

STATE OF MICHIGAN
COURT OF APPEALS

WILLIE SHARP,

Plaintiff-Appellee,

v

KENNETH GARDNER and DENNIS
RICHARDSON,

Defendants-Appellants.

UNPUBLISHED

December 28, 2001

No. 223240

Wayne Circuit Court

LC No. 99-914545-AV

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

Defendants appeal by leave granted from the circuit court's order affirming the district court's judgment for plaintiff in this false arrest and imprisonment case. We reverse and remand for entry of an order granting defendants' motion for a directed verdict.

On June 11, 1993, Philip Hale lived next door to a renter named Edmund Wright. Wright asked if he could speak to Hale and gestured toward the alley, a distance from Wright's residence. Wright was agitated and excited. He told Hale that men had taken over his home. Wright was physically afraid of the men, who had threatened to take Wright's vehicle. One of the men was included on the "ten most wanted" list. Wright asked Hale to contact the police for him. Hale drove to the police station and relayed the information to defendant Kenneth Gardner. Defendant Gardner was told that one of the men who had overtaken Wright's home was named "Stone" and was on the "ten most wanted" list. Defendant Gardner advised defendant Dennis Richardson of the situation. Defendant Richardson went to Hale's residence. Hale had been in the Wright residence before and drew a diagram of the premises. Hale advised police that at least one weapon was in the home.

Police set up surveillance and observed two men get out of a vehicle and proceed into the Wright residence. Police approached the home while a man named "Cody" was exiting. Police were allowed into the home. Defendant Richardson heard one or two people running. Plaintiff's brother, Jenard Sharp or "Stone," was found hiding in a closet with a gun. Defendant Richardson testified that he observed plaintiff leaving the kitchen area where cocaine was found. Plaintiff testified that he was merely sitting on the couch with Wright, whom he did not know. Plaintiff also testified that he could not dispute the information that had been provided by Hale to police. Plaintiff was arrested, but never charged with a crime. Defendant Gardner testified that

plaintiff was arrested because he was “part of the home invasion.” Plaintiff proceeded to trial on a claim of false arrest and imprisonment and obtained a judgment of \$450,000.

On appeal, defendants argue that the trial court erred in denying their motion for a directed verdict.¹ We agree. The denial of a motion for a directed verdict is reviewed de novo. *Gauntlett v Auto-Owners Ins Co*, 242 Mich App 172, 176; 617 NW2d 735 (2000). When reviewing the denial of a motion for a directed verdict, we examine the evidence, presented up to the time of the motion, and all reasonable inferences that may be drawn in the light most favorable to the nonmoving party. *Hord v Environmental Research Institute of Michigan (After Remand)*, 463 Mich 399, 410; 617 NW2d 543 (2000); *Roulston v Tendercare, Inc*, 239 Mich App 270, 278; 608 NW2d 525 (2000). To establish his claim of false arrest or imprisonment, the plaintiff must show that the arrest was not based on probable cause. *Blase v Appicelli*, 195 Mich App 174, 177; 489 NW2d 129 (1992). “Probable cause to arrest without a warrant exists when the facts and circumstances within the officer’s knowledge at the time of the arrest are sufficient to a prudent person, or one of reasonable caution, to believe that the suspect has committed or is committing a crime.” *Tope v Howe*, 179 Mich App 91, 102; 445 NW2d 452 (1989). The existence of probable cause presents a question of law that we review de novo. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 377; 572 NW2d 603 (1998).² Whether the plaintiff could actually have been convicted of an offense is irrelevant to a claim of false arrest. *Brewer v Perrin*, 132 Mich App 520, 527; 349 NW2d 198 (1984).

In the present case, we conclude that the information available to the police at the time of plaintiff’s arrest met the probable cause requirement. *Matthews, supra*. Hale was advised by Wright that his home had been overtaken by men, one of whom was on the “ten most wanted” list. The men allegedly were attempting to transfer title of Wright’s vehicle to flee the state. Hale conveyed this information to the police. The police were advised that the man on the “ten most wanted” list was known as “Stone.” When police set up surveillance of the scene, they saw two men get out of a vehicle and enter Wright’s home. Police were admitted to the home with Wright’s consent. Upon entering the home, police heard one or two people running. Plaintiff’s brother, who was known as “Stone”, was found hiding in a closet with a weapon. There was cocaine found in the home. Wright apparently rejoiced when the men were apprehended.³

¹ Defendants also argue that the trial court erred in denying their motion for summary disposition and motion for a new trial. The trial court held that defendants failed to file the motion in accordance with the notice requirements of MCR 2.116(G)(1)(a)(i). Defendants have not addressed the issue of the timeliness of the motion on appeal. Therefore, we will limit our discussion to the propriety of the directed verdict, which is dispositive of this appeal.

² Plaintiff argues that the question of probable cause presents an issue for the jury, citing *Flones v Dalman*, 199 Mich App 396, 405; 502 NW2d 725 (1993). However, in *Flones*, this Court held that the issue was presented to the jury because the facts supporting the presence or absence of probable cause were in dispute. In the present case, plaintiff testified that he could not dispute the information provided to police that served as the basis for probable cause. See also *Hammitt v Straley*, 338 Mich 587, 597; 61 NW2d 641 (1953) (where undisputed facts are susceptible to only one reasonable inference, the issue of probable cause is for the court.)

³ Plaintiff did not testify regarding Wright’s reaction to his arrest or the arrest of his brother, and Wright did not testify at trial.

Where a prosecution witness has in good faith stated all of the material facts within his knowledge and the advice is acted upon by prosecuting officers, proof of the fact establishes a case of probable cause. See *Flones, supra* at 404-405 quoting *Smith v Tolan*, 158 Mich 89, 93; 122 NW 513 (1909). Accordingly, the trial court erred in denying defendants' motion for directed verdict.⁴

Reversed and remanded for entry of an order granting defendants' motion for a directed verdict. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Harold Hood
/s/ Martin M. Doctoroff

⁴ Plaintiff argues that police officers erred by failing to inquire about plaintiff's innocent presence in the home, citing *Filer v Smith*, 96 Mich 347; 55 NW 999 (1893). In *Filer*, the defendant arrested the plaintiff. The defendant argued that he arrested the plaintiff in good faith because he believed that he was arresting a fugitive, who had run off with a woman and five children. However, the woman arrested did not have five children. Additionally, while the fugitive was described as fifty years of age, the plaintiff was thirty-eight years of age. The defendant made no inquiry with neighboring boarders regarding the plaintiff's business, name, length of stay, or his relationship with the woman. When the plaintiff was arrested, he protested his arrest and presented extensive documentary evidence indicating that he was not the fugitive. Thus, the allegations of good faith were belied by the record. In the present case, there is no indication that plaintiff attempted to present documentary evidence or unbiased statements from disinterested witnesses to vouch for his "mere presence" in the home of a stranger. Accordingly, plaintiff's reliance on *Filer* is misplaced. Our disposition of the directed verdict issue renders a decision regarding the motion for a new trial moot.