Cleveland State Law Review

Volume 16
Issue 3 *Police Tort Liability (Symposium)*

Article 4

1967

Police Liability for False Arrest or Imprisonment

John M. Manos

Police Liability for False Arrest or Imprisonment

*John M. Manos**

IF INDEED, THE POLICEMAN'S LOT is not a happy one,[1] it is certainly becoming a most sophisticated and complicated one. With swirling currents of thought eddying through the United States Supreme Court, resulting in the overthrow of long-established constitutional standards, the consequent code of conduct for the policeman has changed radically. The newly expanded duty to recognize and to respect a full panorama of constitutional rights of an accused has excited much comment, favorable and critical. But of much more personal concern to the individual policeman is the potential liability he may face in an action for damages, particularly for false imprisonment. This liability may spring from the ancient common law concept of false imprisonment or, its sister action, malicious prosecution, or from the relatively recent Civil Rights Statutes.[2]

False imprisonment has been defined by the Ohio Supreme Court as "an unlawful detention or illegal deprivation of one's liberty." [3] Thus, the word "false" is synonymous with "unlawful." The following is a complete definition of false imprisonment as defined by the American Law Institute: [4]

> An act which, directly or indirectly, is a legal cause of a confinement of another within boundaries fixed by the actor for any time, no matter how short in duration, makes the actor liable to the other irrespective of whether harm is caused to any legally protected interest of the other, if the act is intended so to confine the other or a third person, and the other is conscious of the confinement, and the confinement is not consented to by the other, and the confinement is not otherwise privileged.[5]

It is difficult to arrive at a valid distinction between false arrest and false imprisonment. The two causes of action are practically indistinguishable. When there is a false arrest there is a false imprisonment, but in a false arrest detention is based on asserted legal authority to enforce the processes of the law. A false imprisonment can arise between private persons for a private end with no relevance to the administration of criminal law. Our primary concern here, of course, is solely with a detention under color of law. This article purports to describe the var-

---

* Judge, Court of Common Pleas of Cuyahoga County (Cleveland), Ohio.

1 Gilbert & Sullivan, The Pirates of Penzance.

2 42 U.S.C.A. §§ 1983, 1985 (1964).

3 Brinkman v. Drolesbaugh, 97 Ohio St. 171, 119 N.E. 451 (1918).

4 *Cf.*, also, Prosser, Torts 55 (3d ed. 1964).

5 1 Restatement, Torts, 66 § 35 (1934).

ious situations in which an officer of the law[6] can expose himself to liability for false imprisonment.[7]

An oral declaration of an arrest is not necessary in order to constitute an imprisonment. If the person arrested understands that he is under restraint by an officer and submits to this restraint, then he is imprisoned. Conversely, an oral declaration of an arrest with a submission to such restraint constitutes a false imprisonment. The Court in *Johnson v. Norfolk & W. Ry. Co.* stated as follows:

> Any exercise of force, or express or implied threat of force, by which in fact any person is deprived of his liberty, compelled to remain where he does not wish to remain, or to go where he does not wish to go, is an imprisonment. So if an officer tells a person that he is under arrest, and he thereupon submits himself to the officer, going with him and obeying his orders, such person is deprived of his liberty, and if the act of the officer is unlawful it is false imprisonment.[8]

Actual malice is not a necessary element to recover for a false imprisonment.[9] In *Brinkman v. Drolesbaugh,* the Ohio Supreme Court stated as follows:

> False imprisonment *per se* is not concerned with good or bad faith, malicious motive, or want of probable cause on the part of the prosecuting witness, or the officer causing the imprisonment.[10]

Good faith on the part of an officer will not justify an illegal arrest.[11] The courts apply this strict rule in order to protect the public from illegal activity. Recognizing the fact that hardships will arise in some situations, the harshness of this rule has been softened by permitting evidence of good faith to be shown in mitigation of punitive damages.[12]

In further defining false imprisonment and false arrest it is neces-

---

[6] In referring to policemen in this article it is intended to include within that scope any law enforcement officer. The term is used here in its inartful lay sense, that is, a general reference to any organized civil force for maintaining law and order and preventing and detecting crime.

[7] Prosser, *op. cit. supra* n. 4 at 54-55, " 'Imprisonment,' while it seems originally to have meant stone walls and iron bars, no longer signifies incarceration; the plaintiff may be imprisoned when his movements are restrained in the open street, or in a traveling automobile, or when he is confined to an entire city, or is compelled to go along with the defendant. The older idea of confinement has persisted, however, in the requirement that the restraint be a total one, rather than a mere obstruction of the right to go where the plaintiff pleases. Thus it is not imprisonment to block the plaintiff's passage in one direction only, or to shut him in a room with a reasonable exit open. But it seems clear that too much emphasis has been placed upon the technical name of the tort; such interferences may invade a right which is entitled to protection, and an action may lie for them, though it is not that of false imprisonment. If there is any distinction, it is that false imprisonment, being derived from the action of trespass, may be maintained without proof of actual damage, while in such other actions, proof of some damage may be required."

[8] 82 W.Va.692, 97 S.E. 189, 191 (1918).

[9] Reilly v. U.S. Fidelity & G. Co., 15 F.2d 314 (9th Cir. 1926).

[10] *Supra* n. 3.

[11] Nelson v. Kellogg, 162 Cal. 621, 123 P. 1115 (1912).

[12] Beckwith v. Bean, 98 U.S. 266 (1879).

sary to point out that a police officer may be liable even though the criminal charge may be truthful. If a warrant is defective for failure to state an offense, the police officer may be liable even though the plaintiff is found guilty of a criminal charge arising out of the false arrest. An action based on false arrest relates to the violation of a police officer's authority and not the guilt or innocence of the plaintiff. A police officer cannot justify a false arrest for one offense by showing that the plaintiff is guilty of some other offense or the plaintiff could have been arrested for some other offense properly.[13]

Our first pursuit is to distinguish between false imprisonment and malicious prosecution. In *Stork v. Evert,* the court, risking over-simplification, stated that:

> The real difference between the two causes of action is that in malicious prosecution the wrong is malicious, but under due form of law, whereas in an action for false imprisonment the detention is without any legal authority.[14]

This statement is predicated upon the Ohio Supreme Court's consideration of the problem in *Brinkman v. Drolesbaugh,*[15] wherein a game warden was sued for false imprisonment by an errant fisherman who claimed that his arrest by the warden was effected through an invalid warrant. The court found that the arrest warrant which the warden had served was prima facie regular in that jurisdiction and was properly posited in the issuing magistrate, and that the recitals did state an offense. The question then to be answered was whether the officer was exposed to suit if it later be found that the warrant was defective. The court stated:

> Whether or not the complaint is true or false is of no concern in an action for false imprisonment. Such inquiry may be essential to an action in malicious prosecution. Whether or not the complaint in the form of affidavit, information or indictment is or is not sufficient in law to charge an offense is likewise per se insufficient to furnish the basis of an action in false imprisonment.
>
> The law relating to false imprisonment classifies affidavits, informations and indictments into "void" and "voidable." The "void" class includes those setting forth facts which in no conceivable form can constitute a criminal offense; or if they might constitute an offense, the court issuing the process had no jurisdiction over such offense or the person charged with the offense. The "voidable" class includes those where a *bona fide* attempt has been made to charge a possible offense under the statute, but by reason of some defect or irregularity such charge is per se insufficient in law. As to such "voidable" complaint, or "voidable" processes issued thereon there can be no false imprisonment per se.

---

[13] Brinkman v. Drolesbaugh, *supra* n. 3; Noe v. Meadows, 229 Ky. 53, 16 S.W.2d 505 (1929).

[14] 47 Ohio App. 256, 258, 191 N.E. 794 (1934).

[15] *Supra* n. 3.

It is important to note, as pointed out in *Brinkman,* that the tort of false imprisonment is not dependent upon the mental attitude of the alleged tortfeasor. False imprisonment is, in a sense, a clean-cut concept: If the process is void, the arrest is illegal and liability ensues; if the process is merely voidable no liability attaches. Thus, in *Click v. Parish,*[16] the officer was accused of conspiring to secure the plaintiff's arrest as a pretext to collect a private debt owed to a third party. The court, reversing a verdict in favor of the plaintiff, reviewed the Supreme Court holding in *Brinkman,* and found that the plaintiff had failed to state a cause of action because the affidavit and warrant for his arrest were regular on their face. Discussing "void" as opposed to "voidable" warrants, the court stated:

> Under the rules mentioned, the "void" class includes affidavits, informations and indictments setting forth facts which in no conceivable form can constitute a criminal offense; or if they might constitute an offense, the court issuing the process had no jurisdiction over such offense or the person charged with the offense. And the "voidable" class includes those affidavits, informations and indictments where a bona fide attempt has been made to charge a possible offense under the statute, but by reason of some defect or irregularity such charge is per se insufficient in law.[17]

Liability of an Officer for a Mistake in Executing Valid Arrest Warrant.

The mere fact, however, that an arresting officer is executing a prima facie valid arrest warrant does not totally immunize him against an action for false imprisonment.

When an officer executes a valid warrant but mistakenly arrests the wrong person, we are again confronted with another seemingly irreconcilable collision between individual liberty and effective law enforcement. The constitutional right of individuals to be free from unlawful restraint must be measured with the practical exigencies confronting police officers. If the officer is to be protected absolutely when making an arrest, cases may arise in which an innocent person will be deprived of his liberty and have no effective remedy for the wrong suffered. If, however, the officer is held to act at his peril, the administration of the law through the execution of warrants is surely to be impeded, and criminals may escape arrest because of the timidity and caution exercised by the officers.[18]

In response to this dilemma, two divergent views came into focus. The majority view is that an officer who arrests the wrong person is liable only if he failed to use reasonable care in determining the identity of the person named in the warrant. An arrest by an officer is privileged

---

[16] 89 OhioApp. 318, 98 N.E.2d 333 (1950), *aff'd* 155 Ohio St. 84, 98 N.E.2d 293 (1951).

[17] *Supra* n. 3 at 177, 178.

[18] Blocker v. Clark, 126 Ga. 484, 54 S.E. 1022 (1906).

where the officer in good faith believes that the one arrested is in fact the one intended to be arrested.

Still a further solution—a compromise between the two judicial views—has recently been urged by the American Law Institute. In the revised Statement of Torts, the advisory board suggests:

> An arrest under a warrant is not privileged unless the person arrested
>
> (a) is a person sufficiently named or otherwise described in the warrant and is, or is reasonably believed by the actor to be, the person intended, or
>
> (b) although not such person, has knowingly caused the actor to believe him to be so.[19]

As pointed out in the editorial comments,[20] the officer's diligence does not insulate him from legal attack unless an affirmative action by the arrestee has induced the officer's mistake. This view would draw support from *obiter dicta* in *Stork v. Evert*,[21] where the arresting officer's mistake was prompted by the plaintiff-arrestee's misleading actions.

The rule governing mistaken identity in Ohio, however, is clearly set forth in *Johnson v. Reddy*,[22] a classic case of understandable error. The Cleveland Police Department had received information from the Pennsylvania State Police that the plaintiff-arrestee was wanted in Pennsylvania. The plaintiff's name, address, and general description were furnished. After checking these, the Cleveland police arrested the suspect so described. In overturning a verdict against the arresting officers, the Ohio Supreme Court, speaking through its syllabus, held:

> 3. Where request for investigation of a person is made to a police agency of this state by a recognized police agency of another state identifying the subject by address and name and giving a physical description not materially varying from the actual physical appearance of the subject and following a report of such investigation, the foreign agency requests the arrest of the subject, an officer making the arrest without any warrant does so upon reasonable information and is not thereby subject to liability for false arrest or imprisonment.

Thus, the court held, as a matter of law, that the defendants were entitled to rely upon information furnished by another law enforcement agency so long as their reliance was reasonable.

---

[19] 2 Restatement, Torts 2d, § 125 (1965).

[20] "If the actor arrests another who is not sufficiently named or otherwise described, mistaking him for a third person who is sufficiently named or otherwise described in the warrant, and who is understood by the actor to be intended by the name or description, the arrest is not privileged, no matter how reasonable the mistake of identity may be, unless as stated in Clause (b), the other knowingly causes the mistake."

[21] 47 OhioApp. 256, 191 N.E. 794 (1934).

[22] 163 Ohio St. 347, 126 N.E.2d 911 (1955).

In other cases involving an identity or similarity in name between the person sought and the one mistakenly apprehended, officers have generally prevailed.[23] It should follow, therefore, that when the arrested person's name varies materially from the one named in the warrant, the arresting officer should not be absolved from responsibility as to his act or conduct.[24]

Civil Liability for Improper Arrest of Suspected Felon Without Warrant

The comon law devised a myriad of rules to govern the right of peace officers and private citizens to arrest a suspected lawbreaker. The general rule is stated by Prosser:[25]

> The common law distinguishes between the authority of a peace officer and that of a private person, and makes further distinctions according to the nature of the crime for which arrest is made.
>
> a. Either an officer or a private person may arrest for a felony or a breach of the peace committed in his presence, or to prevent the immediate commission of such a crime.
>
> b. An officer may arrest if he has reasonable grounds for suspicion, based on information as to the facts, that a felony has been committed by the person arrested.
>
> c. A private person may arrest if a felony has in fact been committed, and he has reasonable grounds to suspect the person arrested.

It is proper for a peace officer to effect an arrest in order to prevent the commission of a crime[26] or when he has reason to believe that a crime is about to be committed. The term "in his presence" has been duly construed to include any sensory perceptions.[27] The law only requires that the officer be aware of the commission of the crime.

The civil liability of a police officer for arresting without a warrant in Ohio is stated in *Ryan v. Conover*,[28] wherein the plaintiff had been arrested by the defendant officer for violations of the traffic law. Plain-

---

[23] Johnson v. Enlow, 286 P.2d 630 (Col. 1955); Walton v. Will, 66 Cal.App.2d 509, 152 P.2d 639 (1944); Schneider v. Kessler, 97 P.2d 542 (3rd Cir. 1938). Accord: Massey Stores, Inc. v. Reeves, 111 Ga.App. 227, 141 S.E.2d 227 (1965); King v. Robertson, 227 Ala. 378, 150 So. 154 (1933).

[24] Johnson v. Weiner, 155 Fla. 169, 19 So.2d 699 (1944).

[25] Prosser, *op. cit. supra* n. 3 at 108.

[26] Handcock v. Baker, 2 Bos. & P. 260, 120 Eng. Rep. 1270 (1800) (murder about to be committed); Hayes v. Mitchell, 80 Ala. 183 (1881) (breach of peace about to occur); State v. Hughlette, 124 Wash. 366, 214 P. 841 (1923) (reasonable belief felony being committed).

[27] It is sufficient if the crime is perceived by sight, Robertson v. Commonwealth, 198 Ky. 699, 249 S.W. 1010 (1923); People v. Esposito, 118 Misc. 867, 194 N.Y.S. 326 (S. Ct. 1922); hearing, State v. Blackwelder, 182 N.C. 899, 109 S.E. 644 (1921); smell, United States v. Fischer, 38 F.2d 830 (M.D. Pa. 1930); mechanical devices, United States v. Harnish, 7 F.Supp. 305 (N.D. Me. 1934); or a confession, State v. Gulczynsky, 2 W.W. Harr. 120, 120 A. 88 (1922).

[28] 59 OhioApp. 361, 18 N.E.2d 277 (1937).

tiff, although he pleaded guilty immediately after his arrest to the offenses with which he was charged, subsequently sued the policeman and alleged that the policeman maliciously and without cause filed an affidavit and arrested the plaintiff. The court held:

> An officer may arrest a person when circumstances exist that would cause a reasonable person to believe that a crime has been committed in his presence. Section 13432-1, General Code; Bock v. City of Cincinnati, 43 Ohio App. 257, 183 N.E. 119; 6 Corpus Juris, Secundum, 595; 3 Ohio Jurisprudence, 140, Section 11. And this is true even though no offense has actually been committed. Consequently no civil liability attaches to him on account thereof in either circumstance. 3 Ohio Jurisprudence 176, Section 41. And in order to make the arrest he may pursue the person into any part of the state. . . .
>
> In the case at bar it is clear from plaintiff's opening statement that at least two of the offenses were committed in the presence of the officer, and he was, therefore, authorized in arresting, if the appearance would have caused a reasonable person to so act.[29]

Thus, in Ohio, an officer acting upon proper cause is insulated from liability. There is authority contra.[30] The position maintained by Prosser apparently stems from the traditional origin of the tort of false imprisonment. At common law it sounded in trespass, as opposed to trespass on the case, so that the liability would be strict for improper arrest regardless of the fact that the mistake was excusable. Whatever departure Ohio law may take from common law is apparently authorized by Ohio Revised Code Section 2935.04,[31] which permits arrest without warrant upon a showing of a reasonable ground to believe that a felony has been committed and that the person arrested is guilty of the offense.

Detention Without Warrant of a Mentally Deranged Person

Another potential source of liability for the working policeman is the detention of one who is mentally deranged or appears to be. The general rule at common law is as follows:[32]

> The long-established common-law rule is that a person actually insane may be arrested and detained by any interested party, without a warrant or legal process first issuing in a judicial or quasi-judicial proceeding to have the person declared a lunatic or confined

---

29 *Id.* at 364.

30 *Cf.*, Prosser, *op. cit. supra* n. 3 at 52.

31 "When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

32 Annot., 92 A.L.R.2d 570, 572 (1963); *Cf.*, also, Porter v. Rich, 70 Conn. 235, 39 A. 169 (1898); Crawford v. Brown, 321 Ill. 305, 151 N.E. 911 (1926); Bisgaard v. Duvall, 169 Iowa 711, 151 N.W. 1051 (1915); Appeal of Sleeper, 147 Me. 302, 87 A.2d 115 (1952); Van Deusen v. Newcomer, 40 Mich. 90 (1879); Warner v. State, 297 N.Y. 395, 79 N.E.2d 459 (1947).

> as an insane person, when an arrest is necessary to prevent immediate bodily injury to the arrestee or another. As usually expressed, the common-law emphasizes the elements of (1) actual insanity, (2) urgency, and (3) necessity.

Thus, in *Bisgaard v. Duvall*,[33] the court stated:

> It is well established that an insane person, without any adjudication, may lawfully be restrained of his liberty for his own benefit, either because it is necessary to protect him against a tendency to suicide, or to stray away from those who would care for him, or to protect others from his assaults, or other depredations, or because proper medical treatment requires it. . . . Of course, all such arrests or restraints must be reasonable and in good faith; and instructions as to such restraints should be carefully guarded. . . . An insane person stands upon a different plane from that of a criminal; and for his own good, as well as for the protection of the community, he may often be restrained by any person, especially by anyone having an interest in him, or by one whose safety may depend upon his detention, and he may be taken in charge without a warrant. The restraint of an insane person or of a person claimed to be insane is not designed as a punishment for an act done. . . .

In the application of this rule, however, there is some cause for concern. The first requisite for arrest without warrant is actual insanity; what consequences befall the officer if the apparently deranged person proves to be sane? The majority view would affix liability upon him. This harsh rule generates from *Van Deusen v. Newcomer*,[34] wherein it was held:

> Whoever takes into his own hands so serious a responsibility as the confinement of a citizen upon his own judgment merely, assuming it to be necessary in self-defense, must show that, upon the evidence, danger from his being at large was not merely possible, but was probable. Many sane persons, under the influence of strong excitements are subject to serious and perhaps dangerous fits of passion; but another could not be allowed, on this ground alone, to seize and imprison them, in anticipation that possibly the occasion for excitement might arise and the passion be manifested. . . .
>
> I concede that the right to restrain these unfortunate persons for their own benefit or for the protection of others is as clear as the right to restrain one who in the delirium of fever would break away from his attendants, or one who, with a contagious disease upon him, should attempt to enter a public assembly. But *the first thing to be determined is whether there is insanity in fact.* (Emphasis added).

In *Maxwell v. Maxwell*,[35] the court flatly rejected the contention that the arrestor should not be liable if he had probable cause to believe the plaintiff to be insane:

---

[33] 169 Iowa 711, 151 N.W. 1051 (1915).

[34] 40 Mich. 90 (1879).

[35] 189 Iowa 7, 177 N.W. 541 (1920).

> It is not sufficient to show that he was lacking in mental capacity or had hallucinations, but it must go further and show that to permit him to go unrestrained imperiled his own safety or the safety of the public. It is not sufficient to show in cases of this kind that he had probable grounds for suspecting he was insane or probable reason for believing that his being at large would imperil the safety of the public. He must justify it by proving the fact upon which his right to restrain rested. . . .
>
> One who arrests another and restrains him of his liberty, on the theory that he is incapable of rational self-control, assumes the burden of showing that fact and the imminent necessity for the restraint. This, we think, is the true rule, and the sane and safe rule in matters of this kind.

In *Witte v. Haben*,[36] the court recognized the vicissitudes of this rule, and nevertheless clung to it:

> There is force in the position that it is a harsh rule to hold a police officer for false imprisonment when the conduct of the one imprisoned has been such that the ordinarily prudent officer upon the information obtained would come to the conclusion that he was insane and ought to be detained. But, on the other hand, it is readily seen to what oppression and harm a rule would lend itself under which a citizen may be deprived of his liberty without right and without redress because, at some time or other, he has exhibited certain peculiarities or abnormal traits which, through malice or otherwise, come to the ears of an officer who, in good faith, arrests upon the report. . . . But, as indicated, under our statutes and, we believe, under the common law, the rule is that in an action against an officer for false arrest and imprisonment the officer cannot justify upon the ground that he made the arrest upon reliable information that the person arrested was insane; that he fully believed this to be a fact, and as a reasonably prudent officer was justified in so believing. If he without a warrant arrests a person on the ground and belief that such person is insane, proof of insanity is the only defense in a suit for unlawful imprisonment. . . .

On the other hand, reason prevailed in *Christiansen v. Weston*,[37] wherein the court fashioned a rule of reasonable belief of insanity rather than actual insanity:

> We hold, therefore, that where an officer arrests a person on suspicion of insanity, without first filing complaint and obtaining order of court for the arrest, in an action of false imprisonment, he can justify only by showing by a preponderance of the evidence that he had reasonable ground to believe, and did believe at the time, not

---

[36] 131 Minn. 71, 154 N.W. 662, 663-4 (1915). *Cf.*, also: Porter v. Ritch, 70 Conn. 235, 39 A. 176, 177 (1898), wherein it was said: "But a private person can act only . . . at his peril,—the peril of being unable to prove the existence of the emergency which is his justification. . . ."; and, Appeal of Sleeper, 147 Me. 302, 87 A.2d 115, 120 (1952), where the court, by way of dictum, stated: "This right to make such confinement without legal process was dependent upon the fact of *actual* insanity of such a nature that the person confined was actually a menace either to his own safety or that of others."

[37] 36 Ariz. 200, 284 P. 149 (1930).

> only that defendant [*sic*] was insane, but that he was in such a condition it would not be safe to delay his arrest until proper process could be obtained.

The most cogent analysis and discussion of this subject appears in *Plancich v. Williamson*,[38] where the Supreme Court of Washington reversed a verdict against two arresting officers. The court phrased the question before it as follows:

> In resolving the question as to probable cause, we must view the facts in retrospect—as of the time the incidents occurred leading up to and including the arrest. The questions are not: (1) What, actually, in fact had the respondent done on the evening in question respecting his father? or, (2) What, actually, in fact was the respondent's mental condition at the time of arrest? Rather, the questions are: (a) What did the appellants have reason to believe the respondent had done? and, (b) What did they have reason to believe as to his mental condition? [39]

The court stated that the arrest of the suspected mental case "could and probably should have been handled differently," but the question to answer was not, "What could better have been done, but whether what was done was unreasonable." The following excerpt is proximate to this discussion:

> While it may be expected that policemen act as supermen, they are not employed and often are not trained or paid on this basis. Furthermore, they live, work, and operate in a practical world, peopled by individuals of all kinds and varieties, intellectually, emotionally, and otherwise. It is simply too much to expect them to be endowed with clairvoyant powers or the wisdom of philosophers sufficiently to evaluate promptly on the firing line in terms of absolute truth and accuracy factual situations comparable to that in the instant case. Analysis in retrospect, with time for philosophic deliberation, can, of course, more closely approximate the accuracy or ultimate truth of laboratory or other scientific techniques.[40]

The court then overturned the verdict against the officers because there was a reasonable basis for their actions.

It is submitted that the latter rule carries the greater weight. The older cases imposing strict liability upon policemen—no matter how reasonable their actions—are anachronistic relics of more sedate times. In the lightning pace of today, policemen are constantly required to make instantaneous decisions, some involving life and death. Under such stress, we should only require that they act reasonably. The dangers to which they are exposed ought not to be compounded by exposure to liability for conduct which fully comports with reason.

---

[38] 57 Wash.2d 367, 357 P.2d 693 (1961).

[39] *Id.* at 696.

[40] *Id.* at 697.

Liability for Illegal Detention After Arrest

One making an arrest may be liable for false imprisonment for the failure to take the arrested person before a court or magistrate within a reasonable time and/or without unnecessary delay.[41] In *Leger v. Warren*,[42] the court upheld a charge which in effect said:

> . . . that though the defendants making the arrest or causing it to be made, had good cause therefor, that did not justify the imprisonment of the plaintiff thereunder for a longer period than was reasonably necessary to enable the defendants to obtain a warrant or authority from some competent tribunal for his further detention; and that his continued imprisonment, without such warrant or authority, rendered them liable as wrongdoers from the beginning, leaving only the question of damages for the consideration of the jury.

The court premised its holding on this policy consideration.[43]

> The right to make arrests without a warrant is conferred by the statute in order to prevent the escape of criminals where that is likely to result from delay in procuring a writ for their apprehension; and it was not the purpose to dispense with the necessity of obtaining such writ as soon as the situation will reasonably permit. To afford protection to the officer or person making the arrest, the authority must be strictly pursued; and no unreasonable delay in procuring a proper warrant for the prisoner's detention can be excused or tolerated. Any other rule would leave the power open to great abuse and oppression.

The fact that the arresting officer is pursuing his superior's orders does not excuse him from liability for an unnecessarily delayed detention.[44]

There is a division of authority as to the responsibility of the arresting officer after he delivers the arrestee to the custody of another. *Leger v. Warren*[45] imposes continuing responsibility on arresting officer. But, in *Lemel v. Smith*,[46] it was held that when the arresting officers turned

---

[41] Thurston v. Leno, 124 Vt. 298, 204 A.2d 106 (1964); Harness v. Steele, 159 Ind. 286, 64 N.E. 875 (1902); Fulford v. O'Connor, 3 Ill.2d 490, 121 N.E.2d 767 (1954); Librach v. Litzinger, 401 S.W.2d 433 (Mo. 1966).

[42] 62 Ohio St. 500, 57 N.E. 506 (1900).

[43] *Id.* at 508-9.

[44] Leger v. Warren, *supra* n. 42; Moran v. Beckley, 67 F.2d 161 (4th Cir. 1933), citing 25 C.J. 493. There is authority for drawing a distinction between the responsibilty of one who apprehends a suspected felon and one who apprehends a suspected misdemeanant. In Therriault v. Breton, 114 Me. 137, 95 A. 699 (1915), the court said that it would be the duty of officers who arrested for a misdemeanor to procure a warrant within reasonable time and take the person before a court; the court further held that where an officer properly arrested a person suspected of a felony that he could hold the person for a reasonable time to permit investigation of the case before bringing him before a court. This is inconsistent with majority view which follows the expression of the Ohio Supreme Court in Leger v. Warren, *supra*, that, regardless of the nature of the offense charged the suspect is entitled to judicial scrutiny of his detention.

[45] *Supra* n. 42.

[46] 64 Nev. 545, 187 P.2d 169 (1947).

a suspect over to the desk sergeant at the city jail, whose duty it then became to take the suspect before a magistrate, the arresting officers were relieved. Similarly, in *Kalish v. White*,[47] the arresting officer delivered the suspect to his superior officer and was thereafter relieved of liability. In *Alvarez v. Reynolds*,[48] where the arresting officers were patrolmen who turned plaintiff over to investigating detectives, it was held that the duties of the arresting officers ceased at that point so that they would not be liable for a subsequent unlawful detention.

Damages

The question of determining damages in a false arrest case is most important in determining whether or not to file a suit. There are obviously many situations where there may be a technical false arrest but unless some type of damages can be proved it would be a futile act to file a suit. The general and broad rule in substance is that one causing a wrongful imprisonment is liable for all natural and probable consequences thereof.[49]

As in a personal tort action, the plaintiff is entitled to recover such a sum as will fairly and justly compensate him for the injuries sustained. Exemplary or punitive damages can also be recovered in an action for false imprisonment. It seems that even the mere unlawful detention of another constitutes a basis for recovery of nominal damages.[50] Obviously you can recover more than nominal damages if you can prove an actual loss of some kind. Examples of the kinds of injuries which would result in false imprisonment are as follows, to-wit: physical suffering while incarcerated, mental suffering while incarcerated, humiliation, interruption of business, and injury to reputation. Some jurisdictions follow the general rule that recovery cannot be had for mental suffering unless there is also some physical injury. Other jurisdictions permit recovery from mental suffering standing alone if the elements of wilfulness or wantonness are present.[51]

As stated before, punitive or exemplary damages are recoverable in an action for false imprisonment. If the arrest or imprisonment is wilful or malicious with the design to injure the plaintiff then the jury can go beyond the normal rules of compensation and award the plaintiff punitive damages in addition thereto.[52]

---

[47] 36 Cal.App. 604, 173 P. 494 (1918).

[48] 35 Ill.App.2d 54, 181 N.E.2d 616 (1962).

[49] Ross v. Kohler, 163 Ky. 583, 174 S.W. 36 (1915).

[50] Worden v. Davis, 195 N.Y. 391, 88 N.E. 745 (1909).

[51] Spain v. Oregon-Washington R. and Navy Co., 78 Oreg. 355, 153 P. 470 (1915); Beckwith v. Bean, *supra* n. 12.

[52] Sternberg v. Hogg, 254 Ky. 761, 72 S.W.2d 421 (1934).

Conclusion

At least one respected scholar, Judge Mathes, has flatly argued that policemen should be immunized against personal liability for acts done during the course of their employment.[53] In addition, a current of sympathy for the police has begun to run through law-abiding segments of all communities in grateful recognition of the dangers and pressures to which these men daily expose themselves. At any or every minute of an eight-hour shift the patrolman may be threatened with the loss of his life, or he may be called upon to prevent death or injury to a victimized citizen. Death may be stalking him around any corner. Under such stress requiring split-second judgment, should we leave hanging over him the impending threat of an action for damages in the event he is mistaken?

Whatever the answer, it is a problem for the legislature since the common law quite clearly affixes liability upon policemen in those situations described above. However, if the winds of change blow through the timber of judicial decisions, it is urged that the tendency to ameliorate the plight of the police should be extended. The exigency of the moment may compel an officer to use measures which may seem, in the calm of reflective hindsight, to be extreme. But he does not have the benefit of calm deliberation, and he should be held to a standard of conduct commensurate with the circumstances which he faces. That is the very least the law owes its own enforcement officers.

---

[53] 53 Geo. L. J. 889 (1965).