with eerily similar facts, see Deuser v. Vecera, 139 F.3d 1190 (8th Cir.1998) (negligence claim against United States for negligence of park rangers who had briefly detained plaintiff's decedent for public drunkenness, but not arrested him, and then released him in a parking lot from which he wandered onto interstate where he was killed by a passing motorist).

2. What if the plaintiff, a diabetic who is unconscious from insulin shock, is wrongfully arrested and confined in jail overnight in the belief that he is drunk, but is released before he regains consciousness. Is there a tort? See Prosser, False Imprisonment: Consciousness of Confinement, 55 Colum. L. Rev. 847 (1955); Restatement (Second) of Torts § 42 (1965).

3. Called upon to make an emergency evaluation, a doctor diagnoses a person as mentally ill and has her detained in a mental institution. Is this false imprisonment? See Williams v. Smith, 179 Ga.App. 712, 348 S.E.2d 50 (1986) (no false imprisonment if statutory commitment procedures were followed even if doctor was negligent in diagnosis); Foshee v. Health Mgt. Assocs., 675 So.2d 957 (Fla.App.1996) (false imprisonment if statutory commitment procedures were not followed by nurse who physically prevented patient from leaving a psychiatric facility and coerced her into signing voluntary admission papers). What if a hospital detains a woman for two hours while its staff initiates involuntary commitment proceedings because she is agitated and threatened suicide? Riffe v. Armstrong, 197 W.Va. 626, 477 S.E.2d 535 (1996) (hospital's action justified in light of plaintiff's condition upon arrival). Note that these cases are based on state statutes in derogation of the common law that require a showing of "danger to self or others," but which vary in specifics like who can initiate the emergency hold, the extent of judicial oversight, and the rights of patients during the hold.

Hardy v. LaBelle's Distributing Co.

Supreme Court of Montana, 1983.
203 Mont. 263, 661 P.2d 35.

GULBRANDSON, JUSTICE. * * * Defendant, LaBelle's Distributing Company (LaBelle's) hired Hardy as a temporary employee on December 1, 1978. She was assigned duty as a sales clerk in the jewelry department.

On December 9, 1978, another employee for LaBelle's, Jackie Renner, thought she saw Hardy steal one of the watches that LaBelle's had in stock. Jackie Renner reported her belief to LaBelle's showroom manager that evening.

On the morning of December 10, Hardy was approached by the assistant manager of LaBelle's jewelry department and told that all new employees were given a tour of the store. He showed her into the showroom manager's office and then left, closing the door behind him.

There is conflicting testimony concerning who was present in the showroom manager's office when Hardy arrived. Hardy testified that David Kotke, the showroom manager, Steve Newsom, the store's loss prevention manager, and a uniformed policeman were present. Newsom

and one of the policemen in the room testified that another policeman, instead of Kotke, was present.

Hardy was told that she had been accused of stealing a watch. Hardy denied taking the watch and agreed to take a lie detector test. According to conflicting testimony, the meeting lasted approximately from twenty to forty-five minutes.

Hardy took the lie detector test, which supported her statement that she had not taken the watch. The showroom manager apologized to Hardy the next morning and told her that she was still welcome to work at LaBelle's. The employee who reported seeing Hardy take the watch also apologized. The two employees then argued briefly, and Hardy left the store.

Hardy brought this action claiming that defendants had wrongfully detained her against her will when she was questioned about the watch.

On appeal Hardy raises basically two issues: (1) Whether the evidence is sufficient to support the verdict and judgment and (2) Whether the District Court erred in the issuance of its instructions.

The two key elements of false imprisonment are the restraint of an individual against his will and the unlawfulness of such restraint. [Cc] The individual may be restrained by acts or merely by words which he fears to disregard. [Cc]

Here, there is ample evidence to support the jury's finding that Hardy was not unlawfully restrained against her will. While Hardy stated that she felt compelled to remain in the showroom manager's office, she also admitted that she wanted to stay and clarify the situation. She did not ask to leave. She was not told she could not leave. No threat of force or otherwise was made to compel her to stay. Although she followed the assistant manager into the office under pretense of a tour, she testified at trial that she would have followed him voluntarily if she had known the true purpose of the meeting and that two policemen were in the room. Under these circumstances, the jury could easily find that Hardy was not detained against her will. * * *

[The court also found that the District Court did not err in issuance of jury instructions on the law of false imprisonment, and affirmed the District Court's judgment in favor of defendants based on the jury's verdict.]

NOTES AND QUESTIONS

1. The Restatement suggests that, in addition to physical barriers, a false imprisonment can be accomplished by force, threat of force, duress, or asserted legal authority. Restatement (Second) of Torts §§ 37–41 (1965).

2. False imprisonment has not been extended beyond such direct duress to person or to property. As the principal case shows, persuading someone it is in her best interest to stay is not enough. If the plaintiff submits

merely to persuasion, and accompanies the defendant to clear himself of suspicion, without any implied threat of force, the action does not lie. James v. MacDougall & Southwick Co., 134 Wash. 314, 235 P. 812 (1925). Suppose the defendant says to the plaintiff, "You must remain in this room, or I will never speak to you again"? Compare Fitscher v. Rollman & Sons Co., 31 Ohio App. 340, 167 N.E. 469 (1929), where defendant threatened to make a scene on the street unless plaintiff remained.

3. Seizing of plaintiff's property sometimes may provide the "restraint" necessary to constitute false imprisonment. See Fischer v. Famous-Barr Co., 646 S.W.2d 819 (Mo.App.1982), where plaintiff set off the security alarm when exiting a store because the salesperson forgot to remove the sensor tag from clothing she had purchased. Because an employee of the store took possession of the bag containing her purchases, spoke harshly to her, and ordered her to return to the fourth floor where she had made her purchase, plaintiff felt she had to follow. Compare Marcano v. Northwestern Chrysler-Plymouth Sales, Inc., 550 F.Supp. 595 (N.D.Ill.1982) (applying Illinois law), where plaintiff went to a car dealership to discuss a dispute over payments on her loan and voluntarily gave her keys to the dealer so he could inspect the car. The dealer locked the car and kept the keys. Plaintiff stayed at the dealership for five hours. The court held that there was no false imprisonment because she could have left and because the intention of defendant was not to confine her personally, but only to keep the car.

4. An employee is suspected of stealing property from her employer and is told a trip to her home is necessary to recover the property. If the employee feels mentally compelled for fear of losing her job to go in an automobile with her supervisor to her home, has she been confined involuntarily? See Faniel v. Chesapeake & Potomac Tel. Co., 404 A.2d 147 (D.C.App.1979) (fear of losing one's job is a powerful incentive, but it does not render behavior involuntary).

5. It is generally agreed that false imprisonment resembles assault, in that threats of future action are not enough. Thus the action does not lie where the defendant merely threatens to call the police and have the plaintiff arrested unless he remains. Sweeney v. F.W. Woolworth Co., 247 Mass. 277, 142 N.E. 50 (1924).

6. On the shopkeeper's privilege to detain a suspected thief, see Bonkowski v. Arlan's Department Store, page 133.

Enright v. Groves

Colorado Court of Appeals, 1977.
39 Colo.App. 39, 560 P.2d 851.

SMITH, JUDGE. Defendants Groves and City of Ft. Collins appeal from judgments entered against them upon jury verdicts awarding plaintiff $500 actual damages and $1,000 exemplary damages on her claim of false imprisonment * * *.

The evidence at trial disclosed that on August 25, 1974, Officer Groves, while on duty as a uniformed police officer of the City of Fort

Collins, observed a dog running loose in violation of the city's "dog leash" ordinance. He observed the animal approaching what was later identified as the residence of Mrs. Enright, the plaintiff. As Groves approached the house, he encountered Mrs. Enright's eleven-year-old son, and asked him if the dog belonged to him. The boy replied that it was his dog, and told Groves that his mother was sitting in the car parked at the curb by the house. Groves then ordered the boy to put the dog inside the house, and turned and started walking toward the Enright vehicle.

Groves testified that he was met by Mrs. Enright with whom he was not acquainted. She asked if she could help him. Groves responded by demanding her driver's license. She replied by giving him her name and address. He again demanded her driver's license, which she declined to produce. Groves thereupon advised her that she could either produce her driver's license or go to jail. Mrs. Enright responded by asking, "Isn't this ridiculous?" Groves thereupon grabbed one of her arms, stating, "Let's go!" * * *

She was taken to the police station where a complaint was signed charging her with violation of the "dog leash" ordinance and bail was set. Mrs. Enright was released only after a friend posted bail. She was later convicted of the ordinance violation. * * *

Appellants contend that Groves had probable cause to arrest Mrs. Enright, and that she was in fact arrested for and convicted of violation of the dog-at-large ordinance. They assert, therefore, that her claim for false imprisonment or false arrest cannot lie, and that Groves' use of force in arresting Mrs. Enright was permissible. We disagree.

False arrest arises when one is taken into custody by a person who claims but does not have proper legal authority. W. Prosser, Torts § 11 (4th ed.). Accordingly, a claim for false arrest will not lie if an officer has a valid warrant or probable cause to believe that an offense has been committed and that the person who was arrested committed it. Conviction of the crime for which one is specifically arrested is a complete defense to a subsequent claim of false arrest. [Cc]

Here, however, the evidence is clear that Groves arrested Mrs. Enright, not for violation of the dog leash ordinance, but rather for refusing to produce her driver's license. This basis for the arrest is exemplified by the fact that he specifically advised her that she would either produce the license or go to jail. We find no statute or case law in this jurisdiction which requires a citizen to show her driver's license upon demand, unless, for example, she is a driver of an automobile and such demand is made in that connection. * * *

Here, there was no testimony that Groves ever even attempted to explain why he was demanding plaintiff's driver's license, and it is clear that she had already volunteered her name and address. Groves admitted that he did not ask Mrs. Enright if she had any means of

identification on her person, instead he simply demanded that she give him her driver's license.

We conclude that Groves' demand for Mrs. Enright's driver's license was not a lawful order and that refusal to comply therewith was not therefore an offense in and of itself. Groves was not therefore entitled to use force in arresting Mrs. Enright. Thus Groves' defense based upon an arrest for and conviction of a specific offense must, as a matter of law, fail. * * *

Judgment affirmed.

NOTES AND QUESTIONS

1. It is not necessary that the defendant be an officer to assert authority of law. Suppose a filling station attendant asserts legal authority to detain the plaintiff, believing he had stolen cash from the station? Daniel v. Phillips Petroleum Co., 229 Mo.App. 150, 73 S.W.2d 355 (1934). (upholding jury verdict for plaintiff). Plaintiff, alighting from defendant's train, fell and broke his leg. Defendant's conductor told plaintiff that the law required him to remain and fill out a statement about the accident. Plaintiff did so, and his cab was held for fifteen or twenty minutes, during which plaintiff was in considerable pain, while the statement was filled out and signed. This was held to be false imprisonment. Whitman v. Atchison, T. & S.F.R. Co., 85 Kan. 150, 116 P. 234 (1911).

2. A private citizen who physically aids a police officer in making a false arrest can be held liable to plaintiff for false imprisonment. If, however, the police officer requests assistance, the private citizen will not be liable unless he knows the arrest is an unlawful one. See Restatement (Second) of Torts §§ 45A and 139 (1965).

3. Merely providing information to the police, even if it turns out to be incorrect information, is not enough to support a claim of false imprisonment. Holcomb v. Walter's Dimmick Petroleum, Inc., 858 N.E.2d 103, 107 (Ind. 2006) ("Liability will not be imposed when the defendant does nothing more than detail his version of the facts to a policeman and ask for his assistance, leaving it to the officer to determine what is the appropriate response, at least where his representation of the facts does not prevent the intelligent exercise of the officer's discretion.") See also Highfill v. Hale, 186 S.W.3d 277 (Mo. 2006) (because deputy's decision to arrest neighbors for stalking was based at least partly on deputy's own investigation, complainant was not liable).

Whittaker v. Sandford

Supreme Judicial Court of Maine, 1912.
110 Me. 77, 85 A. 399.

[Plaintiff was a member and her husband was a minister of a religious sect, of which defendant was the leader. The sect had a colony in Maine and at Jaffa (now part of Tel Aviv), the latter of which plaintiff had joined. Plaintiff decided to abandon the sect and to return to