

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH GINYARD : CIVIL ACTION  
 :  
 v. :  
 :  
 THE GAP, INC. : NO. 96-7112

**MEMORANDUM AND FINAL JUDGMENT**

HUTTON, J. August , 1997

Presently before the Court is the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Plaintiff's response thereto.

**I. BACKGROUND**

This action arises out of the defendant The Gap's detention of the plaintiff on suspicion of shoplifting at one of the defendant's stores. The plaintiff asserts causes of action under the theories of false imprisonment, slander, negligence, and placement in false light.

The incident in question occurred on December 24, 1995. According to the plaintiff, she and her sister Linda, and her niece Diane started out shopping on South Street, where they stopped into The Gap, The Gap Kids and a drugstore. The plaintiff made several purchases at The Gap and The Gap Kids stores for her nieces, and put the items in a white bag. One of the items in the bag was a red, long-sleeved striped t-neck shirt, which was placed at the top of the bag. The plaintiff then went to The Gap Kids store at 17th

and Walnut Street where she made a purchase. On this trip, Colleen McCloskey, the store manager, observed her sales assistant help the plaintiff with a pair of shoes. (McCloskey Dep. Tr. at 14.) Subsequently, Ms. McCloskey saw a red shirt in plaintiff's bag which she recognized as a Gap Kids shirt. Id. at 64. Ms. McCloskey asked her sales assistant, Zachary Edmonds, if he noticed whether the plaintiff had the red shirt in her bag when she entered the store. Mr. Edmonds told Ms. McCloskey that he had only seen white bags in her bag when he had helped the plaintiff earlier. Id. at 64. Ms. McCloskey observed the plaintiff proceed to the cash register and purchase some shoes and other items. Id. at 15, 64. Ms. McCloskey, however, did not stop the plaintiff at this point. Id. at 64. Ms. McCloskey was then called to approve a check and also to get change. Id. at 65. After asking Mr. Edmonds to watch for the customer leaving the store, Ms. McCloskey went to the rear of the store to get change. Id. at 65. In the meantime, the plaintiff left the store, and Ms. McCloskey was unable to stop her and ask any questions. Id. at 66. The plaintiff then went to The Gap store on the same block and made an additional purchase. The plaintiff returned to The Gap Kids store at 17th and Walnut for another item.

When the plaintiff approached the register and asked for another shopping bag, Ms. McCloskey used the opportunity to ask the plaintiff about the red shirt. The plaintiff stated that she had bought the shirt at the defendant's South Street store earlier in the day. Ms. McCloskey then asked to see her receipt, but after

looking through her pocketbook, the plaintiff said that she could not find it. Id. at 22. The plaintiff next suggested that Ms. McCloskey call the South Street store to verify the purchase of the red shirt. Id. at 36. At that time, Ms. McCloskey states that the plaintiff asked Reggie, the security guard, if they could step outside, and they proceeded outside. Id. at 37. Ms. McCloskey called the South Street Gap, explained the situation to Jen, the store manager, and described the plaintiff as the woman wearing a large, puffy hat. Id. at 39-40. After putting Ms. McCloskey on hold, Jen talked to the salesperson who rang up the plaintiff's sale. Id. at 40. The salesperson remembered the plaintiff bringing the shirt up to the register, but stated that she had not purchased it. Id. As it turned out, the plaintiff's sister had the receipt for the red shirt. Id. at 48. Ms. McCloskey apologized to the plaintiff and offered her a gift certificate for her inconvenience. Id. at 55.

In the plaintiff's deposition testimony, when the plaintiff was asked to judge the amount of time which passed from the moment that the store manager stopped her until the time she walked out the front door of the store by replaying the events in her mind, the plaintiff stated that the incident occurred over a span of 1 minute, 4 seconds. (Plaintiff's Dep. Tr. at 61-62.) The plaintiff's sister, Linda Ginyard, corroborates the time estimate. Linda Ginyard testified that she and the plaintiff left the adult Gap on Walnut Street. Upon leaving the adult Gap, Linda Ginyard stated that she headed to the International House of Pancakes while

the plaintiff headed back to The Gap Kids on Walnut Street. After discovering that the pancake house was closed, Linda Ginyard states that she went directly to The Gap Kids, and saw the plaintiff and the security guard standing outside the adult Gap. Id. at 14. When asked if it only took a minute to determine that she was not going to get any food, Linda Ginyard agreed. Id. at 15.

## II. DISCUSSION

### A. Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the

nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

**B. Merchant's Qualified Privilege to Detain Suspected Shoplifters**

The defendant in this case contends that no genuine issue of material fact exists because the defendant has a qualified privilege to stop and question any individual it believes in good faith may be shoplifting. Specifically, 18 Pa. Cons. Stat. Ann. § 3929 provides as follows:

A peace officer, merchant or merchant's employee or an agent under contract with a merchant, who has probable cause to believe that retail theft has occurred or is occurring on or about a store or other retail mercantile establishment and who has probable cause to believe that a specific person has committed or is committing the retail theft may detain the suspect in a reasonable manner for a reasonable time on or off the premises for all or any of the following purposes: to require the suspect to identify himself, to verify such identification, to determine whether such suspect has in his possession unpurchased merchandise taken from the mercantile establishment and, if so, to recover such merchandise, to inform a peace officer, or to institute criminal proceedings against the suspect. Such detention shall not impose civil or criminal liability upon the peace

officer, merchant, employee, or agent so  
detaining.

18 Pa. Cons. Stat. Ann. § 3929(d). Under this codification of the common law "shop-keepers privilege," the Pennsylvania courts hold that "store employees who stop, detain and search individuals who they reasonably suspect of retail theft do not act under the color of state authority." Commonwealth v. Martin, 446 A.2d 965, 968 (Pa. Super. Ct. 1982). Accordingly, those employees or merchants who act reasonably may not be subject to civil liabilities. Id. (citations omitted).

In this case, it is undisputed that defendant The Gap, Inc. is a "merchant" under the Pennsylvania Retail Theft Statute.<sup>1</sup> Because it is a merchant, the defendant argues that the Pennsylvania Retail Theft Statute precludes liability, because the defendant's employee, Ms. McCloskey, had probable cause to detain the plaintiff. In support of this contention, the defendant offers the deposition testimony of Ms. McCloskey, the plaintiff, and the plaintiff's sister, Linda Ginyard. The deposition testimony clearly shows the following: the plaintiff did not purchase the red shirt at the defendant's store on 17th and Walnut, the store carried that merchandise, the plaintiff could not produce a receipt for the shirt when asked to produce one, the plaintiff's claim that she had bought the shirt at the South Street store could not be corroborated by the personnel at South Street, the plaintiff was

---

<sup>1</sup>Under this statute, a "merchant" is defined as "[a]n owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator." 18 Pa. Cons. Stat. Ann. § 3929(f) (1983).

allowed to immediately leave after her sister produced the sales receipt, and the detention lasted only a few minutes. The plaintiff's response to the defendant's motion for summary judgment consists of two sentences stating: "Plaintiff respectfully relies on her trial brief and upon the defendant's video training tape. The tape demonstrates that the defendant failed to follow its own security procedures."

As indicated above, a party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp., 477 U.S. at 323. This Court finds that through the depositions of the plaintiff, the plaintiff's sister, and Ms. McCloskey, the defendant has satisfied its initial burden that its employee had probable cause to detain the plaintiff. Probable cause is defined as "[a] reasonable ground for belief in certain alleged facts." Black's Law Dictionary 1201 (6th ed. 1990). Under the totality of the circumstances involved in the plaintiff's detention, a reasonably prudent person could believe that the plaintiff stole the red shirt from the store.

Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. In this case, the plaintiff offers nothing to refute the defendant's evidence, except a bald statement that the defendant "failed to follow its own security procedures." This Court finds that the plaintiff has failed to present evidence

sufficient to show that there is a genuine issue for trial. Whether the defendant failed to follow its own security procedures is irrelevant to the question of the existence of probable cause to detain. The defendant's security procedures do not have any bearing on the questions before this Court because its procedures do not necessarily make a detention reasonable or unreasonable. Consequently, because the plaintiff has failed to present any evidence to rebut the defendant's evidence, this Court grants the defendant's motion for summary judgment.

An appropriate Order follows.

