STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1691

State of Minnesota,
Appellant,

vs.

Tracy John Martin,
Respondent.

Filed April 5, 2011
Appeal dismissed
Toussaint, Judge

Wright County District Court
File No. 86-CR-10-2745

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Mark A. Erickson, Shane E. Simonds, Assistant County Attorneys, Buffalo, Minnesota (for appellant)

Bradford S. Delapena, Bradford Delapena, Ltd., St. Paul, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Appellant State of Minnesota challenges the district court's pretrial dismissal of the charges against respondent Tracy John Martin for lack of probable cause. Appellant

argues that the district court misapplied the legal standard for determining probable cause by finding evidence to be inherently incredible and exonerating and by assessing the credibility of the alleged victim's statement. Respondent argues that the dismissal order is not appealable because it turned on a factual, rather than legal, determination. Alternatively, respondent argues that appellant's case is inherently incredible. Because the district court's dismissal of the charges against respondent was based on a factual determination, we dismiss the appeal.

D E C I S I O N

The district court issued a pretrial order dismissing all nine counts with which respondent was charged. The charges centered on respondent's alleged kidnapping, robbery, and assault of S.H., the complaining witness. Appellant contends that the district court's dismissal of the charges was based on legal error.

"This court must determine, as a threshold matter, whether the dismissal was based on a factual or legal determination." *State v. Tice*, 686 N.W.2d 351, 353 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). The state may appeal an order dismissing a complaint for lack of probable cause if dismissal was based on a question of law, but it may not appeal if dismissal was based solely on a factual determination. *Id.*; *see also* Minn. R. Crim. P. 28.04, subd. 1(1) (governing prosecutorial appeal of pretrial orders). The state bears the burden to "make the jurisdiction of the appellate court appear plainly and affirmatively from the record presented." *State v. Ciurleo*, 471 N.W.2d 119, 121 (Minn. App. 1991).

Questions of law, in this context, include statutory construction. *Tice*, 686 N.W.2d at 353; *see also State v. Estrella*, 700 N.W.2d 496, 499 (Minn. App. 2005) ("A dismissal for lack of probable cause is appealable *only* if it is based on a question of law, such as the interpretation of a statute."), *review denied* (Minn. Nov. 15, 2005). Similarly, determination of the elements of an offense in light of its common-law origins is an appealable question of law. *State v. Aarsvold*, 376 N.W.2d 518, 520, 522 (Minn. App. 1985) (en banc), *review denied* (Minn. Dec. 30, 1985). The legal sufficiency of a complaint is also a question of law. *State v. Dunson*, 770 N.W.2d 546, 549-50 (Minn. App. 2009) (holding that the question of whether a complaint may identify alleged victims by initials rather than names is a legal determination).

But we have repeatedly rejected the state's "attempts to create a legal issue where none exists." *State v. Duffy*, 559 N.W.2d 109, 110 (Minn. App. 1997). In *Duffy*, the district court correctly articulated the elements of the offense and found no evidence in regard to one element; we characterized this as the district court "simply stating that the complaint lacked either direct evidence or sufficient circumstantial evidence" of the element in question. *Id.* at 111. In *Estrella*, we concluded that the district court "simply determined there were not enough facts to support a racketeering charge" and found "no merit in the state's attempts to create a legal issue." 700 N.W.2d at 499. We emphasized that the state may not turn a factual determination into an appealable legal issue: "Simply put, all criminal cases involve factual and credibility determinations, whether by a judge or by a jury. All determinations revolve around some principle of law. That does not make all pretrial dismissals appealable by the state." *Id.*

Here, the district court cited the appropriate standard for dismissal based on a lack of probable cause. The court also cited the various charging statutes, quoting relevant language and stating the elements of the offenses. Indeed, appellant concedes that the court "enunciated the correct legal standard." Instead, appellant contends, the court "failed to apply the standard correctly," as there "is no evidence in the record that reaches the legal threshold" of exonerating respondent or making appellant's case impossible. Appellant also alleges that the court improperly assessed S.H.'s credibility and used that as an impermissible basis to find probable cause lacking.

The district court ordered dismissal of the complaint "due to lack of probable cause." *Cf. State v. Poupard*, 471 N.W.2d 686, 689 (Minn. App. 1991) (emphasizing, in finding the order appealable as based on a question of law, that the district court did not "state that the dismissal was based on a lack of probable cause"). The district court found that S.H.'s version of events was inherently incredible because it was contradicted by cell-phone records and a number of items of physical evidence and because it was at times self-contradictory. S.H.'s testimony was, the court noted, the lynchpin of appellant's case against respondent. Further, respondent offered alibi evidence in the form of receipts from various states consistent with his claim to have been in Chicago at the time of the alleged assault.

The district court specifically found that appellant failed to show that it had "substantial evidence" admissible at trial, that the facts in the record did not bring the alleged crime within the realm of "reasonable probability," and that there was not substantial evidence that respondent committed any crime that may have occurred. The

court found that appellant's evidence was inherently incredible. Thus, the court concluded, "there is insufficient probable cause to charge [respondent]." Viewing the district court's order as a whole, we conclude that these are no-probable-cause findings based on an assessment of the factual content of appellant's case.

In support of its contention that the dismissal order is appealable, the state cites only *State v. Dunagan*, 521 N.W.2d 355 (Minn. 1994), which at no point discusses appealability. Appellant merely contends that the district court misapplied the standard that it was supposed to use in finding probable cause as outlined in *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892 (1976).[1] It is true that application of caselaw is a question of law and that appellant's arguments on appeal involve the application of *Florence* and its progeny. But this argument is disposed of by *Estrella*'s recognition that *all* cases revolve around principles of law in some sense. 700 N.W.2d at 499. Here, no underlying legal determination is at issue. Application of the probable-cause standard to the facts of a given case is not, by itself and in all cases, an appealable legal determination.

Ultimately, the question in this case is whether appellant proved probable cause; the question is not the content of what it had to prove. Appellant's contention is simply that the district court misapplied the *Florence* standard—in other words, that it was

[1] We note that, even if the dismissal were appealable, we would not conclude that the district court erred in its application of the probable-cause standard under *Florence* and its progeny. Appellant's case relies on the statement of S.H. But parts of S.H.'s version of events have been proven untrue. Others are inconsistent with the evidence in the record. Cumulatively, the facts on record so substantially undermine appellant's case that, based on the evidence currently before us, appellant could not prove respondent's guilt beyond a reasonable doubt, and it is therefore not "fair and reasonable" to require respondent to stand trial. *See Florence*, 306 Minn. At 457, 239 N.W.2d at 902 (defining relevant probable cause standard).

mistaken in its determination that the facts in the record do not support a finding of probable cause. This does not raise an appealable issue.

Appeal dismissed.