

STATE OF MICHIGAN  
COURT OF APPEALS

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ALFORD TAYLOR,

Plaintiff-Appellant,

v

MENARD INC., VANGUARD PROTECTION &  
INVESTIGATIONS, INC., a/k/a VANGUARD,  
INC., and JOHN MARTIN,

Defendants-Appellees.

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UNPUBLISHED

April 28, 2000

No. 218960

Kent Circuit Court

LC No. 98-000626-NO

Before: Meter, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motions for summary disposition of plaintiff's false arrest, false imprisonment, and malicious prosecution claims pursuant to MCR 2.116(C)(10). We affirm.

This action arises out of an incident where plaintiff was stopped and detained by defendant John Martin, a security guard who suspected that plaintiff shoplifted two packages of drill bits and a starter/driver set from one of defendant Menard, Inc.'s home improvement stores. Menard had contracted with defendant VanGuard, Inc. to provide plainclothes security services; in turn, John Martin was employed by VanGuard to act as a loss prevention officer at a Menard store. Plaintiff was charged with retail fraud in the second degree, MCL 750.356d; MSA 28.588(4); however, the charge was later dismissed on the prosecution's own motion. Plaintiff brought suit against defendants for false imprisonment, false arrest, and malicious prosecution. On appeal, plaintiff argues that the trial court erred by ruling that there was probable cause to stop and detain plaintiff for shoplifting.

We review the trial court's decision whether to grant a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine whether any genuine issue of material fact exists that would prevent entering judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). In making this determination, we view the documentary evidence in a light favoring the nonmoving party. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

Claims of false arrest and false imprisonment require the plaintiff to prove that the arrest lacked probable cause. *Burns v Olde Discount Corp*, 212 Mich App 576, 581; 538 NW2d 686 (1995); *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). Similarly, a claim of malicious prosecution requires the plaintiff to prove that there was no probable cause for the prosecution. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998); *Burns*, *supra* at 581; *Blase v Appicelli*, 195 Mich App 174, 177; 489 NW2d 129 (1992). The parties agree that this case hinges on whether there was probable cause to suspect plaintiff of retail fraud.

Where the facts are undisputed, the determination whether probable cause exists is a question of law for the court to decide. *Matthews*, *supra* at 381-382; *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 615; 396 NW2d 809 (1986). In this case, the facts of plaintiff's stop and detention are essentially undisputed. Plaintiff placed the drill bits and starter/driver set in the basket of his shopping cart and placed four bags of drywall mix in the basket on top of those items. The cashier did not scan the items, and plaintiff left the store without paying for them. Because no factual dispute existed, it was proper for the trial court to determine whether probable cause existed.

Probable cause that a particular person has committed a crime "is established by a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense . . . ." *People v Coutu*, 235 Mich App 695, 708; 599 NW2d 556 (1999), quoting *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). Probable cause is not capable of being precisely defined; rather, it is a commonsense concept dealing with practical considerations of everyday life that must be viewed from the perspective of reasonable and prudent persons, not legal technicians. *Ornelas v United States*, 517 US 690, 695-696; 116 S Ct 1657; 134 L Ed 2d 911 (1996).

We find no error in the trial court's conclusion that probable cause existed to stop and detain plaintiff. In *Bruce v Meijer Supermarkets, Inc*, 34 Mich App 352; 191 NW2d 132 (1971), the plaintiff was observed placing items in her shopping cart; however, before checking out she left them on another shelf, apparently changing her mind about the purchase. A security guard did not see the plaintiff put the items on another shelf, but he noticed that the plaintiff did not pay for those items when she checked out at the cash register. This Court held that the security guard was justified in stopping the plaintiff for questioning to determine whether she had stolen the items. *Id.* at 355. The instant facts are similar. In both cases, a shopper was observed placing items in a shopping cart that were not ultimately checked out at the cash register. Moreover, in the instant case, plaintiff had in fact left the store with the items, whereas in *Bruce*, the plaintiff had simply changed her mind about the purchase and left the items in the store.

Plaintiff argues that there was no probable cause to believe that he committed retail fraud because there was no evidence that he *intended* to leave the store without paying for the items. However, the retail fraud statute, as it read at the time plaintiff was charged, provided that a person commits retail fraud if he or she "steals property of the store that is offered for sale." MCL 750.356d(1)(b); MSA 28.588(4)(1)(b). From the perspective of a reasonably cautious person, viewing plaintiff place small items in his shopping cart, cover those small items with larger ones, and

leave the store without paying for the smaller items seems a sufficient reason to believe that plaintiff was stealing merchandise from the store.<sup>1</sup>

We therefore hold that the trial court did not err in concluding that probable cause existed to justify the stop and detention of plaintiff. Accordingly, the trial court properly granted defendants' motions for summary disposition.<sup>2</sup>

Affirmed.

/s/ Patrick M. Meter

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell

<sup>1</sup> Plaintiff claims that the trial court, in determining whether probable cause existed, relied on facts that occurred after he was stopped. A court must only look to the facts available at the moment of the stop. See *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998). However, the trial court's consideration of post-stop facts was superfluous to its determination that probable cause existed. Indeed, the trial court specifically stated that the post-stop facts were not relevant to the issue whether probable cause existed.

<sup>2</sup> The trial court incorrectly relied on MCL 600.2917; MSA 27A.2917 in granting summary disposition to defendants. Section 2917 provides that, in a civil action against a merchant or a library for false imprisonment, false arrest, assault, battery, or defamation, the plaintiff may not recover damages for mental anguish or punitive damages if probable cause existed to believe that the plaintiff was stealing goods or library materials, as long as the plaintiff's detention was reasonable. This section does not preclude the action itself; rather, it is only a limitation on damages. However, we affirm the trial court where it reached the right result, albeit under different reasoning. *Kosmyrna v Botsford Community Hospital*, 238 Mich App 694, 701; \_\_\_ NW2d \_\_\_ (1999).