



In the Missouri Court of Appeals  
Eastern District  
DIVISION THREE

BONNIE A. ROEDER, ) No. ED107997  
 )  
Respondent, ) Appeal from the Circuit Court  
 ) of St. Charles County  
vs. ) 1511-CC01064-01  
 )  
CITY OF ST. PETERS, ) Honorable Jon A. Cunningham  
 )  
Appellant )  
 )  
And, )  
 )  
COURT ADMINISTRATOR )  
GREG M. WHITE, )  
 )  
Defendant. ) FILED: February 11, 2020

Before Mary K. Hoff, P.J., Sherri B. Sullivan, J., and Angela T. Quigless, J.

MEMORANDUM SUPPLEMENTING ORDER  
AFFIRMING JUDGMENT PURSUANT TO RULE 84.16(b)

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the Judgment.

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT. IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR OTHERWISE USED IN UNRELATED CASES BEFORE THIS COURT OR ANY OTHER COURT. IN THE EVENT OF THE FILING OF A MOTION FOR REHEARING OR

TRANSFER TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED TO ANY SUCH MOTION.

The City of St. Peters (“The City”) appeals from the judgment entered upon a jury verdict finding in favor of Bonnie Roeder (“Roeder”) on her claim for malicious prosecution against the City over its enforcement action against her for “failure to appear on red light camera” and awarding Roeder \$100,000 in damages. We affirm.<sup>1</sup>

Factual and Procedural Background

The procedural history surrounding this case is lengthy and complicated. Therefore, although not essential, we will summarize the relevant facts and proceedings leading up to the current appeal:

On the morning of June 7, 2012, Roeder was driving to work when she ran a red light. Roeder later received in the mail a “Notice of Violation” for violating the red light along with a demand for a \$110.00 fine and a probable cause statement signed by St. Peters police officer Brian Peters (“Officer Peters”).

On July 31, 2012, Roeder was scheduled to appear in the City’s Municipal Court on the red light camera ticket; however, Roeder did not appear in court on the date stated on her citation, because she believed, based on news reports, that the tickets were not enforceable.

On August 2, 2012, the City’s Municipal Court sent Roeder an untitled document stating that she had to appear in court on Tuesday, September 11, 2012. The document was signed by Greg White (“White”), Court Administrator, and referenced the alleged offense as “STP021020...Red Light Camera.” The document further provided:

Due to your failure to appear as scheduled on TUESDAY, July 31, 2012 the Court has reset your case on the St. Peters Municipal Division Court Docket for:

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<sup>1</sup> Roeder’s motion to strike portions of the City’s brief, or alternatively, to strike the City’s brief in its entirety is denied.

**TUESDAY, SEPTEMBER 11, 2012 AT 6:30 PM**

\* \* \*

If you fail to appear in this Court on Tuesday, September 11, 2012, a WARRANT for your arrest on the additional charge of Failure to Appear will be issued.

[Emphasis in original.]

Roeder did not appear in court on September 11, 2012 because she believed the letter was not a summons.

On October 18, 2012, the court issued a separate charge (No. 20121561) against Roeder, through a “Complaint, Affidavit and Information” sworn by White, for “failure to appear” in response to a summons on red light camera and stated that Roeder’s actions were in violation of “Ordinance # 442 of the City of St. Peters, Missouri.”

On October 18, 2012, Municipal Judge Donald Kohl (“Judge Kohl”) signed and issued a warrant for the arrest of Roeder. Bond was set at \$210.00.

On November 5, 2012, Roeder was arrested by City of Creve Coeur police officer, Doug Manninger (“Detective Manninger”) when her license plate was flagged in connection with the warrant for the failure to appear charge. Roeder was held in custody for approximately three hours before posting bond. Detective Manninger testified that he arrested Roeder on the warrant after verifying her identity, and running her license in the law enforcement database.

On February 6, 2013, Roeder’s counsel certified the two charges, one for violating the red light as caught by camera (STP021020) and one for failure to appear on red light camera (No. 20121561), for a jury trial in St. Charles County Circuit Court. The charges were combined under one cause number, Case No. 1311-MU00010.

The consolidated case was tried before a jury on September 4-5, 2013. At the conclusion of the City’s evidence, Roeder asked the court to enter a judgment of acquittal on both the failure

to appear and the red light camera charge. In response, Judge Ted House (“Judge House”) found that the City failed to produce an ordinance, or statute, that would authorize the City to file an ordinance violation charging failure to appear and that Ordinance 442, which the City relied on to support its actions, did not provide authority to charge Roeder with failure to appear. Thereafter, Judge House acquitted Roeder on that charge and ruled that “[t]he motion for judgment of acquittal on the failure to appear charge is sustained.” Judge House denied the motion for judgment of acquittal on the red light camera charge.

On September 5, 2013, at the conclusion of all evidence and arguments, the jury found Roeder guilty on the red light camera violation. Judge House entered his judgment in accordance with the jury’s verdict finding Roeder guilty on the red light camera charge. The jury was instructed on the penalty phase of the case and, after deliberation, the jury assessed the punishment at \$110.00. Judge House entered his judgment in accordance with the jury verdict finding Roeder guilty of the charge of failure to stop at a red light and assessed a fine in the amount of \$110.00.

On October 30, 2013, Judge House set aside the conviction and granted Roeder’s renewed motion for acquittal, filed on September 18, 2013, on the red light camera charge. Judge House set aside his judgment and conviction based on the decision in Unverferth v. City of Florissant, 419 S.W.3d 76 (Mo. App. E.D. 2013), and found that the provision in Ordinance 4356<sup>2</sup> prohibiting the assessment of points for a violation was “in irreconcilable conflict with state law,” and therefore “that provision is void as applied to [Roeder].” Based on this determination, Judge House then dismissed the red light camera charge.

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<sup>2</sup> In 2006, the City adopted Ordinance 4356, which established a camera system at certain signalized intersections within the City and provided that failing to stop at a red light detected by the system constituted a traffic violation. The system was in operation between approximately 2006 and 2014.

The City appealed Judge House’s judgment on the red light camera charge to this Court and then to the Missouri Supreme Court. City of St. Peters v. Roeder, 466 S.W.3d 538, 549 (Mo. banc 2015). Both this Court and the Missouri Supreme Court affirmed Judge House’s dismissal. Specifically, the Missouri Supreme Court held that “the portion of [Ordinance 4356] stating no points will be assessed against a violator’s driving record conflicts with state law.” Id. at 549. The Supreme Court also held that “[t]he invalid portion may be severed from the rest of the ordinance because the city would have enacted the ordinance without the invalid portion.” Id. In affirming Judge House’s dismissal of the red light camera charge, however, the Supreme Court held that it would “give effect to that severance and permit enforcement of the valid portions of [O]rdinance 4356 prospectively only because severance in Roeder’s case would violate constitutional notions of fair notice.” Id.

On December 4, 2015, Roeder filed the underlying action for malicious prosecution against the City and White, jointly and severally, arising out of the original traffic case. In her petition, Roeder also made several federal civil rights claims. The City and White removed the case to Federal Court and, on August 17, 2016, the Federal Court dismissed all but the malicious prosecution claim, remanding that claim back to state court.

On January 23, 2017, Roeder filed her amended petition for malicious prosecution against the City and White, again alleging joint and several liability for her damages.

On January 9, 2018, the City and White filed a motion for summary judgment on the basis of sovereign immunity, which was denied on March 12, 2018.

The City then filed a writ petition on the ground of sovereign immunity which this Court denied on March 27, 2018 in State ex rel. City of St. Peters v. Cunningham (ED106468).

On December 21, 2018, the City and White filed a second motion for summary judgment on the basis of Roeder's alleged failure to establish absence of probable cause on the entire underlying traffic case. On January 10, 2019, the trial court denied the motion. Judge Jon Cunningham ("Judge Cunningham") ruled as follows:

This is the second time that Defendants have filed a Motion for Summary Judgment. After the denial of [Defendants'] first motion for summary judgment by this Court, defendants took the matter up with the Court of Appeals on a Writ which was eventually denied. This motion makes the same arguments and cites the same authorities as they have previously. The Court continues to stand by its prior rulings that since Plaintiff prevailed on both counts against her (failure to appear and the red-light offense), they have sufficiently pleaded a cause of action for malicious prosecution. See Joseph H. Held and Assoc., Inc. v. Wolff, 39 S.W.3d 59, 63 (Mo. App. W.D. 2011).

From March 26 to March 28, 2019, Roeder's malicious prosecution case was tried before a jury in the Circuit Court of St. Charles County. Throughout trial, evidence was adduced about the substantial revenues that the City received from Redflex, the third party provider of red light camera ticket services to the City, and well as the use of Ordinance 442, which had nothing to do either with failure to appear or red light cameras, as a means to compel payment from drivers. Notably, no one from the City or law enforcement could point to a failure to appear ordinance.

At trial, the City attempted to introduce its General Penalty Ordinance as evidence that it had authority to issue failure to appear charges. However, Judge Cunningham denied the City's request holding that the General Penalty Ordinance is irrelevant to the charge of failure to appear. Thereafter, the City made an offer of proof.

With respect to the City's traffic enforcement procedures, Officer Peters testified that he issued red light camera citations and spent one to two minutes on his investigation of each alleged red light camera violation. He testified that his investigation consisted of reviewing images and

information provided by Redflex, the third-party contractor for red light camera enforcement. Officer Peters testified he did not investigate the identity of the driver when he e-signed the citation against Roeder, other than knowing that the driver was a female and that the title was registered to an individual with a female name.

Officer Peters further testified that in cases such as Roeder's in which the alleged driver failed to pay the ticket or come to court, only then would an officer investigate the identity of the driver by reviewing the driver license record. Once the driver's identity was verified, only then would the officer approve the seeking of a warrant on the separate charge of "failure to appear on red light camera violation." Officer Peters explained that this practice was in place because "when you issue a warrant you want to make sure that you have the right person." Officer Peters admitted that typically no investigation was necessary because "[t]he investigation doesn't happen if the person's already paid."

Finally, at the jury instruction conference following the close of all the evidence, Roeder submitted two verdict directing instructions for malicious prosecution. Instruction No. 8 was directed against the City and Instruction No. 9 was directed against White for "instigat[ing] a judicial proceeding" against Roeder that terminated in her favor. The City objected on the basis that White was a City employee and had no independent role in charging Roeder with the red light camera violation and that submitting the instructions without informing the jury that White could only be liable on the failure to appear charge would be error. The City further argued that Roeder was required under Missouri law to prove the absence of probable cause for the entire underlying proceeding—both the red light camera charge and failure to appear charge. Therefore, the City contended, if probable cause existed with respect to the red light camera

charge, then the City and White were entitled to a verdict in their favor for the malicious prosecution claim.

In response, the trial court noted that throughout trial, the basis of Roeder's malicious prosecution claim was only on the failure to appear. Therefore, the issue of whether Roeder needed to prevail on both counts was one for the court to decide not an issue for the jury. The trial court then concluded that the instruction, as submitted, was appropriate and that Roeder's malicious prosecution action could be submitted solely on the failure to appear charge. The trial court then ruled that the City could not argue that "judicial proceeding," as used in Instructions Nos. 8 and 9, referred to the entire underlying proceeding. Thereafter, the City submitted Instruction No. 10, which read as follows:

The issue of malicious prosecution on the red light camera violation is *withdrawn from the case and you are not to consider such issue in arriving at your verdict.* [Emphasis added.]

On March 28, 2019, the jury returned a verdict in favor of White but against the City, and awarded Roeder \$100,000.00 in compensatory damages. On March 29, 2019, the trial court entered judgment in accordance with the jury's verdict. The City filed a motion for judgment notwithstanding the verdict ("JNOV") or for a new trial. The trial court denied the motion. This appeal follows.

#### Discussion

The City raises seven points on appeal. In Points I through IV, the City alleges the trial court erred in overruling the City's motion for JNOV and entering judgment based on an insufficiency of evidence to support a claim of malicious prosecution against the City. In Point V, the City alleges the trial court erred in instructing the jury that the element of the absence of probable cause could be submitted solely on the failure to appear charge and not on the red light

camera charge. In Point VI, the City alleges the trial court erred in refusing to allow the City to argue during closing argument that Roeder failed to establish the absence of probable cause for “the entire underlying proceeding.” Finally, in Point VII, the City alleges the trial court erred and abused its discretion in refusing to allow admission into evidence of the City’s general penalty ordinance. We will discuss each point in turn, along with its applicable standard of review.

### Sovereign Immunity

In Point I, the City argues the trial court erred in denying its motion for JNOV because the City is entitled to sovereign immunity to protect it from tort claims when performing its governmental function of traffic enforcement. We disagree.

The standard of review for the denial of a motion for JNOV is essentially the same as the standard for the denial of a motion for directed verdict. City of Harrisonville v. McCall Serv. Stations, 495 S.W.3d 738, 748 (Mo. banc 2016) (citing All Am. Painting, LLC v. Fin. Solutions & Assocs., Inc., 315 S.W.3d 719, 723 (Mo. banc 2010)). When reviewing a trial court’s denial of a motion for JNOV, we must determine whether the plaintiff made a submissible case by offering evidence to support every element necessary for liability. City of Harrisonville, 495 S.W.3d at 748 (citing Smith v. Brown & Williamson Tobacco Corp., 410 S.W.3d 623, 630 (Mo. banc 2013)). Evidence is viewed in the light most favorable to the jury’s verdict, giving the plaintiff all reasonable inferences and disregarding all conflicting evidence and inferences. Id. (citing Smith, 410 S.W.3d at 630). We will reverse the jury’s verdict for insufficient evidence only where there is a complete absence of probative fact to support the jury’s conclusion. Id.

As a preliminary matter, we note that this Court need not engage in a lengthy analysis of sovereign immunity or a discussion over the distinction between a municipality’s proprietary and

governmental functions. The fundamental issue presented by this appeal is simply this: Can there be sovereign immunity at all when there is no ordinance in existence to justify the City's alleged "police powers"?

Here, the record clearly established that the malicious prosecution charge for which Roeder filed suit against the City was the charge related to the non-existent failure to appear ordinance. Despite the lack of an enabling ordinance, the charge was styled "ordinance violation for failure to appear on red light camera." The jury heard that no such ordinance existed. There can be no sovereign immunity for prosecuting a person under a non-existent law because such a prosecution is not a legitimate exercise of the police power, which requires a "rational relationship to the health, safety, peace, comfort, and general welfare of the inhabitants of the municipality, and it must conform with state law on the same subject." Ballard v. City of Creve Coeur, 419 S.W.3d 109, 119 (Mo. App. E.D. 2013) (citing Bezayiff v. City of St. Louis, 963 S.W.2d 225, 229 (Mo. App. E.D. 1997)). On this basis alone, the jury's conclusion is supported by sufficient evidence and, therefore, the trial court properly denied the City its motion for JNOV. Point I is denied.

#### McGinnis Doctrine<sup>3</sup>

In Point II, the City argues the trial court erred in denying its motion for JNOV because the jury found in favor of White, the City's employee and, under the McGinnis Doctrine, exoneration of the employee exonerates the employer, which in this case is the City. We disagree.

When reviewing a trial court's denial of a motion for JNOV, we must determine whether the plaintiff made a submissible case by offering evidence to support every element necessary for liability. City of Harrisonville, 495 S.W.3d at 748. Evidence is viewed in the light most

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<sup>3</sup> McGinnis v. Chicago, R.I. & P. Ry. Co., 200 Mo. 347, 98 S.W. 590 (Mo. 1906)).

favorable to the jury's verdict, giving the plaintiff all reasonable inferences and disregarding all conflicting evidence and inferences. Id. We will reverse the jury's verdict for insufficient evidence only where there is a complete absence of probative fact to support the jury's conclusion. Id.

Initially, we note that Roeder argues the City waived its McGinnis Doctrine objection by failing to object on the ground of inconsistency before the jury was discharged. Burnett v. Griffith, 739 S.W.2d 712, 713-15 (Mo. banc 1987). Roeder contends that after the jury returned its verdict in favor of White and against the City on Roeder's claim for malicious prosecution, the trial court had counsel approach the bench and review the verdict but the City made no objection on the grounds of inconsistency. After the court polled the jury at the City's request, the trial court then discharged the jury.

The City counters that under Burnett, the City was not required to object to the verdicts before discharge of the jury because it was entitled to a JNOV under the McGinnis Doctrine and "certainly did not want the jury to return for further deliberations in order to arrive at a verdict that would deprive it of the entry of [JNOV] in its favor." Burnett, 739 S.W.2d at 715.

Even assuming, without deciding, that there was waiver, the McGinnis Doctrine still does not apply here because (1) Roeder was not proceeding under a theory of respondeat superior and (2) the evidence does not show that the City's liability is premised solely and exclusively on the acts of White.

Under the McGinnis Doctrine, "when a claim is submitted on the theory of respondeat superior and the jury returns inconsistent verdicts, exonerating the employee, but holding against the employer, the court must grant the employer judgment notwithstanding the verdict." Id. at 713. However, the McGinnis Doctrine does not apply unless the employer's liability is "wholly

dependent” on the conduct of the exonerated employee. Stith v. J. J. Newberry Co., 336 Mo. 467, 79 S.W.2d 447, 459 (1934):

[U]nless the liability of the master is based solely on the negligence of the particular servant who is sued and acquitted, that is if the master is guilty of negligence distinct from the negligence or tort of the servant, though combining with it, or the injury is due in whole or in part to the negligence of other servants than the one sued, then an acquittal of the servant sued *does* not nullify the verdict and judgment may go against the master.

Stith, 79 S.W.2d at 458 (emphasis in original).

Here, the verdict in favor of White does not mean, as the City argues, that there is an inconsistent verdict and that there must be judgment in favor of the City based on the McGinnis Doctrine. From the beginning of her case, as alleged in her amended petition, in her evidence at trial, and in each of her and the City’s proffered verdict directors, Roeder’s theory was that the City’s and White’s liability was joint and several. In other words, contrary to the City’s contentions, the City’s liability was not predicated solely on the liability of White under a theory of respondeat superior. Where the liability of the employer may be predicated upon a basis of liability other than the conduct of the exonerated employee, the McGinnis Doctrine does not apply. Burnett, 739 S.W.2d at 715. Moreover, if the petition or jury instructions encompass actions of other employees of the employer on which liability of the employer may be predicated, the McGinnis Doctrine is also inapplicable. Id.

In her amended petition, Roeder pled acts by City officials other than White, including the conduct of Officer Peters in charging Roeder with failure to appear and the City itself, which had a well-established policy of using failure to appear charges to compel payment of red light camera fines. Moreover, the amended petition explicitly stated that “[t]he Defendants are jointly and severally liable for Plaintiff’s damages.”

In addition, there was ample evidence to support the jury’s verdict that the City was liable, but not White, through his one independent act of providing a probable cause statement that Roeder had violated a non-existent ordinance violation of failure to appear. There was also ample evidence of a municipal policy of using failure to appear warrants to collect red light camera revenues, and that the policy itself was a moving force for Roeder’s prosecution. In short, the evidence showed and the record before us confirms that the City acting through other individuals and entities, besides White—i.e., its police, red light camera contractor, prosecutors, and municipal court—all worked together to “instigat[e]” Roeder’s failure to appear prosecution. Given the record before us, we find no error in trial court’s decision to deny the City’s motion for JNOV because the McGinnis Doctrine was inapplicable in the instant case and the verdict was therefore not inconsistent. Point II is denied.

Insufficient Evidence of the Absence of Probable Cause

In Points III and IV, the City argues the trial court erred in denying its motion for JNOV because Roeder failed to make a submissible case for malicious prosecution by failing to present sufficient evidence to establish the absence of probable cause for the entire underlying proceeding, which included both the failure to appear charge *and* the red light camera charge. The City contends that the evidence at trial established probable cause for instigating the red light camera charge and that Roeder’s conviction on that charge gave rise to a presumption of the existence of probable cause for instigating the prosecution against her, a presumption that Roeder failed to rebut. We disagree.

When reviewing a trial court’s denial of a motion for JNOV, we must determine whether the plaintiff made a submissible case by offering evidence to support every element necessary for liability. City of Harrisonville, 495 S.W.3d at 748. Evidence is viewed in the light most

favorable to the jury's verdict, giving the plaintiff all reasonable inferences and disregarding all conflicting evidence and inferences. Id. We will reverse the jury's verdict for insufficient evidence only where there is a complete absence of probative fact to support the jury's conclusion. Id.

The elements of malicious prosecution are: "(1) the commencement of a judicial proceeding against the plaintiff; (2) the instigation of the suit by the defendant; (3) the termination of the proceeding in [the] plaintiff's favor; (4) the absence of probable cause for the suit; (5) malice by the defendant in instituting the suit; and (6) resulting damage to the plaintiff." Heberlie v. Harriman Oil, 497 S.W.3d 886, 890 (Mo. App. E.D. 2016) (quoting Joseph H. Held & Associates, Inc. v. Wolff, 39 S.W.3d 59, 62-63 (Mo. App. E.D. 2001)).

"The Missouri Supreme Court has defined probable cause for the institution of a civil action to consist of: (1) the plaintiff's belief in the facts alleged, (2) based on sufficient circumstances to reasonably induce such belief by a person of ordinary prudence in the same situation, plus (3) a reasonable belief that under the facts the claim may be valid under the applicable law." Heberlie, 497 S.W.3d at 891 (quoting Holley v. Caulfield, 49 S.W.3d 747, 751 (Mo. App. E.D. 2001)). Put simply, "probable cause is 'a reasonable belief in the facts alleged, plus a reasonable belief that the claim may be valid.'" Id.

Under Point III, the City argues that Roeder had to prove lack of probable cause for the entire proceeding in order for the trial court to properly deny JNOV. Heberlie, 497 S.W.3d at 890. However, as the evidence at trial showed, the failure to appear charge was a separate and distinct charge from the red light camera charge and on this basis alone the trial court properly denied the City's motion.

Here, Roeder's failure to appear charge was filed at a later time than the red light camera charge, had a separate municipal court case number, was based on distinct and separate facts and involved the actions of different actors (the City, White, Judge Kohl, Detective Manninger, City prosecutors) than the red light camera citation (the City, Officer Peters, Redflex officials, City prosecutors). Only when the two charges were consolidated for trial in the circuit court did the two charges obtain one case number. Thus, Roeder was not required to show whether or not there was probable cause for the red light camera charge, since it was originally a different charge, brought earlier in time.

However, even if the failure to appear charge and the red light camera charge were based on the same set of acts, as the City alleges, the jury heard evidence that there was no probable cause or reasonable grounds for the entire proceeding. First, there was no probable cause on the failure to appear charge because the City lacked a failure to appear ordinance. Second, one could have reasonably concluded there was no probable cause for the red light camera citation because, as Officer Peters admitted, he instigated the charge against Roeder before anyone investigated who was driving the car. No one from the City even compared the two photographs until the warrant application stage, months later on the separate, failure to appear charge. Officer Peters admitted it was reasonable to identify the driver only before obtaining a warrant. Therefore, based on these facts we cannot say that the City instigated the prosecution of the red light camera violation on reasonable grounds.

Under Point IV, the City insists that Roeder was convicted of the red light camera charge. This is incorrect. Judge House set aside the jury verdict of guilty and acquitted Roeder as a matter of law based on the then-recent precedent. There was never a final, appealable judgment of guilt to terminate the proceedings in favor of the prosecution. See Doyle v. Crane, 200

S.W.3d 581, 586 (Mo. App. W.D. 2006) (For purposes of malicious prosecution, an underlying action is deemed terminated when: (1) a final judgment is entered on the merits; (2) the action is dismissed by the court with prejudice; or (3) the action is abandoned)).

Even if Roeder was convicted, thereby establishing a presumption of probable cause, the jury heard evidence at trial that rebutted that presumption. Moreover, Roeder established that the City did not have a failure to appear ordinance, thus making the failure to appear charge baseless and improper.

For the reasons outlined above, the trial court did not err in denying JNOV. Points III and IV are denied.

#### Jury Instruction

In Point V, the City argues the trial court erred in instructing the jury that the element of the absence of probable cause could be submitted solely on the failure to appear charge and not on the red light camera charge because Missouri case law clearly establishes that the element of the absence of probable cause must be proved for “the entire underlying proceeding” in order to prevail on a claim for malicious prosecution. We disagree.

Before addressing the merits of the City’s point, Roeder argues that the City waived any appellate review of a claim of instructional error by proffering the instruction that the trial court submitted to the jury. “A party cannot complain on appeal about an alleged error in which that party joined or acquiesced at trial.” Sutton v. McCollum, 421 S.W.3d 477, 481 (Mo. App. S.D. 2013). “That is, a party cannot lead a trial court into error and then employ the error as a source of complaint on appeal. Appellate courts will not reverse a trial court on the basis of an invited error.” Sutton, 421 S.W.3d at 481.

Here, it was the City that proffered Instruction No. 10 that the “issue of malicious prosecution on the red light camera violation is *withdrawn* from the case and not to be considered such issue in arriving at your verdict.” [Emphasis added.] As a result, the City did not object to the court giving the City’s own limiting instruction. Therefore, this was invited error and the City cannot now claim error based on an instruction in which it joined or acquiesced at trial. Id.

Even if not waived, however, any instructional error is harmless. The jury heard evidence that there was no probable cause or reasonable grounds for the entire proceeding. First, there was no probable cause on the failure to appear charge because the City lacked a failure to appear ordinance. Second, one could have reasonably concluded there was no probable cause for the red light camera citation because, as Officer Peters admitted, he instigated the charge against Roeder before anyone investigated who was driving the car. The City admitted, through Officer Peters, that it initiated the charge against Roeder by sending her the red light camera summons before Officer Peters or anyone else investigated who was driving the car. Officer Peters testified that that it is “possible” that at least 15 percent of the time it was unreasonable to assume the owner was driving the car. Only at the warrant application stage, Officer Peters testified, was it reasonable to identify the driver before obtaining a warrant. Before that, no effort was made to identify the driver before issuing the red light camera citation. Further, we emphasize that Judge House *acquitted* Roeder on the red light camera charge as a matter of law.

Finally, the City argues that to make a submissible case for malicious prosecution, Roeder had to prove lack of probable cause for the entire proceeding. Heberlie, 497 S.W.3d at 890. While generally true, here, the evidence at trial showed that the failure to appear charge was a *separate* charge from the red light camera charge and was filed later in time. Only when the two charges

were consolidated for trial did the two charges obtain one case number. Therefore, since the failure to appear charge was originally a different charge, brought earlier in time, Roeder did not need to show whether or not there was probable cause for the red light camera charge. The trial court did not err in not instructing on the element of the absence of probable cause for “the entire underlying proceeding.” Point V is denied.

#### Closing Argument

In Point VI, the City argues the trial court erred in refusing to allow the City to argue during closing argument that Roeder failed to establish the absence of probable cause for “the entire underlying proceeding” because Missouri case law required Roeder to prove that the element of the absence of probable cause was in her favor on both the failure to appear charge and on the red light camera charge in order to prevail on her claim for malicious prosecution. We disagree.

The trial court has broad discretion in controlling the scope of closing argument. Hill v. City of St. Louis, 371 S.W.3d 66, 71 (Mo. App. E.D. 2012). We review the trial court’s ruling for an abuse of discretion, and we will not reverse unless the ruling resulted in prejudice. Hill, 371 S.W.3d at 71.

Here, the City has failed to show how it was prejudiced by the trial court’s ruling, even if erroneous. As discussed under Points III, IV, and V, the jury heard ample evidence that there was no probable cause or reasonable grounds for the entire proceeding because (1) the grounds for issuing a red light camera citation were questionable, and (2) the City did not have a failure to appear ordinance. Point VI is denied.

### Exclusion of General Penalty Ordinance

Finally, in Point VII, the City alleges the trial court erred and abused its discretion in refusing to allow admission into evidence of the City's General Penalty Ordinance because the Ordinance supported the City's charge of failure to appear against Roeder and the refusal resulted in prejudice to the City. We disagree.

The trial court is granted considerable discretion in deciding whether to admit or exclude evidence. Williams v. Mercy Clinic Springfield Communities, 568 S.W.3d 396, 416 (Mo. banc 2019). Accordingly, we review a trial court's decision regarding admissibility of evidence only for an abuse of discretion, such as when the ruling is clearly against the logic of the circumstances and is so unreasonable and arbitrary that the ruling shocks the sense of justice and indicates a lack of careful, deliberate consideration. Williams, 568 S.W.3d at 417.

Before trial, the trial court ruled on a motion in limine that the City "cannot introduce or argue that . . . the City's general penalty ordinance created the offense of failure to appear." At trial, the City attempted to introduce the Ordinance, and made an offer of proof regarding its relevancy. The trial court adhered to its prior order regarding the motion in limine and denied the admission of the Ordinance into evidence.

Here, the City attempts to argue that whether there was or there was not an ordinance making the offense a violation, is irrelevant for purposes of a jury deciding "whether White knew there was no ordinance at the time he charged [Roeder] and whether [he] knew there was no ordinance" and that the General Penalty Ordinance is relevant to the issue of "the absence of probable cause and malice." That argument completely misses the point.

Throughout trial, Roeder argued that the City never produced an ordinance supporting the failure to appear charge because none existed and therefore the charge itself did not exist.

On this basis alone, the trial court correctly determined as a matter of law that the City's General Penalty Ordinance did not create an ordinance violation of failure to appear, or of failure to appear on red light camera violation. Accordingly, the trial court was well within its discretion in finding the General Penalty Ordinance irrelevant insofar as it cannot penalize that which is not prohibited by law. Point VII is denied.

Conclusion

The judgment is affirmed.