medical reasons, was unable to attend the trial. Pertinent portions of his trial deposition were read into evidence.

Brown denied saying, "You can't make me leave," and denied drawing her fist back to hit Officer Fournier.

At the close of Brown's case, Officer Fournier moved for a directed verdict on all of Brown's claims. The circuit court denied the motion as to the tort claims, but sustained Officer Fournier's motion to dismiss the claim for punitive damages. The case was then submitted to the jury.

The jury returned a verdict in favor of Officer Fournier. The circuit court denied Brown's subsequent motion for a new trial. Brown appealed, claiming the circuit court's instructions to the jury were erroneous.

ANALYSIS

Brown presents two general arguments for reversal and a new trial. First, she argues the circuit court published erroneous and prejudicial instructions to the jury regarding her battery and false imprisonment claims against Officer Fournier. Second, Brown contends the circuit court abused its discretion when it granted a directed verdict in favor of Officer Fournier as to Brown's claim for punitive damages. We do not find Brown's arguments persuasive.[3]

[3] Immediately apparent from her brief is Brown's non-compliance with a significant procedural rule, Kentucky Rule of Civil Procedure (CR) 76.12(4)(c)(v). The rule requires that, before an Appellant presents her argument, she must prove she is entitled to do so by including before the argument "a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." Brown did not do this. However, Brown has included in her appendix a copy from the certified circuit court record of her proposed jury instructions. She also cited to the record, in the body of her argument, stating she objected to the instructions the court published. We choose, in this case, to apply the fiction that, under these circumstances, non-compliance with CR 76.12(4)(c)(v) is substantial compliance with the rule as a whole. However, the Court cautions all counsel to consider the wisdom of making substantial compliance his or her personal standard to meet in this or any Court. *See*, *e.g.*, *Oakley v. Oakley*, 391 S.W.3d 377 (Ky. App. 2012) (striking brief and dismissing for failing to substantially comply with CR 76.12); *Ray v. Ashland Oil, Inc.*, 389 S.W.3d 140, 147 (Ky. App. 2012)

A. Jury Instructions –Battery and False Imprisonment

Brown contends the circuit court published erroneous definitions instructions to the jury and that its instructions regarding battery and false imprisonment misstated the law. The definitions instruction and the battery instruction are interrelated and we will address them together. We will review the argument regarding the false imprisonment instruction separately.

i. Definitions and Battery Instructions

Jury instructions serve "to furnish guidance to the jury in their deliberations and to aid them in arriving at a correct verdict." *Ballback's Adm'r v. Boland-Maloney Lumber Co.,* 306 Ky. 647, 208 S.W.2d 940, 943 (1948). Instructions survive scrutiny if they are "based upon the evidence and they . . . properly and intelligibly state the law." *Howard v. Commonwealth,* 618 S.W.2d 177, 178 (Ky. 1981).

Brown argues that several of these instructions, in whole or in part, are contrary to Kentucky law. We carefully considered her specific arguments and, for the reasons that follow, we disagree.

First, Brown challenges Instruction 2B. That instruction states:

(denying motion to strike brief and dismiss appeal, but reviewing only three of seven arguments, and then only for manifest injustice); *Craig v. Kulka*, 380 S.W.3d 546 (Ky. App. 2012) (striking brief and dismissing for failing to substantially comply with CR 76.12). We can debate what is or is not substantial compliance with a rule; strict compliance eliminates all such debate. Strict compliance is achievable under CR 76.12 and it should be the standard all Kentucky counsel proudly and professionally meet.

> Under Kentucky law, the Plaintiff Haley Brown had a ***legal duty to obey an official command of law enforcement officers to disperse***, issued to maintain public safety ***in dangerous proximity to the scene of an active emergency.***

(R. 187-88) (emphasis added).

Brown asserts that nothing in Kentucky jurisprudence requires an individual to obey an official command of law enforcement officers to disperse. It is therefore erroneous, claims Brown, as it has no source or basis in law.

We disagree. We find the requirement that a citizen obey the lawful order of a police officer at an accident scene is drawn from KRS[4] 525.060(1)(c). That statute makes it a criminal offense "when in a public place and with intent to cause public inconvenience, annoyance, or alarm, or wantonly creating a risk thereof," a person "[r]efuses to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency[.]" *Id.*

This accident was serious with substantial damage and injury. The accident scene Officer Fournier was assigned to work, and did work, was both a hazard and a police emergency. Based on Officer Fournier's testimony, when Brown refused his instruction to clear the scene, she wantonly created a risk of public inconvenience and annoyance. We say she did this wantonly because failure to obey a police officer's instruction "constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation." KRS 501.020(3) (defining "wantonly"). Officer Fournier's duty was to secure the

[4] Kentucky Revised Statute.

accident scene, facilitate the work of other first responders, and clear the scene of the accident as soon as possible to limit disruption to the public. If the jury believed Officer Fournier's testimony, which it eventually did, Brown interfered with his ability to perform his duty at the scene of the accident.

Common sense also informs us that Brown's position cannot be correct. To find otherwise would undermine the authority vested in our law enforcement officials. Law and order would suffer a societally harmful breakdown if citizens believed it unnecessary to follow the reasonable and lawful commands of police officers, particularly those given to facilitate an officer's conduct of his duties at the scene of a motor vehicle accident or other emergency. Brown herself admitted at trial that Officer Fournier retained the authority to ask her to leave the accident scene. "When all else is said and done, common sense must not be a stranger in the house of the law." *Cantrell v. Kentucky Unemployment Ins. Comm'n*, 450 S.W.2d 235, 237 (Ky. 1970).

Second, Brown takes issue with Instruction 2A, which said:

> Under Kentucky law, a police officer has the right to use as much force in the course of his job duties as he reasonably believes ***necessary to achieve reasonable law enforcement objectives. The officer can be held liable for the tort of battery only if the force used was excessive.***

(R. 187-88) (emphasis added). Brown says she is unaware of any law permitting a law enforcement officer to use force to "achieve reasonable law enforcement objectives," as set forth in Instruction 2A. She takes the position that, under

Kentucky law, a law enforcement officer has no right or privilege in his or her interactions with a citizen to use any force or engage in any touching, no matter how minimal, unless such physical contact is in self-defense or is necessary to make a lawful arrest. Brown argues that, because she did not attack Officer Fournier and he did not arrest her, he had no right or privilege to touch her, and this instruction erroneously and prejudicially informed the jury otherwise.

It is true, as Brown notes, that KRS 503.090(1), titled "use of physical force in law enforcement," authorizes police officers to use physical force against another person in making a lawful arrest. Similarly, KRS 503.050(1) permits all citizens, including police officers, to use such force as "is necessary to protect himself against the use or imminent use of unlawful physical force by the other person." Brown reads these statutes as exclusive of any and all other kinds of police contact with citizens. Because there was no arrest or self-defense, she argues there was no basis in law for instructing the jury that other contact by a police officer was permissible, thereby making the instruction erroneous.

Again, her position cannot be correct. The purpose of these statutes was not to identify all types of permissible touching by a police officer. We need only turn to our "stop and frisk" jurisprudence to refute Brown's position. In *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), a police officer "'seized' [the] petitioner and subjected him to a 'search' when he took hold of him and patted down the outer surfaces of his clothing." *Id.* at 19, 88 S. Ct. at 1879. The United States Supreme Court grappled in *Terry* with numerous Fourth

Amendment questions of constitutional import. The Supreme Court ultimately concluded that, in certain circumstances, a police officer may stop and conduct a limited physical search of a person without effectuating an arrest. *Id.* at 30, 88 S. Ct. at 1885.

Brown's argument is antithetical to the underlying premise of *Terry* that it is permissible for an officer to touch a citizen without arresting him. In fact, in *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989), the United States Supreme Court addressed the constitutional standard to be applied to "a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, ***or other 'seizure' of his person***." *Id.* at 388, 109 S. Ct. at 1867 (emphasis added). The necessary inference is that there are situations in which a police officer is permitted to use less than excessive force against a citizen without effectuating an arrest or even an investigatory detention.

We can think of several examples of police conduct necessitating permissible touching of citizens. An officer may need to restrain a citizen from engaging in self-harming behavior. An officer may need to touch a citizen who, intentionally or not, obstructs his pursuit of a criminal. Police contact with a protester may be necessary to quell conduct bordering between non-violent and violent protest. Brown's rule would compel the officer to arrest these citizens or face civil sanction. We will not put officers in such a predicament.

There is another reason this instruction is not improper. As noted by the Sixth Circuit applying *Graham*:

> we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policeman face every day. What constitutes "reasonable" action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

Smith v. Freland, 954 F.2d 343, 347 (6th Cir. 1992). "The calculus of [the] reasonableness" of an officer's decision to use force, even absent an arrest or self-protection, "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham,* 490 U.S. at 396-97, 109 S. Ct. 1865.

We agree with the U.S. District Court for the Western District of Kentucky that, in Kentucky, "a police officer is privileged to use the amount of force that the officer reasonably believes is necessary to overcome resistance to his lawful authority, but no more." *Ali v. City of Louisville*, 3:03CV-427-R, 2006 WL 2663018, at *8 (W.D. Ky. Sept. 15, 2006).[5] Accordingly, we find the circuit court's instruction that a police officer may use reasonable force to achieve

[5] In accordance with Federal Rules of Appellate Procedure (FRAP) 32.1: "A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been: (i) designated as 'unpublished' ... and (ii) issued ... after January 1, 1997." While Kentucky courts are not bound by FRAP 32.1 or federal cases interpreting Kentucky law, the federal judiciary has determined that all of its opinions rendered after January 1, 1997, have equally persuasive import without regard to their designation as unpublished. Therefore, we should take no less a view of post-1996 unpublished federal opinions than we do of published federal opinions.

reasonable law enforcement objectives fully consistent with Kentucky law, even though, heretofore, not explicitly stated in our jurisprudence.

Third, Brown argues the circuit court erroneously includes "excessive force" as an element of the tort of battery, in both the definition instruction (Instruction 2A and 2C), and the battery instruction (Instruction 3), contrary to Kentucky law. Brown contends that "excessive force" has no place in our battery jurisprudence, that it amounts to a misstatement of Kentucky law, and that it placed the burden on her to disprove the officer's justification defense. We believe Brown misunderstands the shifting burdens at play in a tort claim of this type.

Common law civil battery is defined as "any unlawful touching of the person of another, either by the aggressor himself, or by any substance set in motion by him[.]" *Vitale v. Henchey,* 24 S.W.3d 651, 657 (Ky. 2000) (quoting *Sigler v. Ralph,* 417 S.W.2d 239, 241 (1967)). Contact is unlawful if it is unwanted or if there is no consent to it. *See Andrew v. Begley*, 203 S.W.3d 165, 171 (Ky. App. 2006). But an unwanted touching may be justified or privileged in certain situations. Brown readily concedes that a police officer is privileged to use force to effect an arrest or in self-protection. As previously noted, there are other circumstances justifying physical contact by law enforcement. Certainly, not all unwanted touching by a police officer performing his duty will be indefensible against a claim of battery. The fact that the purported battery tortfeasor is a police officer has an effect on the proof necessary for the plaintiff's success, on the

defendant's defense, on the burden of going forward with evidence, and, consequently, on the jury instructions.

In a case such as this, in which the claim of battery is against an on-duty police officer, we begin as with any battery claim by presuming any unwanted touching is unlawful. The plaintiff's proof of unwanted touching shifts the burden of going forward with the evidence to the defendant officer to establish that the touching was justified or privileged. That burden is met by admission of evidence that the officer's use of physical force was necessary or appropriate to the circumstances and such proof creates a rebuttable presumption that the force utilized was justified or privileged. That shifts the burden of going forward back to the plaintiff who may overcome the presumption by producing admissible evidence that the physical force used was excessive under the circumstances.

Summarizing then, although an officer may be justified in using force against a person, any defense of justification or privilege is lost if the force used is excessive. *See* KRS 431.025(3) ("No unnecessary force or violence shall be used in making an arrest."); *Ali*, 2006 WL 2663018, at *8 (In Kentucky, "[t]he use of ***excessive*** force by a police officer constitutes the intentional tort of battery." (emphasis added)).

Whether there was touching, whether it was unwanted, whether it was justified, and whether it was excessive are, in a claim of battery by a police officer, factual determinations that fall within the province of the properly instructed jury. We are not holding that the instructions in this case were perfect, but "[i]f

instructions may be read together and thus constitute a harmonious whole, they are not subject to condemnation[.]" *Wilder v. Bailey*, 233 Ky. 238, 25 S.W.2d 381, 384 (1930). Even imperfect jury instructions will survive appellate review if they satisfy certain articulated standards. Jury instructions survive scrutiny if they are "based upon the evidence and they . . . properly and intelligibly state the law." *Howard v. Commonwealth,* 618 S.W.2d 177, 178 (Ky. 1981).

"Regardless of what form jury instructions take, they must state the applicable law correctly and neither confuse nor mislead jurors." *CSX Transp., Inc. v. Moody*, 313 S.W.3d 72, 82 (Ky. 2010). The instructions in this case meet this standard. "All essential aspects of the law necessary to decide the case must be integrated into the instructions." *Sargent v. Shaffer*, 467 S.W.3d 198, 209 (Ky. 2015). These instructions did that. "[T]he defendant has a right to have every issue of fact raised by the evidence and material to his defense submitted to the jury on proper instructions." *Hayes v. Commonwealth,* 870 S.W.2d 786, 788 (Ky. 1993). The instructions addressed the defenses. "[J]ury instructions must be given with the understanding that they are merely a framework for the applicable legal principles. It becomes the role of counsel, then, to flesh out during closing argument the legal nuances that are not included within the language of the instruction." *Olfice, Inc. v. Wilkey*, 173 S.W.3d 226, 230 (Ky. 2005). The circuit court afforded that opportunity to Brown. All in all, we find no error in these instructions relating to the battery claim.

ii. False Imprisonment Instruction

Brown also claimed she was falsely imprisoned when Officer Fournier intentionally and unlawfully restrained her arms. Many of Brown's arguments mirror those previously raised relative to her battery claim, and we reject those arguments to the extent they are relied upon in her false imprisonment claim.

In Kentucky, the tort of false imprisonment requires the plaintiff to establish he or she was unlawfully detained. *Birdsong v. Wal-Mart Stores, Inc.*, 74 S.W.3d 754, 757 (Ky. App. 2001); *Dunn v. Felty*, 226 S.W.3d 68, 71 (Ky. 2007). The tort involves "two points requisite: (1) The detention of the person, and (2) the unlawfulness of such detention." *Great Atlantic & Pacific Tea Co. v. Smith*, 281 Ky. 583, 136 S.W.2d 759, 767 (1939). "A law enforcement officer is liable for false imprisonment unless he or she enjoys a privilege or immunity to detain an individual." *Dunn*, 266 S.W.3d at 71.

Brown's objection to the false imprisonment instruction focuses on language the circuit court chose to describe Officer Fournier's claim of privilege to act as he did. That instruction, Instruction 4, stated:

> **<u>INSTRUCTION NO. 4:</u> FALSE IMPRISONMENT**
>
> You will find for Haley Brown if you are satisfied from the evidence as follows:
>
> 1. That Thomas R. Fournier intentionally detained Haley Brown by physical force, threats or both; and
>
> 2. That such detention of Haley Brown was without her consent and against her will; and

> 3. If you are further satisfied from the evidence that on the occasion in question Thomas R. Fournier had reasonable grounds to believe, and in good faith did believe, that Haley Brown was engaging in conduct which created an ***unreasonable risk*** to the maintenance of public safety in ***dangerous proximity to an emergency by refusing to obey an official order to disperse***, then you will find for Thomas R. Fournier.

(R. 189) (emphasis added).

Brown's proposed jury instruction was identical to that published by the circuit court to the jury until the middle of paragraph 3. Brown rejects as too broad the language that offered a defense for the officer if Brown was "engaging in conduct which created an unreasonable risk to the maintenance of public safety in dangerous proximity to an emergency by refusing to obey an official order to disperse[.]" Brown wanted to cabin that language further so that the officer's privilege defense was available only if Brown "was committing a crime[.]"

We do not agree that Brown must have been committing a crime before Officer Fournier was entitled to claim the privilege in a case such as this. Nor do we agree with Brown that Kentucky jurisprudence fails to support use of phrases such as "unreasonable risk," "dangerous proximity to an emergency," and "refusing to obey an official order to disperse." Could the instruction have been simpler? Certainly. It might have been as simple as that used in the District of Columbia, requiring judgment for the officer if the jury finds he or she "(1) . . . believed, in good faith, that his or her conduct was lawful, and (2) this belief was reasonable." *Wesby v. District of Columbia*, 841 F. Supp. 2d 20, 45 (D.D.C.

2012), *aff'd,* 765 F.3d 13 (D.C. Cir. 2014) (citing District of Columbia model jury instructions and noting, "Thus, even if an arrest is unlawful, a defendant may avoid liability if he can show that he had a subjective good faith belief that his conduct was justified and that subjective belief was reasonable."). That instruction would have sufficed under Kentucky law as well. *See Lexington-Fayette Urban County Gov't v. Middleton*, 555 S.W.2d 613, 617 (Ky. App. 1977) (privilege available if jury finds "both that [officer] had reasonable grounds and in good faith did believe those grounds for making the arrest and that he used no more force than necessary").

The additional language to which Brown objects did not make it easier for the jury to find for Officer Fournier. Ironically, the opposite may be true because the instruction required the jury to find more than what would have been sufficient under *Middleton, supra,* or the case from the District of Columbia. The instruction did not require merely that the jury find it reasonable that Officer Fournier subjectively believed Brown was creating a risk nearby. The jury had to find that Brown actually did create a risk and not just a simple risk; the jury had to find that she created an "*unreasonable* risk" because she was in "*dangerous* proximity" to the accident. If we presume (for it may not be so) that the jurors believed Brown met her burden under paragraph 1 and 2 of Instruction 4 – that Officer Fournier intentionally detained her against her will – then they also must have concluded Brown created an unreasonable risk and that she was dangerously close to the scene which the first responders were attempting to work.

Again, the imperfections of a jury instruction (including those imperfections that favor the complaining party) will not cause it always to be erroneous. Although less would have been satisfactory, the additional language to which Brown objects does not make the instruction inconsistent with Kentucky law.

B. Punitive Damages

Brown argues the circuit court's decision granting a directed verdict in favor of Officer Fournier on the issue of punitive damages was erroneous. There is no need to address this argument. "[T]he claim for punitive damages cannot succeed since the failure to assert a claim on which actual damages can be awarded precludes them from seeking punitive damages." *Ammon v. Welty*, 113 S.W.3d 185, 188 (Ky. App. 2002) (citing *Lawrence v. Risen*, 598 S.W.2d 474, 476 (Ky. App. 1980) ("Appellant failed to assert any claim on which actual damages could be awarded and is thus precluded from seeking exemplary ones on this issue.")).

CONCLUSION

For the foregoing reasons, we affirm the Mercer Circuit Court's July 13, 2015 trial verdict and judgment.

NICKELL, JUDGE, CONCURS.

CLAYTON, JUDGE, CONCURS BY SEPARATE OPINION.

CLAYTON, JUDGE, CONCURRING: I concur. While I agree that under the facts of this case Brown is not entitled to relief, I express no judgments on the hypothetical scenarios.

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