

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

JOHN MCDOUGALL, et al. : CIVIL ACTION
: :
v. : :
: :
NATIONAL RAILROAD PASSENGER : NO. 04-2464
CORPORATION, trading as AMTRAK, : :
et al. : :

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

March 15, 2005

On March 9, 2005, this court conducted a one-day non-jury trial in this civil rights case brought pursuant to 42 U.S.C. § 1983. Pursuant to Fed. R. Civ. P. 52, the court makes the following:

FINDINGS OF FACT

1. Plaintiffs John McDougall and A. Jean McDougall, are husband and wife. Mr. McDougall is a licensed attorney in Pennsylvania. He is currently seventy-two years of age and has practiced law for thirty-eight years, concentrating in criminal defense.
2. Defendant, National Railroad Passenger Corporation, trading as Amtrak (“Amtrak”), is a corporation with its principal place of business in Philadelphia, Pennsylvania. Amtrak provides rail passenger service throughout the United States.
3. Defendant, Lieutenant Kevin Molloy, is a police officer employed by Amtrak and at all times relevant to this case was acting in the course and scope of his employment.
4. Defendant, Richard Drury, is a police officer employed by Amtrak and

at all times relevant to this case was acting in the course and scope of his employment.

5. Virginia Irrera was a conductor for Amtrak train number 175 from New York to Philadelphia on December 4, 2002.

6. Ms. Irrera has been working with Amtrak since July 1989 when she joined Amtrak as a Lead Service Attendant, serving food to passengers. Ms. Irrera served in that position until 1997 when she became an Assistant Conductor. Ms. Irrera served as an Assistant Conductor for approximately one year and then was promoted to Conductor.

7. On December 4, 2002, Ms. Irrera boarded train number 175 at Pennsylvania Station, New York City, wearing an Amtrak conductor's uniform. She placed her coat, which had an Amtrak patch stitched on the front, and backpack across two seats at the end of one of the passenger cars. She lowered the two trays in front of the seats and placed a soda bottle, eyeglasses, conductor's rule book and previously collected tickets on the trays. Ms. Irrera kept several items in the backpack, including her purse, which contained a wallet.

8. On December 4, 2002, plaintiffs boarded Amtrak train number 175 at Pennsylvania Station in New York City.

9. Prior to boarding the train, plaintiffs attended a show and later went to dinner where they both consumed a substantial portion of a 750 ml bottle of wine.

10. Upon entering the train, plaintiffs sat in two seats in a train car. After they gave their tickets to a conductor, they were told that their tickets were for a different train car and they had to move to another car.

11. Plaintiffs moved ahead on the train until they got to a car where they believed they could sit. When they entered the car, they saw two seats together. Mrs.

McDougall said the seats had a jacket and backpack sitting on them. Plaintiffs claimed they were told by another passenger that no one was seen sitting there despite the presence of the jacket and backpack. These two seats were the same seats where Ms. Irrera had placed her belongings.

12. Plaintiffs then placed Ms. Irrera's jacket, backpack and other personal belongings on the floor in the aisle of the train.

13. While the train was en route towards Philadelphia, Ms. Irrera walked in the vicinity of these two seats and determined that plaintiffs were sitting where she had placed her belongings. She then saw that her belongings were strewn across the floor and wet in places with soda. Ms. Irrera thought she had been robbed. While Ms. Irrera collected her belongings from the floor, she asked Mr. McDougall if he had placed her belongings on the floor. Mr. McDougall responded in a hostile and loud voice that he had removed Ms. Irrera's belongings from the seats, that he had paid for these two seats, and that Ms. Irrera was not entitled to use the seats because she was just an employee. As a result of Mr. McDougall's actions, Ms. Irrera lost her eyeglasses and some of her paperwork. At the time of this incident, the train car was not full and plaintiffs had their choice of several seats.

14. Ms. Irrera asked the engineer to radio Amtrak Police for assistance. When the train arrived in Trenton, New Jersey, Amtrak Police Lieutenant Kevin Molloy and Amtrak Police Officer Richard Drury met the train. Ms. Irrera explained the situation to Lieutenant Molloy and Officer Drury, and told the two officers that she wanted plaintiffs to leave the train.

15. Amtrak's Carriage of Passengers Rules specifically gives authority to the conductor to remove passengers from a train in certain circumstances. The Rules state the following:

In order to ensure the quality of travel and safety for its passengers, Amtrak may refuse to carry passengers:

- who have not paid the applicable fare;
- whose conduct is objectionable (e.g., under the influence of alcohol or narcotics);
- whose personal hygiene makes them offensive;
- who pose a health or safety hazard to other passengers or employees;
- who refuse to comply with safety rules or with instructions of Amtrak personnel.

Amtrak employees or other authorized carrier representatives may remove such a passenger from the train at any inhabited place, as necessary under the circumstances, for any of the above reasons.

(Defs.' Ex. H.)

16. The General Rules and Instructions governing conductors on Amtrak trains provides the following:

38. Improper conduct, intoxication, malicious damage to equipment, language or action offensive and annoying to other passengers, smoking in non-smoking areas, or refusal to pay the proper fare, are lawful grounds for removing a passenger from a train.

(Pls.' Ex. 3.)

17. Lieutenant Molloy and Officer Drury proceeded to the train car where plaintiffs were seated. Upon entering the car, they both observed Ms. Irrera's Amtrak jacket and backpack on the floor in the aisle of the train next to where plaintiffs were seated. It appeared to both officers that the jacket had been stepped on, as there was a dusty footprint on the jacket. After making this observation, Officer Drury said to Mr. McDougall "Please step off the train, we want to speak to you." Mr. McDougall refused to exit the train. He informed the officers that he was a criminal defense attorney and that "unless he was under arrest he wasn't going

anywhere.” (Defs.’ Ex. K.) Mr. McDougall said, “arrest me or go away.” Id. Officer Drury again requested Mr. McDougall to step off the train so they could speak. Again, Mr. McDougall refused. Lieutenant Molloy then asked Mr. McDougall to get off the train so he could speak to him. Once again, Mr. McDougall refused.

18. Both officers had no intention of arresting Mr. McDougall at this time. They wanted him to exit the train so they could speak to him about the incident with Ms. Irrera outside the presence of other passengers so as not to delay train number 175, and otherwise cause commotion on the train. Both officers testified that as they were speaking to Mr. McDougall he became boisterous and that other passengers were staring and some began to move away from the area. The officers spoke to Mr. McDougall for about ten minutes inside the train, repeatedly instructing him to exit the train. The officers told Mr. McDougall that he was to leave the train because he refused to move from the conductor’s seat and the conductor wanted him removed. The officers “ordered [him] to leave or he would be arrested for trespass.” (Defs.’ Ex. K.)

19. The Amtrak police officers advised Mr. McDougall that he could simply leave the train and take the next train to his destination. Mr. McDougall refused to comply with the police officers’ directives. He became very agitated and repeatedly yelled at the police officers. As a result, people on the train, including Ms. Irrera, became alarmed. The police officers then handcuffed Mr. McDougall and escorted him off the train. The officers took this action with a minimal amount of force and with no intention of harming Mr. McDougall. As a result of this incident, train number 175 was delayed from its scheduled departure from Trenton, New Jersey, for approximately ten minutes. Ultimately, Mr. McDougall was charged in a Complaint & Summons for trespass and disorderly conduct, in violation of N.J. Stat. Ann. §§ 2C:

18-3 (West Supp. 2004); 2C: 33-2 (West 1995) (Pls.' Ex. 2.) For approximately forty-five minutes while the police completed the paperwork, Mr. McDougall was placed in a holding room in the Trenton, New Jersey train station where he was cuffed to a metal bar in the wall. Mr. McDougall was released, and he and his wife were driven home by their son.

20. During the course of these events, the Amtrak police officers noticed that a strong odor of alcohol emanated from Mr. McDougall. After he was removed from the train, Mr. McDougall admitted that he had been drinking that evening.

21. Prior to his arrest, Mr. McDougall admitted to both Ms. Irrera and the police officers that he had removed Ms. Irrera's belongings from the seats and placed them on the floor.

22. After a bench trial on May 30, 2003, before a judge in the Municipal Court of Trenton, New Jersey, the charges against Mr. McDougall were dismissed. Amtrak was not represented at this trial. Neither Ms. Irrera, nor Officer Drury testified at the trial.

23. While Mr. McDougall experienced some discomfort from the handcuffs, he was not harmed by the officers and never sought medical treatment for any injuries resulting from this incident. The force used by the officers to remove Mr. McDougall from the train car and to arrest him was reasonable under all of the circumstances.

Having made the foregoing Findings of Fact, the court makes the following

CONCLUSIONS OF LAW

1. Plaintiffs claim that Amtrak, Lieutenant Molloy and Officer Drury violated their constitutional rights under 42 U.S.C. § 1983.

2. Plaintiffs claim that defendants are liable for assault and battery, unlawful

restraint, false arrest, malicious prosecution and that these actions deprived them of their rights under the Fourth Amendment of the Constitution.¹

3. Plaintiffs' claims are premised on the allegation that the Amtrak police officers lacked probable cause to arrest and subsequently charge Mr. McDougall. If there was probable cause to arrest Mr. McDougall, then his claims for unlawful restraint, false arrest and malicious prosecution are without merit. See Montgomery v. DeSimone, 159 F.3d 120, 124 (3d Cir. 1998) (in order to prevail on a malicious prosecution claim under § 1983, a plaintiff must establish the absence of probable cause for the initiation of the proceedings against her); Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988) ("The proper inquiry in section 1983 claim based on false arrest or misuse of the criminal process is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense.")²

4. Probable cause to arrest exists where the facts and circumstances within

¹ Plaintiffs alleged violations of the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution. (Complaint ¶ 26.) Under Graham v. Connor, 490 U.S. 386, 395-96 (1989), plaintiffs' constitutional claims must be analyzed solely under the Fourth Amendment since plaintiffs' complaint concerns the seizure of Mr. McDougall and alleged excessive force by the police officers.

² The dismissal of the charges by the Municipal Court Judge does not bar litigation of the issue of probable cause under the doctrine of collateral estoppel. The issue before the Municipal Court judge was whether the prosecution proved that the defendant was guilty beyond a reasonable doubt. Here, the issue before the court is whether there was probable cause to arrest Mr. McDougall, a different issue. Furthermore, Amtrak was not fully represented in the criminal proceeding. See Maiale v. Youse, 2004 WL 1925004, at *4 (E.D. Pa. Aug. 27, 2004) (refusing plaintiff's request to apply collateral estoppel in section 1983 case); Smith v. Holtz, 30 F. Supp. 2d 468, 474-75 (M.D. Pa. 1998) (same), aff'd, 210 F.3d 186 (3d Cir.), cert. denied, 531 U.S. 880 (2000).

the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to cause a man of reasonable caution to believe that an offense has been or is being committed. Draper v. United States, 385 U.S. 307, 313 (1959). Probable cause is established by the totality of the circumstances. Illinois v. Gates, 462 U.S. 213, 230-31 (1983). In deciding whether probable cause exists for making an arrest, courts deal with probabilities, rather than technicalities, and the factual and practical considerations of every day life on which reasonable and prudent men, not legal technicians, act. Draper, 385 U.S. at 313.

5. Here, the Amtrak officers received information from the conductor of the train that plaintiffs had thrown her coat, backpack, personal items and train tickets on the floor of the train car aisle, where they became wet with spilled soda and that plaintiffs were seated in the seats where these items were contained.

6. The conductor, who was visibly upset, relayed that when she confronted plaintiffs, Mr. McDougall admitted putting her personal belongings in the aisle and he became abusive toward her.

7. After receiving the information from Ms. Irrera, the officers entered the train and found the coat and the conductor's belongings strewn on the floor. When questioned, Mr. McDougall admitted to the officers that he threw the items on the floor. The officers asked Mr. McDougall on at least three occasions to step off the train to speak to them so as not to create a scene on the train. Mr. McDougall refused and challenged the officers to arrest him.

8. Based on all of the above circumstances, the court finds that the officers had probable cause to arrest Mr. McDougall for criminal trespass and disorderly conduct, in violation of the below-cited New Jersey statutes.

9. As noted previously, under Amtrak's written policy, an Amtrak conductor may remove passengers from a train:

- Whose conduct is objectionable (e.g., under the influence of alcohol or narcotics).
- Who pose a health or safety hazard to other passengers or employees.
- Who refuse to comply ... with instructions of Amtrak personnel.
- Who engage in improper conduct, intoxication, malicious damage to equipment, language or action offensive and annoying to other passengers.

10. It is hornbook law that “[a] common carrier of passengers has the right, and often the duty, to enforce order and decency upon its conveyances or premises by ejecting those who are disorderly, obscene, or dangerous in their conduct.” 14 Am. Jur. 2d Carriers § 1107 (2000). See also Korn v. Chesapeake & O. Ry. Co., 125 F. 897, 900 (6th Cir. 1903) (“[T]he conductor is responsible for his train, and it is not only his right, but may be his duty, to eject a trespasser or a drunken and disorderly passenger.”).

11. The conductor of a train may eject a passenger even before the actual commission of a disorderly act, “if the conduct is so offensive or disorderly as to reasonably warrant the inference that annoyance or discomfort to other passengers is likely to result from it.” 14 Am. Jur. 2d. Carriers § 1107 (2000). As one New Jersey appellate court stated:

Generally, a common carrier of passengers is clothed with the right, and it is often a duty, to enforce order and decency upon its conveyance; and, where the conduct of a passenger is so offensive and disorderly as reasonably to warrant the inference that inconvenience or annoyance may result, expulsion may be enforced,

even if no overt act of positive disturbance has been committed. The carrier is not required to await a more serious outbreak, with its probable consequences, before taking appropriate action. Thus, where there is reasonable apprehension of annoyance or danger to passengers at the hands of an intoxicated copassenger, the carrier is authorized, and may indeed be under a duty, depending upon the circumstances, to eject the offender, and, in so doing, he incurs no liability for damages, if the right is reasonably exercised in conformance with the standard of duty so laid upon him.

Spalt v. Eaton, 192 A. 576, 579 (N.J. Sup. Ct. 1937), aff'd, 196 A. 736 (1938).

12. This court finds that Ms. Irrera had just cause to eject plaintiffs from the train. Mr. McDougall placed on the floor in the aisle the conductor's coat and backpack, and the soda, glasses and other items that Ms. Irrera had placed on the tray tables. When the conductor confronted plaintiffs about this, Mr. McDougall admitted that he moved these items and, in a loud and agitated manner, told the conductor that he was entitled to the seats because he was a paying customer. He engaged in this behavior even though there were other available seats for him and his wife. Based on Amtrak's written policies, and the duties and powers of a train conductor under New Jersey and federal law, the conductor acted lawfully in requiring plaintiffs to leave the train.

13. Mr. McDougall was charged with being a defiant trespasser, in violation of N.J. Stat. Ann. § 2C: 18-3(b) (West Supp. 2004), which provides:

b: Defiant trespasser. A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the actor . . .

14. In State v. Brennan, 780 A.2d 585 (N.J. Super. Ct. App. Div. 2001), certification denied, 791 A.2d 221 (N.J. 2002), the court held that failure to obey a police

officer's order to leave a premises, in that case a public building, constituted a violation of the defiant trespasser statute. The court held: "Simply stated, if the police are performing a law enforcement function in an appropriate manner, i.e., not with an excessive use of force, then a citizen is obligated to comply with the directions of the police. Failure to do so can result in a number of offenses, including . . . defiant trespass." 780 A.2d at 590. Accord State v. Hamilton, 845 A.2d 669, 671-72 (N.J. Super. Ct. App. Div.), certification denied, 859 A.2d 692 (N.J. 2004).

15. In Brennan, the defendant was present at a town meeting and became involved in a dispute with the town's mayor. The mayor asked the defendant to sit down so that someone else could speak. The defendant refused and, according to the mayor, "was discourteous, abrasive, immature and antagonistic." 780 A.2d at 587. The mayor called the police. The police repeatedly told the defendant to leave the premises. The defendant refused and was arrested. On appeal from his conviction for defiant trespass, the defendant claimed that the police acted improperly in arresting the defendant without properly investigating his dispute with the mayor. The court rejected this argument, stating that the police

were not obligated to conduct a full-fledged investigation of the allegations presented to them by the mayor prior to asking defendant to leave the premises. A public meeting had been halted allegedly because defendant had been disruptive. The meeting was apparently going to continue after the recess. The police did not initially arrest defendant, but rather, gave him direction to leave the premises. Defendant, at that point, had no discretion to disobey that direction. His refusal to leave constituted defiant trespass. He was warned that arrest would be the consequence of his continued refusal to leave.

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Although defendant had been lawfully on the premises, when the police officers asked him to leave, that privilege was revoked. The notice to leave was clearly and repeatedly given. Defendant was told of the consequences of not voluntarily leaving. The offense did not turn on whether defendant had actually been

disruptive. The mayor conveyed a scenario to the police that justified the action they took. If that scenario was inaccurate or ill-motivated, defendant had remedies available to him through appropriate legal channels. Similarly, if defendant's First Amendment rights were impinged by his removal from the meeting, that deprivation could be addressed at a later time. The remedy that was not available to defendant was the defiance of a police officer's direction given in the lawful course of the officer's employment.

Id. at 592.

16. Even if this court were to find that the conductor's request to the officers to remove Mr. McDougall from the train was unjustified or harsh, it is no justification or excuse for Mr. McDougall's disobedience of the lawful order of the police to exit the train. It is of no consequence that Mr. McDougall, as a paying customer, thought he was more entitled to the seats than an employee of Amtrak. He is still liable for defiant trespass for disobeying the police officers' order to leave the train.

17. Accordingly, this court holds that the officers' order to Mr. McDougall to leave the train was given in the performance of a law enforcement function, and in an appropriate manner. Mr. McDougall willfully failed to comply with the officers' orders despite being provided with several opportunities to do so. Mr. McDougall said, "arrest me or go away." Thus, the police officers had probable cause to arrest Mr. McDougall for defiant trespass.

18. Mr. McDougall also was charged with violating N.J. Stat. Ann. § 2C:33-2(a) (West 1995), which provides:

a. Improper Behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he (1) Engages in fighting or threatening, or in violent or tumultuous behavior, or (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

The term “public” means “affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are . . . transport facilities . . .” N.J. Stat. Ann. § 2C:33-2(b) (West 1995). This court finds that the police did have probable cause to arrest Mr. McDougall for disorderly conduct. His boisterous and tumultuous behavior toward the conductor and the police caused several of the other patrons in the train car to become alarmed. The conductor and officers testified that many passengers viewed the scene with Mr. McDougall and the police with apprehension. Some left their seats to distance themselves from the fracas. Furthermore, Mr. McDougall’s refusal to leave the train caused the train to be delayed in arriving at its designation and resulted in public inconvenience.

19. Defendants Molloy and Drury are not liable to Mr. McDougall for assault and battery since they only used such force as is reasonably necessary under the circumstances. See Graham v. Connor, 490 U.S. 386, 396 (1989) (“Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”); Hill v. Algor, 85 F. Supp. 2d 391, 411 (D.N.J. 2001) (When making an arrest, a New Jersey police officer “may use such force as is reasonable necessary under the circumstances.”).

20. Amtrak “is subject to suit under § 1983 as a state actor.” Oshatz v. Amtrak, 2003 WL 22872038, at *1 (E.D. Pa. Nov. 18, 2003). However, Amtrak cannot be held liable under a respondent superior theory for the action of its police officers. Id. Nonetheless, under Monell v. Dep’t of Soc. Serv. of the City of N.Y., 436 U.S. 658 (1978), Amtrak may be liable if its policy or well settled custom causes a constitutional injury. Oshatz, 2003 WL 22872038, at *1. However, for there to be liability, “there must be a violation of the plaintiff’s

constitutional rights.” Brown v. Commonwealth of Pa. Dep’t of Health Emergency Med. Servs. Training Inst., 318 F.3d 473, 482 (3d Cir. 2003). Specifically, “[t]here must be a ‘direct causal link’ between the policy and a constitutional violation.” Id. (quoting City of Canton v. Harris, 489 U.S. 378, 385 (1989)). See also Morley v. Philadelphia Police Dep’t, 2004 WL 1527829, at *10 (E.D. Pa. July 7, 2004) (same). In this case, plaintiffs have shown neither a constitutional violation nor an Amtrak policy violating their constitutional rights. Consequently, they have not shown a direct causal link between an alleged unconstitutional action that occurred during the implementation of an Amtrak policy or practice. Therefore, plaintiffs’ claim against Amtrak fails and judgment will be entered in Amtrak’s favor.

21. Defendants have raised the defense of official immunity of the two police officers. This court need not decide this issue since it has found that plaintiffs’ constitutional rights were not violated. See Tarus v. Borough of Pine Hill, 2004 WL 1588174, at *3 (3d Cir. July 15, 2004) (non-precedential) (declining to decide official immunity question because police officer did not engage in any wrongdoing in arresting plaintiff).

22. For all of the above reasons, judgment will be entered in favor of all defendants and against plaintiffs on all their claims.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

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

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v.	:	
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CIVIL JUDGMENT ORDER

AND NOW, this 15th day of March, 2005, after a Bench Trial before the undersigned, and in accordance with the Memorandum of Decision filed this date,

IT IS ORDERED that Judgment be and the same is hereby entered in favor of National Railroad Passenger Corporation, trading as Amtrak, and Lieutenant Kevin Molloy and Police Officer Richard Drury, defendants, and against John McDougall and A. Jean McDougall, plaintiffs, in the above-captioned matter.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge