Civil Rights
DePaula v. State, 111765
Court of Claims
Judge S. Michael Nadel
Decided July 2, 2009

On the morning of September 30, 2005, in a courtroom at the Queens County Civil Court, the claimant, an attorney, was arrested and detained by a Court Officer. This claim, arising from that incident, is for false arrest and malicious prosecution.[1] Both the claimant and the Court Officer who arrested him testified at trial.

According to the claimant, he arrived at the courtroom, which was the calendar part for the Queens County Civil Court, sometime after 10:00 AM, after the first call of the calendar had taken place. He was seated in the very last row of benches, next to the aisle, awaiting second call, and anticipating having to handle several matters that morning. His cell phone rang and he answered it, talking into it for 15 to 20 seconds. He acknowledged that he knew it was improper to use his phone in the courtroom, and explained he had inadvertently left it on.

While speaking into the phone, the claimant was approached by a Court Officer, who told him to give him the phone. According to the claimant, he responded by saying he was sorry and that he would step out of the courtroom. When the Court Officer again asked him to give him the phone, the claimant gave it to him. The claimant testified that the Court Officer told him he could get the phone back at about 1:00 PM, when court was scheduled to recess, and the Court Officer returned to the front of the courtroom.

According to Mr. DePaula, about 10 minutes later, he noticed the same Court Officer walking down the aisle towards him, and when he arrived beside him he said something to the effect that "you should know better, you're not supposed to use a cell phone in the courtroom." At that point, the claimant said to the Court Officer: "You're just being a prick." According to the claimant, the foregoing exchange between them had been in a conversational tone, but at that point the Court Officer became angry and said to him: "You called me a prick, you're under arrest." Mr. DePaula asked what he was being arrested for, to which the Court Officer replied: "You called me a prick, stand up and put your hands behind your back." Mr. DePaula protested, saying he had matters on the court calendar, asking if he could talk to the Court Officer after they were concluded. The Court Officer again stated: "You called me a prick, you're under arrest." At that point Mr. DePaula stood up and put his hands behind his back. He was handcuffed, taken out of the courtroom, through several halls, and to a security office near the entrance to the courthouse.

According to Mr. DePaula, during both encounters, and during the entire time he had been in the courtroom that morning, court was not in session, although the Judge was seated on the bench and he was conferencing cases off the record. Mr. DePaula maintained that neither encounter between himself and the Court Officer in any way interrupted court proceedings. The claimant remained handcuffed, alone in a very small room with the door closed, for about 15 to 20 minutes, until the Court Officer returned, removed the handcuffs, returned his cell phone, and gave him a summons for disorderly conduct, whereupon he was free to go.

On cross examination, Mr. DePaula conceded he was close enough to the entry doors to the courtroom that he could have left the courtroom when his phone rang, and that he knew answering the phone in the courtroom was a violation of court rules. He denied that he refused to give the Court officer the phone. He denied that he either glared or stared at the Court Officer as he walked towards him down the aisle the second time. He denied that the Court Officer asked him to leave the courtroom before he placed him under arrest and put the handcuffs on him.

Mr. DePaula also denied that he used the word "prick" to provoke the Court Officer. He explained that what he meant by using the word was a "contemptible, disagreeable, obnoxious person."

Court Officer Rey was called as a witness by the defendant. At the time of the incident he had been a Court Officer for 16 years and had been assigned to Queens Civil Court for about 7 years. On that day he had been assigned to go to the calendar part, where he was to assist with litigants in a particular case that might pose a security risk. He arrived in the courtroom at about 10:00 AM. He testified that Court was in session and the Judge was on the bench. After a few minutes he noticed someone at the rear of the courtroom who was speaking on a cell phone. He approached him and told him to stop speaking on the cell phone. Officer Rey testified that Mr. DePaula started to argue with him and did not immediately put the phone away, so he took it from him and told him he could get it back after the calendar call was over. He returned to the front of the courtroom and gave the phone to another Court Officer.

Several minutes later, as he was leaving the courtroom with the other litigants, as he had been assigned, he noticed Mr. DePaula was staring at him. It appeared to Officer Rey that Mr. DePaula was going to say something to him. When he was a few feet from him, Officer Rey said to him: "You should know better." According to Officer Rey, Mr. DePaula then said to him, in a loud nasty tone: "You know something, you're a prick."

Officer Rey testified that he then twice told Mr. DePaula to step out of the courtroom, but that Mr. DePaula did not comply, and that he then placed him under arrest. Officer Rey put handcuffs on Mr. DePaula while they were in the courtroom, and escorted him from the courtroom to a room where he left him for no more than 15 minutes. Officer Rey was given instructions to issue Mr. DePaula a summons, which he did. He charged him with disorderly conduct for causing a disruption in the courtrooom.

Officer Rey reiterated that both encounters with Mr. DePaula took place while Court was in session. He said there were at least 75 people in the courtroom.

On cross examination, Officer Rey testified that once he had taken the phone from Mr. DePaula, he considered the incident over. He denied that he placed him under arrest immediately after Mr. DePaula called him a "prick." He acknowledged that nothing in the summons or in the unusual incident report, refers to asking the claimant to leave the courtroom or that he refused to do so.

Officer Rey also testified that the reason he asked Mr. DePaula to leave the courtroom was because he was creating a disturbance. He said that had Mr. DePaula left the courtroom as he had been asked, his intention was to verbally admonish him and "that would be it." He said the disruption in the courtroom he had referred to was "an individual cursing at a Court Officer in an open courtroom while there was a hearing being conducted."

In addition to the foregoing testimony, the trial record includes the testimony of another witness, and four exhibits: The summons (Claimant's Exhibit 1), a Certificate of Disposition of the trial at which the claimant was acquitted (Claimant's Exhibit 2), that portion of the transcript of the trial which includes the testimony of the Civil Court Judge who was presiding in the calendar part on the morning of the incident (Claimant's Exhibit 3), and the Unified Court System Unusual Occurrence Report prepared by Court Officer Rey (Claimant's Exhibit 4).

The exhibits establish, and the defendant does not dispute, that the claimant was tried for the offense of Disorderly Conduct, Penal Law §240.20(3), and that he was acquitted.

Ms. Lewis was called to testify by the claimant. She was present in the courtroom and was seated on the same bench as the claimant at the time of the incident. She was there on a matter unrelated to the claimant, and she did not know or have any contact with the claimant before that day.

She testified that the claimant's cell phone rang, after which a Court Officer approached him and told him he should not have a phone on in the courtroom. The Officer then confiscated the phone and informed the claimant that it would be returned at the conclusion of the proceedings.

According to Ms. Lewis, sometime after the phone was taken, while the Officer was standing in the well area near the Judge, he started making body movements towards the claimant. The Officer then walked towards the claimant in what she described as a "vexed" manner, and ordered him to get up. While the claimant was in the process of rising, but not yet standing, the Officer grabbed him, stood him up, spun him around, and handcuffed him. Ms. Lewis said that while the claimant was being handcuffed she overheard him say a word that ended in "ick." She did not hear the entire word. She described the claimant's tone of voice as calm and soft as he said the word.

Ms. Lewis said she testified on the claimant's behalf at the criminal trial, and that she was testifying at this trial because the claimant had asked her to. She was permitted, over the defendant's objection, to testify that she had no antipathy toward law enforcement personnel and that several of her close relatives had been police officers for many years.

Upon the foregoing record, the claimant seeks to hold the defendant liable for false arrest and malicious prosecution. Claimant's two theories of liability are separate and distinct causes of action (Broughton v. State of New York, 37 NY2d 451 [1975], cert den sub nom. Schanbarger v. Kellogg, 423 US 929).

The elements of a false arrest cause of action are: (1) the defendant intended to confine claimant; (2) claimant was conscious of the confinement; (3) claimant did not consent to the confinement; and (4) the confinement was not otherwise privileged (Broughton, supra at 456). It is not disputed by that the claimant has established the first three elements of a claim for false arrest. An arrest without a warrant, as is the case here, is presumptively invalid and the burden therefore shifts to the defendant to establish that the arrest was privileged (id. at 458).

Upon the Facts presented, the lawfulness of the claimant's arrest is governed by Criminal Procedure Law §140.10(1)(a), which authorizes a police officer to arrest a person without a warrant for "[a]ny offense when he has reasonable cause to believe that such person has committed such offense in his presence …" The term "reasonable cause" has been "equated with 'probable cause' as that term is used in the Fourth Amendment" of the United States Constitution (People v. Lombardi, 18 AD2d 177, 180, affd 13 NY2d 1014 [1963]).

The defendant's burden, therefore, is to establish that there was probable cause to believe that Mr. DePaula had committed the offense of Disorderly Conduct, as defined in Penal Law §240.20(3): "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof…[i]n a public place, he use[d] abusive or obscene language…"

While the requisite intent might be established by the Court Officer's version of the second encounter with Mr. DePaula, upon consideration of the conflicting testimony, the defendant has not established that the arrest was based upon anything more than the words spoken by the claimant. The preponderance of the credible evidence establishes that Mr. DePaula's utterance was spoken in a conversational tone, and that he did not refuse the Officer's request to leave the courtroom before he was placed under arrest. While not entirely consistent with Mr. DePaula's version of the encounter, the testimony of Ms. Lewis, a disinterested witness, did not support the Officer's version of what occurred. Nor was the Officer's account at trial consistent with his two prior written descriptions of the encounter, made on the date of the incident (the summons [Claimant's Exhibit 1] and the Unusual Occurrence Report [Claimant's Exhibit 4]), neither of which made any reference to his having asked the claimant to leave the courtroom, or that he refused to do so.[2]

Indeed, according to Officer Rey's own words at this trial, the "disruption" he perceived at the time was "an individual cursing at a Court Officer in an open courtroom while there was a hearing being conducted." Upon the Facts established at trial, no actual disruption of any proceedings occurred, nor did the claimant's words and actions provide a basis to perceive an intent to cause such a disruption.[3]

Thus, however reprehensible the utterance Mr. DePaula chose to make, in a courtroom and addressed to a Court Officer, the statement alone did not, as a matter of law, amount to disorderly conduct. The law is well settled that the mere use of "abusive or obscene language" in a public place does not constitute a violation of Penal Law §240.20[3]. "[T]he disorderly conduct statute challenged here applies to words and conduct reinforced by a culpable mental state to create a public disturbance" (People v. Tichenor, 89 NY2d 769, 775 [1997]).

The Court of Appeals has specifically held that the use of obscene language, directed at a Court Officer in a busy courtroom, is not a violation of Penal Law §240.20[3], absent "the essential element of either intent or recklessness" (People v. Tarka, 75 NY2d 996, 997 [1990]).[4]

Accordingly, the arrest and detention of Mr. DePaula were not privileged; the cause of action for false arrest has been established.

The evidence adduced at trial does not, however, establish the cause of action for malicious prosecution. An essential element of malicious prosecution is actual malice (Broughton v. State of New York, supra at 457), which means that the prosecution was commenced by the defendant "due to a wrong or improper motive, something other than a desire so see the ends of justice served" (Nardelli v. Stamberg, 44 NY2d 500, 503 [1978]). No evidence adduced at trial supports that conclusion.

A conference is hereby scheduled for July 15, 2009 at 10:00 AM, for the purpose of ascertaining whether any discovery pertaining to the issue of damages is necessary, and to discuss the scheduling of a trial on the issue of damages.

LET INTERLOCUTORY JUDGMENT BE ENTERED ACCORDINGLY.

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1. The claimant has not pursued the cause of action in the claim for violation of his civil rights.

2. The testimony elicited at claimant's criminal trial of the Judge presiding in Civil Court on the day of the incident (Claimant's Exhibit 3) was inconclusive as to whether a disturbance occurred in his courtroom. The substance of his testimony was that he was unaware of any disturbance, but that he was presiding over a busy courtroom. From his testimony it is not possible to ascertain whether court was or was not actually in session at any particular time, since he explained it was his practice during a calendar call to also conduct conferences off the record while he was seated on the bench.

3. Having accepted the claimant's version of events, it is not necessary for the Court to address the defendant's essential argument in support of its contention that there was probable cause for the arrest—that Officer Rey had no choice but to arrest the claimant. Nonetheless, the Court deems it appropriate to note that it is not for this Court, in this context, to suggest what this Court Officer ought, or ought not, to have done. The experience of this Court over the years (in several capacities) has included contact with numerous Court Officers whose performance has consistently exceeded the highest levels of professionalism and dedication to their obligation to maintain the orderly conduct of court proceedings and to assure the safety of the public and court personnel. That professionalism and dedication has been manifested across a broad spectrum of activity, ranging from the often mundane tasks attendant upon enabling a busy court to function efficiently and free from disturbance, to acts of extraordinary heroism and valor in order to protect human life in the face of acts of international terror. The role of this Court in this case is to determine, based upon the evidence adduced at the trial of this claim and in accordance with well established principles of law, whether there was probable cause to arrest this claimant for disorderly conduct.

4. According to an article in the New York Law Journal which reported the Court of Appeals decision in Tarka, the plaintiff in that case, while seated in the audience during a session of Manhattan Criminal Court "became 'very loud'… . [and she used] an obscenity toward the officers" (NYLJ 5/9/90, p. 1, col. 6).