

June 16, 2000 - See News Release #42

SUPREME COURT OF LOUISIANA

No. 99-C-1730

ROLAND GIBSON SR., JESSE GIBSON,
ROLAND GIBSON, JR., AND DENNIS GIBSON

Versus

THE CITY OF NEW ORLEANS AND LLOYD WEST

ON APPLICATION FOR REHEARING

PER CURIAM*

On application for rehearing, plaintiff raises two substantial issues.

Effect of Conviction on Recovery of Damages for False Arrest

Plaintiff takes issue with this court's statement on original hearing that an indictment is conclusive proof of probable cause to arrest and that the plaintiff in an action based on damages for false arrest cannot allege lack of probable cause for the arrest if the plaintiff had been indicted or convicted.¹ Plaintiff contends that this statement conflicts with the decision in Jones v. Soileau, 448 So. 2d 1268 (La. 1984) ("The crucial determination [in a malicious prosecution action] is whether [the defendant] had an honest and reasonable belief in the guilt of [the plaintiff] at the time he pressed charges") (emphasis added).

We need not resolve this issue. The challenged statement, made on original

*Johnson, J., not on panel. Rule IV, part II, §3.

¹The statement that "[a]fter indictment or conviction, the defendant can no longer allege lack of probable cause to arrest" is clearly correct in a criminal proceeding in which the accused, after conviction, contends on appeal that the trial court erred in finding probable cause at the preliminary examination. See State v. Sweeney, 443 So. 2d 522, 531 (La. 1983).

hearing, was not necessary to the decision, because probable cause did exist at the time of arrest, as noted in the majority and concurring opinions on original hearing. The only real question about the existence of probable cause at the time of arrest was whether Lloyd West's statement implicating defendant as the triggerman was coerced by the police.

West's Allegedly Coerced Statement

At the time of the arrest, the police had (1) the statement of Lloyd West implicating plaintiff as a participant with West in the murder and (2) corroboration for West's statement by the fact that West and plaintiff were seen together nine hours before the murder. If the police had an honest and reasonable belief in the accuracy of the statement, they had probable cause to arrest plaintiff.

West testified in the present civil action that the police coerced him to implicate plaintiff by beating him and forcing him to make the statement, and the trial judge expressly credited West's testimony about the beating. If the police indeed beat West into implicating himself and plaintiff in the robbery and murder, then the police did not have a good faith reasonable belief in the accuracy of West's statement, which they used as a basis for probable cause to arrest plaintiff.

In the 1968 proceeding against West (that culminated in a plea bargain), West was represented by competent counsel, but his attorney did not move to suppress the confession, nor, as far as we can tell from the record, did West tell his attorney or the prosecutor, through his attorney, that he had been beaten into confessing. Furthermore, after West was sentenced, he had numerous opportunities to allege that his confession was compelled by force, yet failed to make such an assertion. For example, in West's 1985 affidavit asserting that he lied when he testified against

Gibson in order to avoid a death sentence, West did not claim he was beaten into confessing. In fact, it appears the first time that West claimed he was beaten was four days after this suit for damages was filed by Gibson in 1993. Moreover, when West implicated himself and plaintiff in 1968 in the robbery and murder, the police had physical evidence (fingerprint) of West's involvement, but knew nothing about plaintiff or about any co-perpetrator, except that a person named Roland had been seen with West nine hours before the murder. There was no apparent motivation for the police to coerce West into implicating plaintiff as the triggerman, while there was a good reason for West to identify an accomplice as the triggerman in order to avoid the death penalty. West did avoid the death penalty by implicating plaintiff, but remained silent for more than twenty years about any beating by the police as his motivation for inculcating himself and implicating plaintiff. Significantly, the trial judge who granted post-conviction relief to plaintiff in 1993 did not do so on the basis that West's statement was coerced (although this evidence was presented to the trial judge), but granted relief because of a Brady violation.

On reconsideration, we conclude that the trial judge was manifestly erroneous in crediting West's 1993 recantation of his 1968 statement. Accordingly, the application for rehearing is denied.