

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000148-MR

TERRI LYNN REDWINE

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 98-CI-01240

CITY OF HOPKINSVILLE

APPELLEE

OPINION

REVERSING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

BARBER, JUDGE: Appellant Terri Lynn Redwine appeals the trial court's dismissal of her claims for malicious prosecution, libel and slander stemming from an arrest without probable cause. We reverse the trial court's dismissal of the action as premature.

Appellant Redwine was the fiancé of Wendell Quarles. Mr. Quarles was the owner/operator of a Liquor Store and a night club. Redwine was not an owner or employee of either business. The record shows that Redwine had very limited contact with

either business. The trial court entered summary judgment in favor of Appellee City of Hopkinsville on Redwine's claims of malicious prosecution, libel and slander. Redwine appeals.

Mr. Quarles was arrested one evening when Redwine was not with him. Upon learning of his arrest, Redwine approached the arresting officer to determine what was going on. She expressed concern that Quarles had the only keys to his operating businesses, and that he had no way to get his keys to his employees. The officer gave her Quarles' keys to the businesses and told her to go close them. The officer also gave her the keys to Quarles' automobile and told her to take it home. Redwine did as she was instructed. While Redwine was collecting the business cash deposits on behalf of Quarles, and closing the businesses, officers arrived to search the business premises. Redwine had already provided Quarles' family members with the key to the businesses. The family members were employees of the businesses, and knew how to close the businesses for the evening. When the police officers arrived on the scene, Mr. Quarles' brother and employee, Corey Quarles, had possession of the keys to the premises, and was closing the businesses. Corey Quarles provided Redwine with the keys and the night's deposits when he finished with the closure procedures.

Prior to the search of the business premises, all employees of the business were searched. Redwine was also searched. Examination of Redwine's person by the police officers revealed no illegal substances. After a search of the business premises, marijuana residue and rolling papers were located in a locked storage area. Redwine testified that this storage area was only accessed by Quarles and was used by him to store his belongings. Contrary to the City's claims, there is no evidence that Redwine had dominion and control over Quarles' locked drawer in the storage area.

Redwine was arrested by the investigating officers after the search. Redwine asserts that she was arrested because she had the key to the premises at that time and was the only individual present. The business employees and Quarles' family members had left the scene by the time the search was completed. The City argues that Redwine was arrested because the officers had probable cause to believe that she was the owner of the illegal substances found on the premises. Redwine was charged with possession of marijuana and possession of drug paraphernalia in violation of KRS 218A.500(2) and KRS 218A.1422.

The local newspaper published news of Redwine's arrest on drug charges. As a result, Redwine was fired from her position at First City Bank. Shortly after the arrest, the charges against Redwine were dismissed. Redwine brought charges

against the City of Hopkinsville for malicious prosecution and false imprisonment. The City moved for summary judgment, and the trial court granted summary judgment in its favor. Redwine appeals the grant of summary judgment to the City of Hopkinsville.

Redwine asserts that at the time of the arrest the police knew or should have known that she did not have access to or possession of the business premises. She states that the police provided her with the only key to the premises when they arrested Quarles, shortly before Redwine arrived on the business premises. For this reason, the police knew she did not have independent access to or control over the business. The record shows that the search warrant detailed Quarles' individual wrongdoing as the basis for issuing the warrant for the premises. Redwine argues that her arrest was improper and unlawful as she had no control over the premises prior to the search, and thus no reason to be charged with the possession of illegal substances found on the premises.

The City argues that the officers had probable cause to arrest Redwine because she exercised dominion and control over the premises by accepting the keys and by taking the cash receipts from the businesses to deposit. The City asserts that Redwine's actions showed her to have significant "dominion and control" over the business and the business premises. The

record shows that Redwine had no affiliation with the business and had no dominion or control over it other than using the keys provided to her by the officers to shut down the businesses for the evening.

The search warrant under which the arrest was made lists only Quarles and his property as the targets of the search. The warrant was based on the finding that Quarles was found in possession of drugs and money, and was not based on a crime common to a group of persons. The investigating officers had no reason to believe that Redwine was involved in Quarles' offense, or that she was responsible for illegal substances found in Quarles' locked drawer in Quarles' business.

Probable cause is to be determined in "the light of particular circumstances and the particular offense involved." Wilson v. Commonwealth, Ky., 403 S.W.2d 705, 707-708 (1996). An officer must have a good faith belief in the existence of probable cause. Dugger v. Off 2d, Inc., Ky. App., 612 S.W.2d 756 (1980). Probable cause does not exist unless the officer has a reasonable belief that the person arrested committed the offense charged. Crawford v. Commonwealth, Ky., 824 S.W.2d 847, 849 (1992). A finding of probable cause must be based on the totality of the evidence. Beemer v. Commonwealth, Ky., 665 S.W.2d 912, 913-914 (1984). An arrest in the absence of probable cause may be found to be malicious prosecution. See:

Smith v. Stokes, Ky. App., 54 S.W.3d 565, 567 (2001). We reverse the trial court's finding that probable cause existed for Redwine's arrest.

Redwine also asserted slander and libel against the City. Proceedings in a court of law are absolutely privileged, such that libel and slander charges cannot be made based on such proceedings. Seebree v. Thompson, Ky., 103 S.W. 374, 376 (1907). Redwine asserts that the Hopkinsville Police Department improperly made defamatory statements to the newspaper regarding her arrest. She bases this assertion on a conversation with the reporter who wrote the article on the drug charges. The reporter notified her that all information came from the Police Department. The record shows that the paper based its information on police scanner information and arrest warrants. At this early stage in the proceedings, Redwine has shown no improper communications between the City and the newspaper supporting a charge of libel or slander against the City. In the absence of discovery on this matter, however, entry of summary judgment was premature.

For the foregoing reasons we reverse the entry of summary judgment and remand the action for further proceedings consistent with this opinion.

EMBERTON, CHIEF JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS.

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