

**ROSARIO ANGELOPOULOS V. LAZARUS PA., INC.
AND RICH'S DEPARTMENT STORES, INC.**

Retail Theft Act-Detention of Suspected Shoplifter

1. A merchant who has probable cause may detain a suspect in a reasonable manner for a reasonable period of time for any or all of the following six purposes:

- 1) identification,
- 2) verification of identification
- 3) discovery of unpurchased merchandise
- 4) recovery of same
- 5) informing a peace officer, or
- 6) institution of criminal proceedings.

2. The use of handcuffs to detain a person suspected of retail theft is permissible only so long as the handcuffs are used to accomplish one or more of the six enumerated justifications of a detention.

3. It is not permissible to use handcuffs to coerce a signed confession.

4. Jury's finding that Defendant's detention of Plaintiff was done in a reasonable manner, for a reasonable time and for a proper purpose, was so contrary to the evidence as to shock one's sense of justice, when Defendant held Plaintiff for fifty-five minutes for the purpose coercing her to sign a confession.

(Shannon F. Barkley)

James F. Rosenberg and Robert L. Allman for Plaintiff.
Gerard J. Cipriani and Stephen A. Hall for Defendants.
No. GD 02-5223. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division

OPINION

Penkower, J., August 31, 2004-This action against Lazarus Pa., Inc. and Rich's Department Stores, Inc. arises out of Plaintiff Rosario Angelopoulos's detention for suspicion of shoplifting at a Lazarus department store. The case went to the jury on claims of false imprisonment and battery. The jury found for Defendants on both counts. Plaintiff filed a Motion for Post-Trial Relief, seeking a new trial or judgment notwithstanding the verdict. After concluding that the verdict was against the weight of the evidence, I granted a new trial.

On October 29, 2001, Plaintiff was shopping at the Lazarus department store located in the South Hills Village Mall. While shopping, she approached a display of Godiva chocolates which

included one box of chocolates that, according to her testimony, did not have a lid or a ribbon and the cellophane was not sealed. She took one piece of candy and ate it. She then continued to shop in the store and returned to take another piece of candy from the Godiva chocolate display. In neither instance did she pay, or offer to pay, for the pieces of chocolate that she consumed. Several minutes later, Michael Demicco, a loss prevention associate for Lazarus, followed by Janet Lesure, a trainee for loss prevention, approached Mrs. Angelopoulos. Mr. Demicco requested that Mrs. Angelopoulos follow him to the loss prevention office located in the Lazarus store. Mrs. Angelopoulos complied. Mr. Demicco and Ms. Lesure searched Mrs. Angelopoulos's purse and bags and Ms. Lesure performed a search of her body. Mrs. Angelopoulos was then handcuffed to a table affixed to the floor. Her identification documentation and her Lazarus credit card were taken from her purse.

Mr. Demico presented Mrs. Angelopoulos with a statement of admission. He completed her name and address and the dollar amount of the merchandise allegedly taken by Mrs. Angelopoulos. Only the signature line was blank. Mrs. Angelopoulos objected to the admission form and asked to see the store manager. Mr. Llewellyn, Mr. Demicco's supervisor, entered the room and agreed to find the store manager. He returned, accompanied by Patty Connelly, a store manager. Mrs. Angelopoulos asked to have the handcuffs removed and Ms. Connelly indicated that she did not have the power to have the handcuffs removed and that it was the policy of the loss prevention group to handcuff everyone suspected of shoplifting.

After repeated refusals to sign the admission form, Mrs. Angelopoulos ultimately did agree to sign the form provided that Mr. Demicco wrote on the form, "Took 2 pieces of chocolate out of box and ate it without purchase. Foil was cracked." She was then released from the handcuffs. Mr. Demicco then told her that Lazarus must take her photograph, to which she objected. She then scratched out her signature from the admission form. Throughout the detention process, Mrs. Angelopoulos was kept handcuffed continuously for a period of approximately 50 to 55 minutes. With respect to liability, the jury was asked to answer the following written interrogatories:

False imprisonment

Question 1.

Do you find that Defendant intentionally caused the confinement of Plaintiff against her will? (Jury's answer: Yes)

Question 2.

Do you find that Defendant had probable cause to believe that Plaintiff had committed or was committing theft of merchandise from the store? (Jury's answer: Yes)

Question 3.

Do you find that Defendant's detention of Plaintiff was done in a reasonable manner, for a reasonable time, and for a proper purpose? (Jury's answer: Yes)

BATTERY**Question 4.**

Do you find that Defendant committed a battery against the Plaintiff? (Jury's answer: No)

The Superior Court, in *Campagna v. Rogan*, 829 A.2d 322 (Pa. Super. 2003), set forth the grounds for granting a new trial: "A new trial will be granted on the grounds that the verdict is against the weight of the evidence where the verdict is so contrary to the evidence it shocks one's sense of justice."

Citations omitted. In *Chiaverini v. Sewickley Valley Hospital*, 598 A.2d 1029 (Pa. Super. 1991), the Court noted, "[t]he decision to grant a new trial is within the sound discretion of the trial court, and that court's decision will be overturned on review only if we determine that the court committed a clear abuse of discretion or error of law." Citations omitted.

The Retail Theft Act provides a privilege for a retailer who detains a person suspected of committing retail theft, d) Detention.-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.C.S. 3929(d).

In her post trial motion, Plaintiff does not take issue with the jury's finding of probable cause. However, the inquiry does not end there. The Act provides that a merchant who has probable cause to believe that retail theft has occurred may detain a

suspect in a reasonable manner for a reasonable time for any or all of the following six purposes:

- 1) identification
- 2) verification of identification
- 3) discovery of unpurchased merchandise
- 4) recovery of same
- 5) informing a peace officer, or
- 6) institution of criminal proceedings.

Beyond the requirement of probable cause, the Act clearly places limitations on a retailer's right to detain and manner of detaining an individual suspected of retail theft. First, the detention of the suspect must be done in a reasonable manner. Secondly, the detention must be for a reasonable time. Thirdly, the purpose of the detention must be limited to one or more of those enumerated in the Act.

Initially, Plaintiff argued that Lazarus's policy of handcuffing all suspected shoplifters is in violation of the Retail Theft Act. Plaintiff submits that the Lazarus Loss Prevention Training Bulletin establishes a policy that violate the law. The bulletin provides: (3) Handcuffing Policy. It is within the discretion of the Loss Prevention associate to handcuff a suspect at point of contact or during the escort to the loss prevention office only after all requirements of the apprehension guidelines have been met. It is mandatory that all suspects are handcuffed in the office either to the available bar or ring or with his/her arms behind his/her back. Exceptions for those individuals with physical limitations must be noted within the case narrative. Furthermore under the Policy Statement, it reads, "Failure to use handcuffs during the detainment will result in corrective counseling." There was no dispute that it was Lazarus's policy to handcuff any person suspected of retail theft.

The Court cannot conclude that Lazarus's handcuffing policy is per se illegal. To the extent that a retail institution reasonably concludes that handcuffing is necessary to pursue one of the enumerated justifications under the Act, the retailer has not overstepped the statutory bounds. For example, if it is necessary to handcuff a suspect while verifying their identity, such action is not a violation of the Retail Theft Act. Also, to the extent that handcuffing is necessary for safety reasons while the retailer is pursuing one of the six objectives of the act, no violation will have occurred. Secondly, Plaintiff argued that because Mrs. Angelopoulos was detained for nearly one hour, Lazarus is in violation of the Act. Plaintiff cites to the Restatement (2nd) of Torts, 120, comment A. which states, "[t]he privilege is one of detention on the premises for only the time necessary for a reasonable investigation. Investigation

does not mean discovery of all facts, but only such inquiry as may reasonably be made under the circumstances, promptly and without undue detention. What is a reasonable time will depend upon all of the circumstances-. Normally, such a reasonable time will be short.

Fifteen minutes may be too long where all that is necessary is to ask a clerk whether the other has paid. If the detention is continued beyond the time reasonably necessary for investigation, the actor is liable for the excessive detention.

The Court cannot conclude that an almost one hour detention is per se unreasonable and, therefore, a violation of the Retail Theft Act. The Court is not prepared to issue a blanket time limit with regard to investigations and detentions. Retailers must be permitted a certain amount of flexibility with regard to the time frame necessary to carry out detentions authorized by the Act.

Each case must be examined according to its own circumstances. Finally, Plaintiff argued that the presentation of a statement of admission form to Mrs. Angelopoulos for her signature is per se unlawful under the Retail Theft Act. There is no reported authority for this proposition. The admission form testimony is but one of many factors for the Court to consider in evaluating Plaintiff's request for a new trial. Having declined to adopt certain per se, bright line rules regarding investigation and detention of retail theft suspects, the Court must then examine the facts and circumstances in their totality.

Regarding the events of October 29, Mrs. Angelopoulos testified that she was shopping at the South Hills Village on that day. She entered the Lazarus department store and purchased and/or returned certain items. She then noticed a Godiva chocolate display and one small box of chocolate with no lid and with the cellophane sliced and she assumed that it was a free sample. She testified that she took one piece of chocolate and ate it. She later took one additional piece of chocolate and ate it. She testified that she was then approached by a man, later known to be Michael Demicco, a loss prevention associate for Lazarus, who escorted her into an office room. She was searched and her belongings were taken. She was then handcuffed to a bar in the room.

Mrs. Angelopoulos testified that she was presented with a statement of admission. [Trial Transcript, p. 27]. The following exchange took place on direct examination:

A. I said, I will pay for the candy. Please let me go. Take this off.

Q. Did they respond to that?

A. Yes. He said, all right. All you have to do is sign the paper.

Q. What paper are you referring to?

A. This one paper where it said that I had shoplifted.

The testimony continued,

Q. What was your response to them when they presented it [the statement of admission] to you?

A. I kept telling them, I did not shoplift. I did not shoplift. I kept saying that. Hundreds of times I said, I did not shoplift. It was open and that's why I took the candy, but I'll pay for it. Just let me out of these handcuffs.

Q. And would they let you out of the handcuffs?

A. So Mr. Demicco would push the paper toward me and said, Well, all you have to do is just sign, and we'll take the handcuffs off of you.

Q. And did you agree to sign?

A. No. I said no. They didn't realize no matter what I said, I wanted to pay for it. I told them I did not shoplift-. [Trial Transcript, pp. 28-29] Ultimately, after nearly one hour, she agreed to sign the statement so long as certain qualifying language was inserted. At that point she was released from the handcuffs and was free to go. She then quickly changed her mind and scratched off her signature from the document.

Mr. Michael Demicco, a loss prevention specialist at the Lazarus department store in question, testified at some length regarding the events of October 29, 2001. He testified that he had received a certification authorizing him to detain, search, handcuff and interview people. [Trial Transcript, p. 12]. He testified that he received certain guidelines from his manager regarding how to respond to a suspected shoplifter.

With respect to handcuffing and the presentation of an admissions statement to a suspected shoplifter, Mr. Demicco testified about the general policy. He explained that suspected shoplifters are handcuffed for several reasons. One is to identify the suspect. Another is to afford Lazarus the opportunity to recover any merchandise. With regard to Lazarus's policies, the following exchange took place:

Q. And the final purpose that you talked about for taking people to the apprehension room and handcuffing them to the table is

because you want them to admit that they shoplifted?

A. It's not correct. It's up to them if they won't admit it.

Q. That's the final purpose to get them to sign a form?

A. No. It's entirely up to them. I'm not forcing them to do anything. [Trial Transcript, p. 32].

However, Mr. Demicco continued about his general policy with regard questioning of customers that may have taken merchandise:

Q. You don't bring a phone into that room, do you?

A. No. Nobody has ever had to -

Q. And you don't tell them if they have a right to call a lawyer, do they?

A. No.

Q. You don't tell people, you can call your family and tell them where you are?

A. I don't tell them that.

Q. You don't let people go to the bathroom.

A. That's correct.

Q. You don't tell people when they're going to be released.

A. Well, I tell them as long as I get my general information and that's basically it, if they want to admit to it and sign it, that's fine if not, then they're going to be released.

Mr. Demicco described the events of October 29, 2001. He testified that noticed Mrs. Angelopoulos on the closed circuit TV and saw her take two pieces of candy out of the box and eat them. He testified that he detained her and that she was searched and patted down and her belongings looked through. He testified that he handcuffed her to the table for approximately 50 to 55 minutes. [Trial Transcript, p. 6].

Q. Can we agree that after you presented her with the statement of admission form she, at least at first, didn't want to sign it?

A. That's true.

Q. Because she said she wasn't shoplifting. She hadn't done anything wrong?

A. That's true.

Q. Then you wouldn't release her from the handcuffs as she asked, correct?

A. Initially. [Trial Transcript, p. 71]

As stated above, the Court is not prepared to issue a blanket rule striking down a policy of handcuffing suspected shoplifters or striking down detentions that last for more than a specific amount of time. However, in the present case, based on the totality of the facts and circumstances, the Court concludes that Lazarus's policies and practices with regard to retail theft, as applied to Mrs. Angelopoulos on October 29, 2001, were in violation of the Retail Theft Act.

The Court reaches this conclusion based upon a confluence of factors, all of which were in play on the day in question: the handcuffing of Mrs. Angelopoulos the refusal to release Mrs. Angelopoulos from the handcuffs once she objected the use of the handcuffs and detention to accomplish a purpose beyond one of the six reasons enumerated in the Retail Theft Act the duration of the detention the presentation of the admission form and the refusal of Lazarus to release Mrs. Angelopoulos when she stated that she would not sign the admission form, even though there was no longer any reason to continue to detain her for one of the enumerated purposes under the Act.

As explained previously, the use of handcuffs is not a per se violation of the Retail Theft Act so long as the handcuffs are used to accomplish one or more of the six enumerated justifications of a detention.

It is apparent that Lazarus handcuffed Mrs. Angelopoulos initially for legitimate purposes. However, once they were able to identify her (they had her identification documentation and her Lazarus charge card), and confirm by searching her that she did not possess any unpurchased merchandise (she was only observed eating two pieces of chocolate), there was no longer any reason to detain her, and unquestionably no reason to keep her handcuffed.

Fifty to fifty-five minutes appears to be an unusually long period of time under the circumstances for a few ministerial acts. See Restatement (2nd) of Torts, 120, comment A, page 6, supra.

Lazarus had no intention of informing a peace officer at that time nor did they intend to detain her for the purpose of instituting criminal proceedings at that time.

There no longer existed any statutorily permitted reasons to continue her detention. At that point, Mrs. Angelopoulos should have been released from her handcuffs as she had repeatedly requested. Once they refused to release her, as testified to by Mr. Demicco [See, Trial Transcript, p. 71], the handcuffing went beyond the bounds of the principal reasons behind the Act, and beyond the bounds of decency.

To continue to keep her handcuffed, while presenting to her for her signature what is essentially a confession form, is clearly unjustified.

Mrs. Angelopoulos testified that she was told by Lazarus employees that she must sign the admission form in order to be released from her detention. [See Trial Transcript, pp. 28-9].

As a matter of company policy, Mr. Demicco appeared to state otherwise. However, when applied to Mrs. Angelopoulos's case, he did testify that Mrs. Angelopoulos stated that she would not sign the admission form, that she asked to be released from the handcuffs, and that he would not, at least initially, release her from her handcuffs. [Trial Transcript, p. 71].

Once Lazarus refused to release Mrs. Angelopoulos from her handcuffs, despite her protestations that she would not sign the form, the detention became coercive and well beyond any legitimate policies envisioned by the Act.

The very act of handcuffing is a serious limitation on one's individual liberty. A handcuffed individual is not free to come and go or to leave the interrogation room for any reason. In this case, the individual is not free to use a telephone or take care of certain personal needs, as testified to by Mr. Demicco.

When handcuffing is combined with the other factors cited, it is clear that the detention crossed the line from investigation and safety to coercion and heavy-handedness.

Accordingly, the Court concludes that the jury's affirmative answer to Question #3, i.e., whether the detention was done in a reasonable manner, for a reasonable time, and for proper purpose, was so contrary to the evidence as to shock one's sense of justice. A new trial is therefore warranted.