

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5194

Summary Calendar

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EDNA BETH KNIGHTON and ROBERT KNIGHTON,  
Plaintiffs-Appellants,  
versus  
DILLARD DEPARTMENT STORES, INC.,  
Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
(92-CV-1368)

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(January 21, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

This diversity jurisdiction case requires us to determine whether the Knightons' claims against Dillard for false arrest and malicious prosecution should have survived a motion for summary judgment.

I.

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Caddo Parish Deputy Sheriff J.D. Lindsey worked as a security officer at Dillard's retail store in South Park Mall in Shreveport, Louisiana. On June 19, 1991, he arrested Edna Beth Knighton for stealing a dress. The store referred the matter to the Caddo Parish District Attorney's Office to determine the merits of the charge.

After reviewing the arrest report, the District Attorney's Office decided to prosecute the case as a misdemeanor theft pursuant to its policy of prosecuting all shoplifting cases with merit. The state prosecuted Knighton for misdemeanor theft in the First Judicial District Court of Louisiana, Caddo Parish, Louisiana. After a bench trial, Knighton was acquitted.

On June 17, 1992, the Knightons filed a civil action against Dillard in the First Judicial District Court, Caddo Parish, Louisiana, claiming false arrest and malicious prosecution. On July 16, 1992, Dillard removed the case to the U.S. District Court for the Western District of Louisiana. The court granted a motion for summary judgment. We affirm.

## II.

In determining whether summary judgment was proper, we review the case de novo, and review fact questions in the light most favorable to the nonmovant. Walker v. Sears, Roebuck & Co., 853 F.2d 355, 358 (5th Cir. 1988).

## III.

A merchant cannot arrest a suspected shoplifter; only a peace officer can make the arrest. La. Code Crim. P. art. 215.

Dillard's security officer arrested Knighton, but he did so as a deputy sheriff, not as a store employee. In addition, an independent prosecutorial inquiry precludes an action for false arrest. Rodriguez v. Richey, 556 F.2d 1185, 1193 (5th Cir. 1977) (en banc), cert. denied, 434 U.S. 1047 (1978). Assistant District Attorney Kenneth B. Pennywell made an independent determination of probable cause for the arrest. The Knightons cannot maintain that Dillard falsely arrested Knighton.

Even if the Knightons characterized their claim as one for unlawful imprisonment or detention, the same result obtains. Deputy Sheriff Lindsey had reasonable cause to detain Knighton because he had interviewed employees who had observed Knighton and he had seen her suspicious movements himself. See La. Code Crim. P. art. 215 (requiring "reasonable cause" to detain for questioning).

#### IV.

A malicious prosecution claim must involve: (1) commencement of a criminal or civil judicial proceeding; (2) the defendant in the malicious prosecution case having brought the original criminal or civil case; (3) termination of the original proceeding in favor of the plaintiff in the malicious prosecution case; (4) the absence of probable cause in the original proceeding; (5) the presence of malice in bringing the original case; and (6) damages. Johnson v. Pearce, 313 So.2d 812, 816 (La. 1975).

This being said, where the defendant in a malicious prosecution case simply presents facts to the authorities in good

faith and a prosecutor makes an independent decision to bring a criminal charge, elements (2), (4), and (5) are specifically negated and the malicious prosecution case dissolves. Stephens v. Brown & Root, Inc., 338 F. Supp. 680, 682 (W.D. La. 1971) (quoting Eusant v. Unity Indus. Life Ins. & Sick Ben Ass'n, 196 So. 554 (La. 1940)).

Assistant District Attorney Pennywell reviewed the facts and made an independent decision to prosecute. He has stated that he made this decision pursuant to office policy, and that Dillard did not press for prosecution or otherwise attempt to compromise his independent review of the case. The Knightons have proffered no evidence to rebut these facts. The malicious prosecution claim is defeated by the presence of independent prosecutorial review.

AFFIRMED.