

**STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700**

No. 55,885-CW

AARON LARRY BOWMAN

VERSUS

OUACHITA PARISH SHERIFF'S OFFICE, SHERIFF
JAY RUSSELL, METRO NARCOTICS UNIT, MONROE
POLICE DEPARTMENT, LOUISIANA STATE POLICE
DEPARTMENT, UNIVERSITY OF LOUISIANA AT
MONROE POLICE DEPARTMENT, THE CITY OF
MONROE, PARISH OF OUACHITA, AND DONOVAN GINN

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On application of Sheriff Jay Russell and Deputy Donovan Ginn for
SUPERVISORY WRIT in No. C-2020-2498 on the docket of the Fourth Judicial
District, Parish of OUACHITA, Judge Robert C. Johnson.

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Louisiana System

Before PITMAN, THOMPSON, and ELLENDER, JJ.

WRIT GRANTED AND MADE PEREMPTORY; REMANDED.

The applicants, Jay Russell and Donovan Ginn, seek supervisory review of
the trial court's denial of their exception of prescription.

The respondent, Aaron Bowman, filed a petition for damages on September 20, 2020, arising from an altercation he had with several law enforcement officers on May 30, 2019. Specifically, Bowman alleged that Deputy Donovan Ginn, an employee of Ouachita Parish Sheriff Jay Russell, was involved in an unlawful arrest that resulted in Bowman being beaten severely by unnamed officers who were part of a joint tactical effort involving the Ouachita Parish Sheriff's Office, Louisiana State Police, Monroe Police Department, and other agencies.

Sheriff Russell and Dep. Ginn filed an exception of prescription alleging that Bowman's claims against them were untimely under La. C.C. art. 3942. No opposition to their exception of prescription was filed, although at the hearing on the exception Bowman was allowed to present argument in opposition to the exception.

The trial court determined that Sheriff Russell and Dep. Ginn established that Bowman's petition had prescribed on its face; this shifted the burden to Bowman, who argued that because Dep. Ginn's actions constituted a crime of violence, his petition was timely under La. C.C. art. 3943.10. Bowman pointed to allegations raised in his amended petition, filed on July 18, 2022, that a former La. State Trooper, Jacob Brown, had been charged with wrongdoing in relation to the incident with Bowman on May 30, 2019. Bowman argued that because a law enforcement officer had been charged with wrongdoing, this sufficiently showed that an act defined as a crime of violence formed the basis of his claims, making his claims against Sheriff Russell and Dep. Ginn timely as well.

The district court accepted Bowman's arguments and denied the exception of prescription. The instant writ application followed. Applicants contend that the district court erred in allowing Bowman to present argument at the hearing on the exception of prescription despite making no written objection and in denying the exception of prescription.

On appellate review of a peremptory exception of prescription, when there is no dispute regarding material facts and only the determination of a legal issue, the reviewing court applies a de novo standard of review. *Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.*, 21-00061 (La. 10/10/21), 333 So. 3d 368. The burden of proving prescription ordinarily lies with the party raising the exception; however, when prescription is evident from the face of the petition, the burden shifts to the plaintiff to show the action has not prescribed. *Id.*

Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained. La. C.C. art. 3492. Delictual actions which arise due to damages sustained as a result of an act defined as a crime of violence under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, except as provided in Article 3496.2, are subject to a liberative prescription of two years. This prescription commences to run from the day injury or damage is sustained. La. C.C. art. 3943.10.

La. C. Cr. P. art. 220 permits law enforcement officers to use reasonable force to effect a lawful arrest and detention as well as to overcome any resistance or threatened resistance. The mere fact that injuries may result from an encounter with law enforcement does not automatically transform a defendant officer's actions that would be permitted under La. C. Cr. P. art. 220 into crimes of violence. To determine whether an officer's actions are crimes of violence for the purposes of allowing a plaintiff the two-year liberative prescriptive period of La. C.C. art. 3943.10, some evidence must be presented to show that the officer's conduct exceeded the scope of authority set out in La. C. Cr. P. art. 220. That evidence does not have to consist of pending criminal charges for a violent felony, but could take some other form, such as a prosecution for a lesser offense or even evidence of disciplinary action imposed by the officer's department. Without such evidence that the officer's actions while effectuating an arrest exceeded the scope of authority granted to him by La. C. Cr. P. art. 220, thereby rising to the level of criminal conduct, the injuries suffered by a defendant are not the result of a crime of violence perpetrated by that officer. *Byrd v. Bossier Par. Sheriff*, 54,914 (La. App. 2 Cir. 3/1/23), 357 So. 3d 582; see also, *Brown v. Pouncy*, 55,626 (La. App. 2 Cir. 5/22/24), 2024 WL 2307514.

In this matter, Bowman alleged that on May 30, 2019, certain officers from various agencies followed his vehicle home for no apparent reason, approached him after he pulled into his driveway, inquired and confirmed with Bowman that he did not have any drugs or weapons on him, pulled him out of the vehicle, dragged him to the ground, and despite a complete and total lack of resistance, hit and kicked him for a period of time. Bowman claimed that as a result of the attack, he suffered serious injuries. Bowman also alleged that officers then fabricated a false narrative of the encounter. He further alleged that he was not arrested at the scene, yet Dep. Ginn obtained an arrest warrant for him three to four days later. In his initial petition, Bowman stated plainly that he did not know which officers had been involved in the use of excessive force against his person. In the amended petition, however, he alleged that it was a man named Jacob Brown, a former employee of the La. State Police, who battered him with a flashlight and had pending criminal charges arising out of his improper conduct toward Bowman on May 30, 2019.

To date, the only officer named by Bowman in his petition(s) who has pending criminal charges of any kind in relation to this incident is former State Trooper Jacob Brown. As to Dep. Ginn, the time limit on prosecution for any actions he may have taken on May 30, 2019, has run. La. C. Cr. P. art. 572(A). While there is no requirement in La. C.C. art. 3943.10 that criminal charges must be pending against a defendant for a plaintiff to use the two-year liberative prescriptive period, the statute does require that the damages in question be sustained as a result of an act defined as a crime of violence under La. R.S. 14:2.

Even assuming that Dep. Ginn used excessive force, this fact by itself is not sufficient to meet the requirements of La. C.C. art. 3943.10 if that use of force was in furtherance of a lawful arrest and authorized by La. C. Cr. P. art. 220. In that

situation, the excessive force would not be criminal. Here, there is no evidence in Bowman’s petitions, in the form of pending criminal charges against Dep. Ginn or even departmental discipline initiated against him, to establish that his conduct exceeded the scope of the authority conferred on him as a commissioned law enforcement officer attempting to effectuate a lawful arrest by La. C. Cr. P. art. 220. Accordingly, we find that Bowman has failed to allege facts sufficient to show that Dep. Ginn’s actions on May 30, 2019, rose to the level of criminal conduct or constituted crimes of violence for the purpose of invoking the two-year prescriptive period of La. C.C. art. 3943.10. Thus, Bowman had one year under La. C.C. art. 3492 to file his suit against applicants. Any ruling regarding Bowman’s argument at the hearing is pretermitted as unnecessary.

The writ is granted and the ruling of the trial court denying applicants’ exception of prescription is reversed. Applicants’ exception of prescription is granted and plaintiff’s claims against them are dismissed with prejudice. This matter is remanded to the trial court for further proceedings consistent with this order.

Shreveport, Louisiana, this 20 day of June, 2024.

DJE JGO JRT

FILED: June 20, 2024

Stacy Dwyer
DEPUTY CLERK