

**Ed. Note: Opinion Rendered April 11, 2000**

**SUPREME COURT OF LOUISIANA**

**No. 99-C-1730**

**ROLAND GIBSON, JESSIE GIBSON,  
ROLAND GIBSON, JR. AND DENNIS GIBSON**

**versus**

**THE STATE OF LOUISIANA, JOHN ST. JOHN  
AND LLOYD WEST**

**ON WRIT OF CERTIORARI  
TO THE COURT OF APPEAL,  
FOURTH CIRCUIT, PARISH OF ORLEANS**

TRAYLOR, Justice\*

In 1968, Plaintiff, Roland Gibson was convicted of first degree murder and received a life sentence. He subsequently filed an application for post conviction relief and, in 1993, was granted a new trial based upon the failure of the District Attorney to furnish *Brady* material. Lloyd West, the sole witness testifying against Gibson, recanted his previous testimony and confession wherein he implicated Gibson as the triggerman in the murder. Gibson, his wife, and two sons filed the instant suit for false arrest and imprisonment, malicious prosecution, and personal injury for Gibson's twenty-five-year incarceration. Without West's testimony, the District Attorney entered a *nolle prosequi* as to Gibson's indictment on March 31, 1993.

After the civil trial in the instant matter, the trial court found the Police lacked probable cause for Gibson's 1967 arrest and awarded Plaintiffs in excess of eleven million dollars in damages. The trial court apportioned ninety percent of the fault to the City and ten percent to West. The City and Lloyd West appealed. The court of appeal affirmed the trial court, but amended fault to include that attributable to the District Attorney under La. Civ. Code art. 2323. The court of appeal apportioned forty-five percent of the fault to the State, forty-five percent to the City, and ten percent to West. The City sought writs with this court.

We granted writs to determine whether, after being duly convicted of a crime and later released, a party may succeed in a suit for civil damages against the municipality for his arrest, prosecution, and incarceration on the basis of an alleged wrongful arrest. After a thorough review of the applicable law and the entire record, we answer this question in the negative. We

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\*JOHNSON, J., not on panel. See Rule IV, Part 2, § 3.

hold that the City cannot be found at fault for Plaintiff's alleged wrongful arrest and prosecution and, therefore, vacate the contrary findings of the lower courts.

## FACTS AND PROCEDURAL HISTORY

### *Murder Investigation and Trial*

On December 30, 1967, at approximately 8:30 p.m. Charles Reinecke, Jr., a New Orleans Yellow Cab driver, was shot and killed in his taxi during an armed robbery. On January 1, 1968, the New Orleans Police (Police) completed an Offense Against Person Case Report detailing that an unknown five-foot, eleven-inch tall white male, twenty-five to thirty years of age, and weighing approximately 160 pounds was wanted in connection with the investigation "for questioning only." The Police lifted a fingerprint from a rear cab window and later determined it belonged to Lloyd West.

West, who was already in Police custody for an unrelated crime, initially denied any knowledge of the incident and gave the names of two persons with whom he claimed to have been at the time of the murder. These individuals denied being with West. West named a third individual, Thomas Crayton, who denied being with West at the time of the murder but informed the Police that on December 29, 1967 West and an AWOL<sup>1</sup> Army soldier named "Roland" spent the night at his home. Crayton stated that he left West and "Roland" at his home when he left at noon on December 30, 1967. The Police contacted the Army and confirmed that as of 7:00 a.m. on December 30, 1967, a soldier named Roland Gibson was reported AWOL from his company in Fort Campbell, Kentucky, and could have been missing for up to forty-eight hours.<sup>2</sup>

West was again interviewed and confronted with the discrepancies in his statements. At this point, he changed his story and claimed he was with his mother at the time of the murder.

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<sup>1</sup>AWOL is the military acronym for "absent with-out leave."

<sup>2</sup>The Army confirmed to the Police that Gibson was paid on December 29, 1967 and that he was AWOL as of 7:00 a.m. on the morning of December 30, 1967. The Army told Police that Gibson had not been seen on base after noon on December 29, 1967 and could have left any time thereafter.

His mother was summoned to the police station, refused to be his alibi, and told Police that her son was lying. The Police apprized West of his mother's statement and asked him to submit to a polygraph test. Only after the polygraph test indicated deception did West confess his involvement in the murder and implicate Gibson as the triggerman. West repeated this confession on video, in the presence of his mother and uncle. West told Police that the murder weapon, a gun, was under a mattress at Gibson's residence.<sup>3</sup>

On March 30, 1968, the Police obtained a search warrant for Gibson's residence and served it on Gibson's mother. During the search, the Police found no weapon but remained at the residence and arrested Gibson when he arrived home at 6:20 a.m, intoxicated from a night of drinking. The Police arrested Gibson and took him to the police station. On the afternoon of March 31, 1968, the Police attempted to interrogate Gibson but found Gibson remained intoxicated. On April 1, 1968, Gibson was advised of his rights and questioned by the Police. He repeatedly denied any knowledge of the murder and claimed to have left Fort Campbell by bus at 10:00 p.m. on the day of the murder. According to this story, Gibson could not have reached New Orleans by the time of the murder. Gibson told Police he arrived in New Orleans at approximately 3:00 a.m. the day after the murder. In an attempt to corroborate his story, Gibson told Police he was paid on the morning of December 30, 1967 but later produced an Army pay stub showing he was in fact paid on December 29, 1967. Gibson also produced a bus ticket which bore a date that did not substantiate his story. When confronted with conflicting information provided by the Army, Gibson admitted he was paid on December 29, went AWOL, and arrived in New Orleans before the murder took place.

On May 10, 1968, the Police concluded their investigation and turned all evidence and reports over to the District Attorney. The District Attorney did not provide the defense with the supplemental police report which detailed the numerous conflicting stories and alibis West provided the Police before he confessed and implicated Gibson in the murder.

Gibson and West were indicted for first degree murder. At Gibson's criminal trial, West testified that although he participated in the murder, Gibson was the triggerman. For the first time, Gibson, his wife, and his mother related that Gibson was alternately with his mother and

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<sup>3</sup>Later, West confessed that the gun was at his home. The gun was never retrieved.

wife the entire night of the murder. When asked the reason for their failure to inform the Police of this alibi during the pendency of the investigation and Gibson's incarceration, the wife and mother responded that they were never asked to do so. Several police officers testified that Gibson had given a different alibi when he was questioned in 1968. Following trial, the jury found Gibson guilty as charged and sentenced him to life imprisonment at hard labor. Two days later, West pled guilty to first degree murder, was sentenced to life imprisonment, and remains incarcerated.

Throughout the years, West and Gibson have filed appeals and numerous requests for post conviction relief.<sup>4</sup> On June 3, 1985, Gibson drew up and gave West an affidavit to sign that recanted his prior testimony. In the affidavit, West swore that he lied at Gibson's trial and falsely accused Gibson to avoid receiving the death penalty. West signed the affidavit and, since that time, maintains Gibson was neither present during nor his accomplice in the murder.

#### *Hearings on Application for Post Conviction Relief*

In 1992, approximately seven years after Gibson effected West's affidavit and twenty-four years after his conviction, Gibson filed the instant application for post conviction relief and, for the first time, revealed West's June 3, 1985 affidavit. In it, Gibson claimed the District Attorney withheld a supplemental police report containing exculpatory *Brady* material.

The criminal court held three hearings on Gibson's motion for post conviction relief. West's testimony and the supplemental police report were entered into evidence at the hearings held on October 23, 1992 and December 18, 1992. At the third and final hearing held on February 16, 1993, West testified that during their incarceration at Angola Penitentiary, he and Gibson had frequently discussed and eventually concocted a plan to get out of prison. This plan culminated in Gibson's presentation of the affidavit to West for his signature and Gibson's application for post conviction relief. At the hearing, West represented for the first time that a

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<sup>4</sup>Gibson's reported prior appeals include *State ex rel. Gibson v. Henderson*, 246 So. 2d 199 (La. 1971); *State v. Gibson*, 271 So. 2d 868 (La. 1973); *State ex rel. Gibson v. Blackburn*, 383 So. 2d 794 (La. 1980); *State ex rel. Gibson v. Blackburn*, 479 So. 2d 360 (La. 1985); *Gibson v. State*, 94-0476 (La. 4 Cir. 10/27/94), 644 So. 2d 1148.

man named George Carter, not Roland Gibson, was the triggerman. West stated he had not previously implicated George Carter because the Police beat him into submission of a statement implicating Gibson.<sup>5</sup>

The presiding judge granted Gibson's application for post-conviction relief, finding that the District Attorney withheld the supplemental police report which contained exculpatory *Brady* material in the form of West's numerous conflicting statements to Police and could have denied Gibson a fair trial. The judge ordered a new trial. The District Attorney, bereft of the testimony of its sole witness, West, entered a *nolle prosequi* as to Gibson's indictment on March 31, 1993. Thereafter, Gibson was released from prison.

### *Civil Trial*

On February 12, 1993, the Plaintiffs, Roland Gibson, his wife and two sons, filed the instant civil suit against the State of Louisiana, Lloyd West, the New Orleans District Attorney's Office, and the City<sup>6</sup> seeking damages for false arrest and imprisonment, malicious prosecution, and personal injury in connection with Roland Gibson's twenty-five-year incarceration. The trial court found the State and District Attorney to be immune under La. Rev. Stat. 42:1441A and dismissed all claims against them. On February 18, 1998, after a bifurcated trial, the trial court found the Police "did not have reasonable and trustworthy information sufficient to believe Mr. Gibson had committed a crime." The court rendered judgment awarding Plaintiffs a total of \$11,674,624, with fault allocated ten percent to West and ninety percent to the City.

The City appealed, asserting the trial court erred in finding no probable cause existed for the arrest of Gibson, in holding the City was liable for damages allegedly occasioned upon Plaintiffs for Gibson's false arrest, conviction, and twenty-five year incarceration, and in

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<sup>5</sup> The trial court, in its reasons for judgment, mentioned Gibson's contention that West was beaten into submitting the confession wherein he implicated Gibson. The court then repeatedly criticized the Police for believing West, a "convicted felon," over Gibson. The trial court would not have criticized the Police for believing West over Gibson if it found that the Police had forced the confession. Following the trial court's criticism of the Police to its logical conclusion, we must find that the trial court was not convinced that West was beaten.

<sup>6</sup> Also named were a fictitious Assistant District Attorney and a fictitious insurance company, who are no longer parties to this suit.

allocating ninety percent of the fault to the City. The court of appeal, amended fault to include comparative fault of the District Attorney regardless of immunity as required by the La. Civ. Code art. 2323.<sup>7</sup> 98-1100 (La. App. 4 Cir. 2/24/99), 731 So. 2d 379. The court of appeal found “the trial court erred in holding the Police, rather than [sic] the District Attorney, primarily liable for Gibson’s wrongful conviction and incarceration” and re-apportioned forty-five percent of the fault to the State, forty-five percent to the City, and ten percent to West. The court of appeal affirmed the remainder of the trial court judgment. The City sought writs with this court.

## STANDARD OF REVIEW

The proper standard of review is whether the trial court committed an error of law or made a factual finding which is manifestly erroneous or clearly wrong. *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). If the trial court's decision is reasonable in light of the record reviewed in its entirety, this court may not reverse even if we would have weighed the evidence differently. *Id.* Where there is no dispute of fact, the question of probable cause is a question of law. *Crescent City Live-Stock Landing and Slaughter-House Co. v. Butchers Union Slaughter-House and Live-Stock Landing Co.*, 120 U.S. 141 (1887) (citing *Stewart v. Sonneborn*, 98 U.S. 187 (1878)). The facts of this case are not disputed, therefore, this court must determine whether the lower court was manifestly erroneous in finding the Police lacked probable cause to arrest Gibson.

Upon a thorough review of the trial transcript, record, and judgment, we find the trial court’s judgment was not reasonable and that it committed manifest error in finding liability on the part of the City for false arrest.

## LAW AND DISCUSSION

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<sup>7</sup>Art. 2323 (a) provides in pertinent part:

In any action for damages where a person suffers injury, death, or loss, *the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute. . . .* (Emphasis Added)

The main issue presented for review is whether a municipality, through its police department, may be held liable in tort for wrongful arrest after the arrestee has been indicted, prosecuted, found guilty, and convicted of the crime with which he was charged. Implicit in this inquiry is the question of whether the fact that the Plaintiff had been arraigned, indicted, and convicted based upon the criminal court's satisfaction that the probable cause standard was met conclusively proves probable cause existed at the time of the arrest. To examine this issue, we first will embark on an examination of the probable cause standard.

### *Probable Cause to Arrest*

At the outset, we note without hesitation that no police officer should fear that doing his duty in good faith will subject him to liability. An officer satisfies his duty of good faith in making an arrest if the arrest is based on probable cause. Probable cause exists when the facts and circumstances within the arresting officer's knowledge, and of which he has reasonable and trustworthy information, are sufficient to justify a man of average caution in the belief that the person to be arrested has committed or is committing an offense. *Beck v. Ohio*, 379 U.S. 89 (1964); *Miller v. East Baton Rouge Parish Sheriff's Dep't*, 511 So. 2d 446, 452-53 (La. 1987); *State v. Wilson*, 467 So. 2d 503 (La. 1985).

The determination of probable cause, unlike the determination of guilt at trial, does not require the fine resolution of conflicting evidence required at trial, and credibility determinations are seldom crucial in deciding whether available evidence supports a reasonable belief that the person to be arrested has committed a crime. *Gerstein v. Pugh*, 420 U.S. 103 (1975); *State v. Rodrigue*, 437 So. 2d 830 (La. 1983); *State v. Simms*, 571 So. 2d 145, 148 (La. 1990). Probable cause, as the very name implies, deals with probabilities. *Brinegar v. United States*, 338 U.S. 160 (1949); *Simms*, 571 So. 2d at 148. The probable cause standard recognizes that a degree of uncertainty may exist and that an officer need not have sufficient proof to convict but must have more than a mere suspicion. *State v. Guidry*, 388 So. 2d 797 (La. 1980); *State v. Lehnen*, 403 So. 2d 683, 687 (La. 1981); *State v. Herbert*, 351 So. 2d 434 (La. 1977). The facts need not eliminate all possible innocent explanations in order to support a finding of probable cause.

*Lehnen*, 403 So. 2d at 687; *State v. Phillips*, 347 So. 2d 206 (La. 1977).

While verification may be required to establish probable cause where the source of the information seems untrustworthy, it is well established that the reputation of the accused, his opportunity to offer explanation, and the need for prompt action are all factors in determining whether unverified information furnishes probable cause. *Miller*, 511 So. 2d at 452-53; *Hibernia Nat'l. Bank v. Bolleter*, 390 So. 2d 842 (La. 1980). However, admissions of criminal activity carry their own indicia of reliability sufficient to support a finding of probable cause. *United States v. Harris*, 403 U.S. 573 (1971); *State v. Mena*, 399 So. 2d 149 (La. 1981); *State v. Welsh*, 371 So. 2d 1314 (La. 1979); *State v. Mena*, 344 So. 2d 357 (La. 1976). Where a person confesses to a crime, the confession and implication of another is to be deemed highly credible and *more* reliable and trustworthy than previous statements disavowing any knowledge of the murder, because confessions are statements against penal interest. *See Mena*, 399 So. 2d at 152.

Applying these precepts, as the trial court, we will determine whether the Police had probable cause to arrest Gibson. First and foremost, probable cause for the arrest and conviction were met to the satisfaction of the criminal court. The civil trial court re-tried the evidence upon which Gibson was convicted and apparently equated the standard of proof of probable cause with proof necessary to prove guilt at trial. However, this was not the duty nor the task before the trial court, and it appears the trial court misapplied that law.

In its reasons for judgment, the trial court asserted five reasons why it found the Police lacked probable cause to arrest Gibson: 1) the Police report detailed that a white male was “wanted for questioning only,” a description which did not fit Gibson; 2) the Police reports did not mention two individuals were suspected of committing the crime; 3) there was no physical evidence against Gibson; 4) the Police believed West, a “convicted felon;” and 5) the Police failed to contact Greyhound to secure an alibi on Gibson’s behalf.

After a thorough analysis of these points, we find no merit to any of the reasons for judgment and address each one in turn. First, the fact that the Police report contained the physical description of a white male wanted “for questioning only” does not refute the existence of probable cause for Gibson’s arrest in light of other evidence against Gibson. The police report did not specify whether the white male was a suspect in the murder or merely a witness of some



kind. Under *State v. Phillips* and *State v. Lehnen*, the Police do not need to eliminate all possible innocent explanations in order to support a finding of probable cause. For this reason, we find the trial court erred in this finding.

Second, we do not find compelling the trial court's desire for an "explanation in police reports as to why or when police [concluded] that the crime was committed by two individuals rather than one." The Police are not precluded from arresting those whom they reasonably believe to have committed a crime and need not restrict themselves to investigating, questioning or arresting only those individuals they have previously designated as suspects in their reports. As evidence avails itself, the Police are required to act on that evidence and arrest any individual they reasonably suspect of having committed a crime. This is a basic tenet of the probable cause standard.

Third, regarding the trial court's requirement of physical evidence to arrest, clearly, just as an individual can be convicted solely on circumstantial evidence, so too can probable cause exist without physical evidence linking an individual to a crime. Under *Beck v. Ohio* and its progeny, the probable cause standard does not require the police to have direct, physical evidence; it only requires that the reasonable and trustworthy facts and circumstances within the arresting officer's knowledge are sufficient to justify a man of average caution in the belief that the arrestee has committed a crime. The trial court erred in requiring physical evidence to prove probable cause for the arrest.

Fourth, the trial court's repeated criticism of the Police for believing West's statements are disingenuous at best because the trial court later found West to be "a highly credible witness." The court cannot in one breath chastise the Police for their reliance on the statements of a "convicted felon" and in the next breath hold in high esteem the same individual's candor. Under *State v. Mena*, the most reliable and honest statement made by West in these entire proceedings is his 1968 confession and implication of Gibson in the murder. In light of all the reasonably reliable facts known to the Police at the time of the arrest,<sup>8</sup> the trial court erred in

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<sup>8</sup>The following facts were known to the Police at the time of the arrest and upon which they based that arrest: West implicated Gibson in his confession which was, as earlier discussed, properly regarded by the Police as highly credible under *State v. Mena*, regardless of West's prior false statements. This alone provided Police sufficient probable cause to effect a valid arrest. Further fortifying the existence of probable cause for the arrest, the Police received information

finding otherwise.

Lastly, the trial court censured the Police for not contacting Greyhound to substantiate Gibson's alibi. Under *State v. Lehnen* and *State v. Phillips*, the Police need not exhaust all innocent explanations in order for probable cause to exist. Furthermore, Gibson later admitted he was in town at the time of the murder, so the Police's alleged failure is irrelevant. The trial court erred in unjustifiedly placing this burden upon the Police.

Under our analysis, each of the trial courts' reasons for judgment fail and we find the civil trial court committed manifest error in re-determining the probable cause issue. Plaintiffs failed to prove that no reasonable police officer would have concluded probable cause was present.

All information known to the Police at the time of Gibson's arrest was sufficient to justify a man of ordinary caution in believing Gibson had committed a crime. *See* n. 8. Furthermore, probable cause was conclusively proven by Gibson's indictment and conviction in the criminal case. It is well settled that an indictment is conclusive proof of probable cause which connotes that probable cause existed for the underlying arrest. *Gerstein v. Pugh*, 420 U.S. 103 (1975); *State v. Holmes*, 388 So. 2d 722, 724 (La. 1980); *State v. Howard*, 325 So. 2d 812 (La. 1976); *State v. Pierre*, 606 So. 2d 816, 820 (La. App. 3 Cir. 1992); *State v. Clark*, 581 So. 2d 747 (La. App. 4 Cir. 1991); *State v. Johnson*, 529 So. 2d 466 (La. App. 1 Cir. 1988). After indictment or conviction, the defendant can no longer allege lack of probable cause for his arrest. The jurisprudence of this state allows civil damages for false arrest only where there has been insufficient probable cause to sustain the arrest and the party has not been convicted of the crime with which they were charged. *Winn v. City of Alexandria*, 96-0492 (La. App. 3 Cir. 1996), 685 So. 2d 281; *Miller*, 511 So. 2d at 451. Our research has indicated no reported cases where civil

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from Mr. Crayton and the Army that corroborated the Police's belief that Gibson was in New Orleans and with West on the day of the murder. Gibson had no valid alibi and those he attempted to provide Police never materialized. The witnesses' statements against Gibson were uncontradicted and further bolstered the Police's reasonable belief that Gibson was involved in the murder, providing probable cause. As previously discussed, the trial court erred in finding West's inconsistent statements and confession negated the existence of probable cause for Gibson's arrest. It is not uncommon for an accused to deny guilt when first questioned by the Police. However, we consider the information provided by West in his confession to be more reliable and trustworthy than his previous conflicting statements because his confession was a statement against penal interest which carried its own indicia of reliability sufficient to support a finding of probable cause.

liability was found where the plaintiff was found guilty and convicted of the crime for which he later filed such a civil action.

Because the standard of proof for the determination of probable cause for a criminal case is more onerous than that for a civil case, it is, therefore, not the province of the civil court to later second-guess or redetermine this finding after the convict has been released, acquitted, or *nolle prosequied*. Absolute certainty of conviction is not the benchmark by which probable cause is determined, and we decline to go so far even where, as in this case, the conviction is later overturned and Plaintiff was not again convicted of the crime. Consequently, we conclude that probable cause existed at the time of Plaintiff's arrest and thereafter, notwithstanding the fact that plaintiff was granted post conviction relief and his indictment *nolle prosequied*.

Upon a thorough review of the record, we find the Police had probable cause to arrest Plaintiff. The trial court committed manifest error in finding the Police lacked probable. We, likewise, find the court of appeal erred in affirming the trial court. For these reasons, we reverse the trial court and court of appeal finding of fault on the part of the City for Plaintiff's judgment.

#### CONCLUSION

Based on the totality of the circumstances, the Police had probable cause to believe Gibson had committed first degree murder and were therefore justified in arresting him. The trial court and court of appeal erred in assessing any fault to the City. Therefore, we reverse the portions of the rulings of the civil court and court of appeal finding the Police liable for false arrest based upon a lack of probable cause.

#### DECREE

REVERSED.