DISTRICT OF COLUMBIA COURT OF APPEALS

No. 94-CV-238

ELIJAH KARRIEM, APPELLANT

v.

DISTRICT OF COLUMBIA, APPELLEE

No. 94-CV-261

DISTRICT OF COLUMBIA, APPELLANT

v.

ELIJAH KARRIEM, APPELLEE

Appeals from the Superior Court of the
District of Columbia

(Hon. George W. Mitchell, Trial Judge)

(Submitted December 10, 1996 Decided August 20, 1998)

Thomas P. Donelson was on the brief for Elijah Karriem.

Charles F.C. Ruff, Corporation Counsel at the time the brief was filed, *Charles L. Reischel*, Deputy Corporation Counsel, *Lutz Alexander Prager*, Assistant Deputy Corporation Counsel, and *Sonia A. Bacchus*, Assistant Corporation Counsel, were on the brief for the District of Columbia.

Before TERRY, STEADMAN, and KING, *Associate Judges*.

TERRY, *Associate Judge*: Elijah Karriem, a street vendor in the District of Columbia, was arrested on three occasions in 1988 and 1989 for failing to obey police orders to relocate his vending stand and for vending in an entrance zone. After each set of charges was dismissed, Karriem sued the District and several individual police officers, alleging false arrest, defamation, and various other intentional torts.

The three cases against the District were consolidated for trial.[1] After all the evidence was in, the trial court granted directed verdicts for the District on most of Karriem's claims, leaving only three for the jury to decide: false arrest, tortious interference with contractual relations, and abuse of process. The jury returned a verdict in favor of Karriem for injuries suffered as a result of the 1988 arrest, awarding him $2000 in damages, but it found for the District on the two 1989 arrests. Karriem appeals from the judgment against him on his claims arising out of the 1989 arrests; the District cross-appeals from the denial of its motion for judgment notwithstanding the verdict on the claims based on the 1988 arrest. We hold in favor of the District in both appeals, affirming the judgment in Karriem's appeal and reversing the judgment in the District's cross-appeal.

---

[1] The claims against the individual police officers were all settled and dismissed before trial, leaving the District as the only defendant.

I

A. *The 1988 Arrest*

In early October 1988, several members of the Metropolitan Police Department (MPD) met with Howard University security officials to discuss the need for crowd control at Howard's homecoming football game on October 22. In order to reduce the crowds near Cramton Auditorium on Sixth Street, N.W., the police agreed to permit vendors to set up their stands only on the west side of Sixth Street near the auditorium on the day of the game. Sergeant Jerome Gray testified that he and other MPD officers gave oral notice of the restrictions to all vendors, including Mr. Karriem, at least four or five days before October 22, but he could not recall whether Karriem had received written notification.

Officer George Hardy, a member of the MPD Vending Enforcement Unit, testified that he orally notified Karriem of the vending restrictions on at least two occasions before October 22. On the morning of October 22, however, he saw that Karriem and several others had erected vending stands in the restricted area on the east side of Sixth Street. Officer Hardy also noticed

that Karriem's stand exceeded the size limits prescribed by 24 DCMR § 512.3,[2] and that it was surrounded by merchandise in violation of 24 DCMR § 510.14.[3]

Hardy and other officers asked the vendors, including Mr. Karriem, to move to the west side of Sixth Street because vending was not allowed that day on the east side of the street. All but Karriem complied. Officer Hardy asked Karriem two more times to relocate, and when he still refused to move, he was

---

[2] 24 DCMR § 512.3 (1988) provides:

> No sidewalk vending cart or stand shall exceed the following dimensions:
>
> (a) Wider than four feet six inches (4'6");
> (b) Longer than seven feet (7'0"); and
> (c) Higher than seven feet six inches (7'6").

[3] 24 DCMR § 510.14 (1988) provides:

> All items related to the operation of a vending business shall be kept either on, in, or under a vending cart or stand.

arrested and charged with operating an oversized stand[4] and with storage in a public space.

B. *The 1989 Arrests*

In September 1989, members of the MPD, including Sergeant Gray, met with representatives of Howard University, the Department of Consumer and Regulatory Affairs, and the Sign Division of the Department of Public Works. The purpose of the meeting was to discuss enlarging the "entrance zone" in front of Cramton Auditorium while still allowing street vendors to operate in the immediate vicinity. After some discussion, it was agreed that vendors would be permitted to operate south of a specified utility pole near the auditorium, but not north of that pole.

A few days later, the Department of Public Works posted a "No Parking -- Entrance" sign north of the utility pole. Sergeant Gray testified that he gave street vendors oral notice of the new restriction before enforcing it against

---

[4] Hardy measured the stand and found that it was more than fourteen feet long and nine feet wide, well in excess of the permitted dimensions. See note 2, *supra*.

them. Gray also issued a memorandum on September 7 detailing the new restrictions and instructing vendors to remain south of the utility pole.

On September 8 Sergeant Gray and other MPD officers saw Mr. Karriem vending from an oversized stand in the entrance area where vending was restricted by the new sign. Gray testified that he twice told Karriem to relocate his stand, but that Karriem refused both requests, insisting that the new sign was illegal.[5] Karriem was subsequently arrested and charged with blocking an entrance[6] and vending from an oversized stand.

On September 18, just ten days later, Karriem was again seen vending from an oversized stand in the restricted entrance zone. MPD officers again

---

[5] Karriem told Sergeant Gray that the sign had been posted illegally because notice of it had not been published in the District of Columbia Register. Gray responded that the police were not involved in the posting of the sign, but that "our job is to enforce the sign if it is erected." The District conceded at trial that the sign was erected without the requisite notice.

[6] 24 DCMR § 510.21 (1988) provides:

> No vendor shall vend nor shall there be any vending operation within marked loading and entrance zones.

told him to move his stand, but again he refused to do so. Once again, Karriem was arrested and charged with blocking an entrance.[7]

II

Mr. Karriem offers three arguments for reversal of the judgment against him based on the two 1989 arrests. First, he maintains that the trial court erred in failing to instruct the jury that an arrest which is substantially based on an "invalid law, an invalid regulation, or invalid parking sign" is *per se* a false arrest. We disagree.

When the plaintiff in a false arrest case shows that he was arrested without a warrant, a rebuttable presumption arises that the arrest was unlawful, and the burden shifts to the District to justify the arrest by showing that it was based on probable cause. *Clarke v. District of Columbia*, 311 A.2d 508, 511 (D.C. 1973) (citing cases). Probable cause is usually "determined by reference to the objective standard used to determine probable cause in a criminal proceeding . . . ." *District of Columbia v. Murphy*, 635 A.2d 929, 931 (D.C.

[7] Some time after September 18, the Department of Consumer and Regulatory Affairs notified the police that there was "some discrepancy about the sign," and the police discontinued their enforcement of it.

1993) (citation omitted). This test requires an assessment of the objective facts as they actually occurred. *Id.* at 932.[8] When the District establishes that its officers made an arrest based on probable cause, their actions are justified, and the District will not be held liable for false arrest.

Karriem contends that his arrest was *per se* without probable cause because it was based on a traffic sign later determined to have been erected improperly, and that the trial court should have instructed the jury accordingly. There is no law in the District of Columbia to support such an instruction. The police officers on the scene in September 1988 had no way of knowing that the sign had not been properly placed in front of Cramton Auditorium. They saw what appeared to be a valid sign marking an entrance zone and also saw Mr.

---

[8] *Murphy* and other cases also allow the District, at its option, to rely on "a lesser, partially subjective test," whereby a false arrest claim will be defeated by a showing (1) that the police officer had a good faith belief that his or her conduct was lawful and (2) that this belief was reasonable. *Murphy,* 635 A.2d at 932. This test is usually easier to meet than the objective test, but it must be affirmatively relied upon by the District; if it is not, the objective test applies. *See id.* We need not consider this lesser test in the case at bar, for we are satisfied -- indeed, the undisputed evidence, including Karriem's testimony, plainly shows -- that the police had objective probable cause as a matter of law to arrest Mr. Karriem on each of the three occasions at issue here. *Woodward v. District of Columbia,* 387 A.2d 726 (D.C. 1978), on which Mr. Karriem relies, is distinguishable on this ground, for in *Woodward* the issue was whether the police reasonably had a good-faith belief that there was probable cause for the challenged arrest.

Karriem vending from his stand in apparent violation of that sign. *See* 24 DCMR § 510.21, *supra* note 6. They gave him several opportunities to move, and it was only after he persisted in his refusal that he was arrested. If he had been prosecuted for vending in an entrance zone, he might have asserted in his defense that the sign was invalid.[9] But its alleged invalidity did not give him the right to refuse to move when the police told him to do so. The sign appeared on its face to be a valid and proper sign, and Mr. Karriem never contended otherwise. Even though he believed it had not been validly placed in front of Cramton Auditorium, that belief did not entitle him to refuse to obey it and then to recover damages from the District for false arrest when he was arrested for that refusal. We find no error in the court's rejection of his requested instruction.

Second, Mr. Karriem contends that the Council of the District of Columbia was not authorized to prescribe criminal penalties for violation of the vending regulations greater than a $300 fine or ten days in jail, and that the Council therefore exceeded its authority when it adopted 24 DCMR § 501.9, which permits a maximum sentence of ninety days in jail for vending

---

[9] We express no view on the validity of such a defense.

violations.[10] From this premise he concludes that section 501.9 is invalid, that he was subject at most to a civil penalty, and that his criminal arrest for violating the vending regulations was unlawful.

Mr. Karriem's logic is flawed. He bases his argument on D.C. Code § 1-316 (1992), which authorizes the Council

> to prescribe reasonable penalties of a fine not to exceed $300 or imprisonment not to exceed ten days, in lieu of or in addition to any fine, or to prescribe civil fines or other civil sanctions for the violation of . . . any regulation promulgated under authority of § 1-315 . . . .

Section 1-315 (3), in turn, empowers the Council to issue "all the necessary regulations" governing the conduct of licensed street vendors. What Mr. Karriem overlooks is section 1-315 (9), which specifically authorizes the Council

---

[10] 24 DCMR § 501.9 (1988) provides:

> If a person is convicted of violating any of the provisions of these [vending] regulations, he or she shall be punished by a fine of not more than three hundred dollars ($300), or by imprisonment for not more than ninety (90) days, for each such offense.

> [t]o prescribe reasonable *penalties, including civil penalties,* for the infraction of the regulations mentioned in §§ 1-315 and 1-318. The penalties may be enforced in any court or administrative tribunal of the District of Columbia having jurisdiction of *minor offenses or civil infractions,* and in the same manner that minor offenses or civil infractions are by law prosecuted or adjudicated and punished. [Emphasis added.]

We construe this language in section 1-315 (9) as authorizing the Council to establish both civil and criminal penalties for violating any vending regulations issued under section 1-315 (3). The plain and ordinary meaning[11] of the phrase "penalties, including civil penalties," makes clear that the drafters intended to authorize both civil and criminal sanctions for vending violations; if that were not the case, the phrase "including civil penalties" would be redundant. Our conclusion is bolstered by the use of the phrase "minor offenses," which in context must be read as distinguishable from "civil infractions." The only reasonable reading of "minor offenses," in our view, is that they refer to criminal rather than civil violations; otherwise, "civil infractions" would again

---

[11] "[I]n the absence of contrary legislative history or some other comparable indication, courts presume that the legislature intended words in a statute to be given their plain and ordinary meaning." *Alvarez v. United States,* 576 A.2d 713, 715 (D.C.) (citations omitted), *cert. denied,* 498 U.S. 875 (1990).

be redundant. We hold, accordingly, that the trial court committed no error in ruling that the prohibition on vending in an entrance zone provides for both civil and criminal sanctions.[12] *Cf. Purcell v. United States*, 594 A.2d 527 (D.C. 1991) (holding that penalty for violation of certain traffic regulations is civil and thus does not raise double jeopardy bar to subsequent criminal prosecution based on same conduct).

Karriem's third argument is that the trial court abused its discretion when it prevented him from questioning police witnesses about their allegedly malicious intent and their failure to follow the police department's General Orders with respect to the 1989 arrests. These arguments are without merit because the undisputed evidence established that the police officers had objective probable cause to arrest Mr. Karriem on both September 8 and September 18.

Mr. Karriem's complaint and his trial testimony make clear that on both September 8 and 18, 1989, he was aware of the "No Parking -- Entrance" sign,

---

[12] Even if section 1-316 is construed as a limitation on the authority granted in section 1-315 (9), as issue that we do not decide, the only effect would be upon the length of the maximum sentence that could be imposed. We note that the regulation itself contains a severability provision. 24 DCMR § 501.10 (1988).

yet knowingly set up his vending stand in violation of it. His primary argument is not that the sign did not exist or apply to the area where he was located, but rather that it had been erected contrary to applicable regulations and that any attempt to enforce it against him was therefore illegal.

By his own admission, Mr. Karriem was operating a vending stand in a designated entrance zone. That fact gave the police officers objective probable cause to arrest him for committing a crime in their presence, regardless of whether or not the sign had been erected improperly. There is no good faith right in the District of Columbia to resist an arrest,[13] and an officer may arrest without a warrant a person who he has probable cause to believe is committing an offense in his presence. D.C. Code § 23-581 (a)(1) (1996). The objective facts known to the police officers on the scene, and confirmed by Karriem when he testified at trial, made clear that Karriem was knowingly operating a vending stand in a marked entrance zone. Because the officers had objective probable cause to arrest Karriem, the trial court correctly held that their intent was irrelevant. *See Whren v. United States*, 517 U.S. 806, 813 (1996).

---

[13] *See* D.C. Code § 22-505 (a) (1996), last sentence.

Similarly, the trial court did not abuse its discretion when it prevented Karriem from questioning the officers about their alleged non-compliance with the MPD General Orders. Karriem claims that he should have been allowed to ask them about their failure to issue him written warnings prior to the 1989 arrests, as the General Orders supposedly provided. However, whether Karriem was falsely arrested in September 1989 is determined under the objective probable cause analysis outlined in *Murphy, supra*, 635 A.2d at 931, and the contents of the General Orders are simply not involved in that calculation. Therefore, any inquiry into the officers' asserted failure to comply with the General Orders would be irrelevant, and the court did not err in refusing to allow Karriem to cross-examine them about that.[14]

III

The District has cross-appealed from the trial court's denial of its motion for judgment n.o.v. with respect to the 1988 arrest. It contends that there was insufficient evidence to support the jury's finding that MPD officers

---

[14] Karriem further suggests that the trial court abused its discretion when it prohibited him from testifying about beatings he allegedly received at other times at the hands of certain police officers. Because the police had objective probable cause to arrest Karriem for vending in an entrance zone on September 8 and 18, the alleged beatings on other dates were also irrelevant.

falsely arrested Mr. Karriem in October 1988. Our standard of review for the denial of a motion for judgment notwithstanding the verdict is whether a jury could reasonably reach a verdict in favor of the non-moving party, having viewed the evidence in the light most favorable to that party. *E.g.*, *District of Columbia v. Cassidy*, 465 A.2d 395, 397-398 (D.C. 1983); *Papanicolas v. Group Hospitalization, Inc.*, 434 A.2d 403, 404 (D.C. 1981). Applying this standard here, we conclude that the District is correct.

Sergeant Gray and Officer Hardy testified that all vendors on the east side of Sixth Street were notified that they would be required to move to the west side of the street on October 22, 1988. Mr. Karriem testified that he willfully ignored Officer Hardy's direction to move to the other side of the street:

> Q. Mr. Karriem, on October 22, 1988, prior to the time that you were arrested, you were told to move from Cramton Auditorium; is that correct?
>
> A. That is correct, sir.
>
> Q. And you were told by a Metropolitan Police officer?
>
> A. That is correct.
>
> * * * * *

Q. Did you move?

A. No, sir.

Viewing this testimony, and all the other evidence, in the light most favorable to Karriem, a reasonable jury would necessarily conclude that Mr. Karriem was violating the law by refusing to comply with lawful police orders to move to the other side of the street. Karriem's own testimony confirms that he was acting in violation of at least 18 DCMR § 2000.2,[15] and possibly D.C. Code § 4-150 as well.[16]

---

[15] 18 DCMR § 2000.2 (1995) provides:

> No person shall fail or refuse to comply with any lawful order or direction of any police officer . . . invested by law with authority to direct, control, or regulate traffic.

[16] D.C. Code § 4-150 (1996) provides:

> Any willful interference with . . . any member of the police force, by any of the persons named in § 4-147 [which includes licensed street vendors], while in official and due discharge of duty, shall be punishable as a misdemeanor.

Even if the jury totally disregarded the District's witnesses and believed only Mr. Karriem himself, it could not reasonably have returned a verdict in his favor. According to his own testimony, Karriem knowingly refused to comply with lawful police orders. That refusal provided an objective basis for the police officers' probable cause determination, and thus as a matter of law their arrest of Mr. Karriem was valid. *See Murphy*, *supra*, 635 A.2d at 931.

When he was arrested in October 1988, Karriem was not charged with refusing to comply with a lawful order, but was charged instead with vending from an oversized stand and storage in a public space. That fact, however, does not help Mr. Karriem. As this court has held:

> [W]here probable cause was lacking to arrest a plaintiff on the announced charge, but where probable cause existed to believe that he committed a different offense proffered by the defense after the fact, the defense can avoid liability if the consequences for the plaintiff probably would have been substantially as unfavorable if he had been arrested on the charge on which the defense seeks to rely after the fact.

Etheredge v. District of Columbia, 635 A.2d 908, 920-921 (D.C. 1993). Thus it does not matter whether Mr. Karriem was arrested for refusing to comply with a lawful police order or for violating the vending regulations; either way, the

arrest was lawful, and Mr. Karriem had no valid false arrest claim against the District.[17] Because the undisputed evidence, viewed in the light most favorable to Mr. Karriem, would preclude any reasonable jury from concluding that the police officers lacked probable cause to arrest him on October 22, 1988, the trial court should have granted the District's motion for judgment notwithstanding the verdict.

IV

In Mr. Karriem's appeal, No. 94-CV-238, that portion of the judgment relating to the 1989 arrests is affirmed. In the District's appeal, No. 94-CV-261, the trial court's denial of the District's motion for judgment n.o.v. on the claim based on the 1988 arrest must be and is hereby reversed.

Affirmed in part and reversed in part.

---

[17] Nor does Karriem make any suggestion that the consequences of the several grounds for arrest probably would have been substantially different, to his detriment. *See Etheredge, supra*, 635 A.2d at 920-921.