

c. Arrest and Detention

GREAT ATLANTIC & PACIFIC TEA CO. v. PAUL

Supreme Court of Maryland, 1970.
256 Md. 643, 261 A.2d 731.

DIGGES, JUDGE

Still in a convalescent state Mr. Paul . . . went shopping at his local A & P store in Hillcrest Heights, Maryland, on December 20, 1967. So recent had been his heart attack that this was one of the first times he had ventured out in his automobile. The Hillcrest Heights store was a typical supermarket with check-out counters in the front. . . . On this occasion, due to heavy crowds in the store, Mr. Paul left his cart at the end of one aisle and slowly proceeded to examine carefully the labels of various articles of food to make sure they complied with his strict post-cardiac diet. Having examined and selected a particular item he would then return to his cart, deposit the goods and go in search of other merchandise.

[Parker, an assistant manager, watched Paul and concluded he had put a can of tick spray in his coat with intent to steal. Parker confronted Paul. The two men gave quite different versions of what happened. Paul testified that Parker grabbed him and forced him to march to the manager's office, where he was searched without discovery of any tick spray.] There was testimony that word of this incident spread throughout Paul's neighborhood. . . . Paul testified that the incident aggravated his heart condition causing him physical pain and suffering, as well as personal humiliation.

[The jury awarded Paul \$10,000 in compensatory and \$30,000 in punitive damages.] The jury by its verdict chose to believe Paul's version of the occurrence, and appellant realizes this aspect of the case is final. It insists, however, that mistakes of law requiring reversal have been made by the trial judge. . . .

Appellant . . . claims error was committed in the false imprisonment phase of the case. . . . The necessary elements of a case for false imprisonment are a deprivation of the liberty of another without his consent and without legal justification. . . .

Appellant urges that Maryland should adopt the rule expressed in Restatement (Second) of Torts, Sec. 120 A (1965) "One who reasonably believes that another has tortiously taken a chattel upon his premises, or has failed to make due cash payment for a chattel purchased or services rendered there, is privileged, without arresting the other, to detain him on the premises for the time necessary for a reasonable investigation of

the facts." Appellant cites several jurisdictions which have adopted this qualified privilege. It offered an instruction substantially embodying the Restatement language at the trial level, and it is refusal to instruct the jury in accordance with this rule that it assigns as error. It urges strenuously that probable cause should be a defense in this limited situation, detailing the growing problem of shoplifting in this country. It states that the modern self-service style of retail selling makes the shopkeeper powerless to protect his goods unless Section 120 A is adopted in substance. . . .

Whatever technical distinction there may be between an "arrest" and a "detention" the test whether legal justification existed in a particular case has been judged by the principles applicable to the law of arrest. A shopkeeper under these principles has only the rights of a private person. In Maryland a private person has authority to arrest without a warrant only when a) there is a felony being committed in his presence or when a felony has in fact been committed whether or not in his presence, and the arrester has reasonable ground (probable cause) to believe the person he arrests has committed it; or b) a misdemeanor is being committed in the presence or view of the arrester which amounts to a breach of the peace. Breach of the peace signifies disorderly, dangerous conduct disruptive of public peace and it is clear that the usual shoplifting incident does not fit within this category. Since most shoplifters steal inexpensive items, the only crime they are generally guilty of is petit larceny, a misdemeanor. Thus a private person has no power to arrest them, and probable cause to believe they committed the crime is in fact not a defense. . . . There is a narrow exception to the general rules of arrest stated above. Any property owner, including a storekeeper, has a common law privilege to detain against his will any person he believes has tortiously taken his property. This privilege can be exercised only to prevent theft or to recapture property, and does not extend to detention for the purpose of punishment. This common law right is exercised at the shopkeeper's peril, however, and if the person detained does not unlawfully have any of the arrester's property in his possession, the arrester is liable for false imprisonment. [The Maryland legislature had enacted a statute which substantially embodied the rule of section 120 A, but the judiciary found it unconstitutional due to titling defects. The legislature declined to reenact the statute.] . . . In view of this resolution by the Legislature we do not believe we should remake the law in this area even if we were inclined to do so. . . .

Having stated all the foregoing, we do not think that even if 120 A of Restatement (Second) had been the law of Maryland it would have aided appellant in this case. There was sufficient evidence for the jury to find that the manner and method of the detention here was not within the privilege "necessary for a reasonable investigation of the facts." But the reasonableness of the detention does not become an issue unless it is first shown that the person invoking the privilege "reasonably believes that another has tortiously taken a chattel upon his premises." Parker testified he did not see Paul place any merchandise in his coat and did

not check the shelf to see if the “missing” item had been returned, although if he had, these activities would not have necessarily constituted probable cause. He further testified he stopped Paul in an aisle before Paul had given any indication of leaving the store, even though customers could not pay for any item until they reached the check-out counters at the front of the store. In a self-service store we think no probable cause (which, for the purpose of this opinion, we assume is equivalent to “reasonable belief” under 120 A) for detention exists until the suspected person actually attempts to leave without paying, unless he manifests control over the property in such a way that his intention to steal is unequivocal. Construing all the evidence in a light most favorable to the defendant, there is no showing of probable cause here. . . .

Judgment affirmed. Costs to be paid by appellant.

Notes

1. The privilege recognized by the Restatement’s § 120 A is a privilege to detain for investigation for a short time, until police can arrive for example. *Guijosa v. Wal-Mart Stores, Inc.*, 6 P.3d 583 (Wash. App. 2000). It does not include a privilege to hold longer than necessary for investigation or for any other purpose. Why did the Maryland Court refuse to recognize this privilege?

2. Police officers are privileged to make an arrest under a warrant that appears to be authorized and on the basis of “probable cause” or reasonable grounds to believe that a felony has been committed by the arrested person. A private person is similarly privileged, but if he was mistaken about the actual existence of a crime the privilege would afford no protection to the private person. The private person could not ordinarily effect an arrest for a misdemeanor that was not a breach of the peace.

3. The common law rules authorizing arrest for felony and misdemeanor are summarized in the Restatement Second of Torts §§ 112–139 (1965). See also DOBBS ON TORTS § 83 (2000); HARPER, JAMES & GRAY, THE LAW OF TORTS § 3.17 & 3.18 (3d ed.1996 & Supps.). Statutes may play a large role today. The law of arrest is especially important in the field of criminal law. The details are left for courses dealing with that subject matter.