

3.20 FALSE IMPRISONMENT (FALSE ARREST) (Approved 6/89)

D. POLICE ARREST WITHOUT A WARRANT

A police officer may arrest an individual without a warrant if he/she has a reasonable basis to believe that a crime is being or has been committed, that the person to be arrested is committing the crime or has committed it, even though it is not being committed or has not been committed in the officer's presence, and, after the arrest, the individual is restrained only for a reasonable period of time before he/she is taken before a judge or another appropriate public official to obtain a warrant for the arrest.

So, in deciding whether plaintiff was falsely imprisoned, there are two decisions you have to make.

The first is whether plaintiff has proven, by the greater weight of the evidence, that defendant intentionally detained or restrained plaintiff in his/her personal liberty or freedom of movement by arresting him/her.

The second decision, assuming you find that defendant did intentionally restrain plaintiff by an arrest, involves defendant's claim that he/she had a right to make the arrest and that the confinement was only for a reasonable period of time. Here, the defendant must prove this to you by the greater weight of the evidence. So, you must decide, one, whether defendant was a police officer when these

events took place; two, if so, whether defendant had a reasonable basis to believe that the defendant was a police officer when these events took place; two, if so, whether defendant had a reasonable basis to believe that the specific crime [insert type of crime] was being or had been committed; three, if so, whether defendant also had reasonable or probable cause to believe that plaintiff committed that crime; and four, if so, did defendant restrain plaintiff only for a reasonable period of time before bringing plaintiff before a judge or other appropriate public official to obtain a warrant for the arrest.

A reasonable basis or probable cause must be that the facts and circumstances known to the officer were those which would lead a reasonably cautious person to believe that a crime was being committed or had been committed and that the plaintiff had committed it. It must be more than mere conjecture or unfounded suspicion. In considering the reasonableness of the defendant's judgment you may consider that a person acting under the pressures of being a police officer cannot make decisions with the same precision as a person making cautious study of the same facts at home while seated in an armchair. Also, you may consider that an officer of the law has no right to intrude upon the rights of citizens because the officer has an unfounded hunch that something is wrong. A police officer is required to follow the laws guiding his/her behavior.

[Here discuss facts of arrest and detention].

So, even if you find that the defendant had proper grounds to make such an arrest, you still must consider whether he/she restrained the plaintiff only for a reasonable period of time before he/she could take him/her before a judge or public official and obtain a warrant for his/her arrest or whether he/she confined the plaintiff without bringing him/her before the nearest judge or official for a length of time that was unnecessary under the circumstances. A reasonable time to take an arrested person before the nearest judge or official would be the time it would take an ordinary, diligent police officer to do that task under the circumstances that faced the defendant. The reasonableness of this time would be affected by the availability of the nearest judge or official considering the location of the arrest, the time of day or night, the problem of confining the plaintiff, the available means for reaching a judge or official and any other factors that you might think would have a bearing on the amount of time. If the defendant imprisoned the plaintiff for an unreasonable time before bringing him/her to the nearest judge or official, that would be false imprisonment, even though the initial confinement was proper. If the confinement is in all respects proper according to the rules as I have explained them, then you must find for the defendant. But if you find that there was a confinement, and you find that either there was no right to make the arrest or that

the confinement was for an unreasonable period of time, then you must find for the plaintiff.

[go on to Damages (False Imprisonment (False Arrest)), Charge 8.47C]

*(See **NOTE TO JUDGE** at the end of the Charge 3.20E “Arrest Without Warrant for Disorderly Persons Offense or Breach of Peace.”)*