

SUPREME COURT OF LOUISIANA

No. 97-C-1086 c/w No. 97-C-1125

NEIL HARRISON ET AL.

Versus

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS AND OFFICE OF STATE POLICE ET AL.

LEMMON, J., Concurring in Part and Dissenting in Part

I agree with the majority's holding that Harrah's is not liable. I disagree, however, with the majority's holding that the Office of State Police is not liable. Particularly, I disagree with the majority's conclusion that the State Police officers did not arrest Harrison and Romero under the version of the incident found credible by the trier of fact. For the following reasons, I conclude that the officers' conduct amounted to a false arrest of Harrison and Romero and would thus affirm that portion of the judgments of the lower courts.

False Arrest

The tort of false arrest or false imprisonment occurs when one intentionally and unlawfully arrests or totally restrains another against his or her will. Kyle v. City of New Orleans, 353 So. 2d 969, 971 (La. 1977). An early decision of this court set forth two elements necessary to establish the tort of false arrest: (1) involuntary detention of the person, and (2) the unlawfulness of such detention. Wells v. Johnson, 52 La. Ann. 713, 27 So. 185, 189 (1898). The unlawfulness of the detention is the gravamen of the offense; neither malice nor ill will is required. Id. This tort is based on the fault concept embodied in La. Civ. Code art. 2315. See Fontenot v. Lavergne, 365 So. 2d

1168 (La. App. 3d Cir. 1978).

The gist of the tort of false arrest is wrongful and willful detention imposed by the defendant. Staurt M. Speiser et al., The American Law of Torts §27:1 (1990). Undisputedly, Romero and Harrison were detained without a warrant by the State Police . The critical issue, on which the evidence was in dispute, is whether they were detained against their will.

Liability of State Police

The State Police cite as a basis for the legality of the detention La. Code Crim. Proc. art. 215.1, and argue that they had the “reasonable suspicion” required by La. Code Crim. Proc. art. 215.1A¹ to detain plaintiffs in order to question them about their relationship with Trout. The State Police point out that they observed the conduct of Trout and plaintiffs on monitors live and on videotape, and saw interaction that included Trout’s betting for Reeves, teaching two plaintiffs to play blackjack, and making change with plaintiffs’ chips. According to this defendant, plaintiffs were behaving in a boisterous manner suggestive of an attempt to distract attention from Trout’s cheating.

Article 215.1A, which requires “reasonable suspicion” that a person “is committing, has committed, or is about to commit an offense,” only authorizes a law enforcement officer to stop the person and demand the person’s name, address and explanation of his or her actions, such as occurred with plaintiff Shaw. The article further contemplates a brief investigatory detention to verify the information obtained

¹La. Code Crim. Proc. art. 215.1A provides:

A law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and may demand of him his name, address, and an explanation of his actions.

or to obtain information independently. State v. Fauria, 393 So. 2d 688, 690 (La. 1991). However, when an extensive detention for questioning essentially amounts to an arrest, as found by the court of appeal in the present case, the law enforcement officer must have more than “reasonable suspicion.”

La. Code Crim. Proc. art. 213(3),² cited in many false arrest cases, authorizes a peace officer to arrest a person without a warrant when the officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer. Reasonable cause in this context is the equivalent of probable cause, which exists when the facts and circumstances, either personally known to the arresting officer or of which he has reasonable and trustworthy information, are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. Beck v. Ohio, 379 U.S. 89 (1964); State v. Simms, 571 So. 2d 145, 148 (La. 1990).

Accordingly, as even the majority acknowledges, the outset question in determining the liability of the State Police is whether an arrest of Harrison and Romero occurred. If so, the State Police must have had reasonable cause or probable cause to effect the arrest; if not, reasonable suspicion was sufficient.

An arrest occurs when one person is taken into custody by another through imposition of actual restraint, either by force or by submission of the arrested person to custody. La. Code Crim. Proc. art. 201. The determination of whether an arrest occurred depends on the totality of the circumstance. State v. Allen, 95-1754 (La.

²La. Code Crim. Proc. Art. 213(3) provides:

A peace officer may, without a warrant, arrest a person when:

. . .

(3) The peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer.

9/5/96); 682 So. 2d 713. A prime factor in the determination is whether a reasonable person under the circumstances would consider himself or herself free to leave. State v. Moreno, 619 So. 2d 62, 65 (La. 1993)(citing United States v. Mendenhall, 446 U.S. 544, 554 (1980)). Ultimately, whether a person has been arrested depends on circumstances indicating an intent to impose an extended restraint on the person's liberty. Simms, 571 So. 2d at 148.

A reviewing court must accord great deference to the factual findings of the trier of fact, whether jury or judge, and reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on appellate review in the absence of manifest error. Canter v. Koehring Co., 283 So.2d 716, 724 (La. 1973). This well-settled principle of review is based not only on the trial court's better capacity to evaluate witnesses, but also on the proper allocation of trial and appellate functions between the respective courts. Id. The determination of whether there was such an extended restraint on a person's liberty as to constitute an arrest is largely a factual finding, based on evaluations of credibility and inferences drawn from the testimony of the witnesses and other evidence.

In the present case, the trial judge heard the live testimony and reviewed the videotapes observed by the State Police. While the State Police point out inconsistencies in the testimony of plaintiffs and their witnesses, these certainly were argued to and considered by the trial judge, who credited plaintiffs' evidence. The principal inquiry is whether there was credible evidence to support the trial judge's conclusions.

Trooper Mark Wise testified that he and Sargent Lee Kavanaugh, after observing the conduct of Trout and the three plaintiffs on videotape and live on the monitors for twenty to thirty minutes, decided to arrest Trout and to question the three plaintiffs.

When the troopers and Harrah's security officers arrived at Table 115, they told Trout he was under arrest, but told the others at the table only to keep their hands on the table and not to touch the chips. Both Wise and Kavanaugh denied that they told any of the three plaintiffs they were under arrest. Because they had seen no interaction between Trout and Shaw or the unidentified other players at the table, the troopers only asked these players if they knew Trout and released them upon receiving negative responses, but took their names and addresses from driver's licenses for use in further investigation.

According to Wise, he had only two questions for plaintiffs: (1) whether they knew Trout and (2) whether they had seen Trout cheating. Nevertheless, he "asked" Harrison, Romero and Reeves to accompany him to a private area of the casino. According to Wise, they voluntarily went with him because they were anxious to clear their names; he told them several times they were not under arrest, and they never asked to leave; and he would have let them go if they had asked.

When the three plaintiffs arrived at the private room where they were told not to speak among themselves, Wise questioned each one individually outside the room after advising him of his constitutional rights. Because Wise received some inconsistent answers, he went back and forth to the surveillance room to review tapes on several occasions, and he questioned Reeves twice. About one and one-half hours after plaintiffs were taken to the private room, Wise told them they were free to leave, but that their chips would be held as possible evidence pending further investigation. He told them they would be notified if additional investigation warranted further questioning or filing of charges.

Kavanaugh's testimony was relatively consistent with that of Wise on the arrest issue. However, the context of his admissions that he and Wise determined "when

these gentlemen were free to leave after questioning” and that “the gentlemen were released” after an hour and one-half of questioning suggested he believed plaintiffs were not free to leave earlier.

The testimony of the three plaintiffs directly contradicted Wise. Romero testified that Wise told him at the table that he was under arrest and “to put his [expletive deleted] hands upon the table.” Harrison and Reeves did not hear anyone specifically say they were under arrest, but they believed they were. Plaintiffs testified they yielded involuntarily to the authority of the law enforcement officers who pushed and shoved them to the private room and refused to inform them what they had done or why they were being taken out of the casino.³ They felt they had no choice but to yield to the authority exerted by the troopers, and they certainly did not feel free to leave. Their request to make a phone call was denied, and they were refused access to a rest room for the first hour, after which a security officer accompanied Romero into the rest room.

According to Romero, he was called a liar and cursed again by Wise when he denied knowing Trout. Reeves testified without contradiction he was very nervous and had chest pains in the private room, but his request for a doctor or nurse was met with a suggestion to lie on the floor.

Under the evidence found credible by the trial judge, no reasonable person in the position of the three plaintiffs would have believed he or she was free to leave at any time between the “securing” of Table 115 and the “release” of the three plaintiffs. Moreover, the troopers clearly manifested an intent to impose an extended restraint on plaintiffs’ liberty. Although Wise professed that he only wanted to ask plaintiffs two questions, he admitted he could have done this in a brief detention at the table (as was done with Shaw) and that he could have used the names and addresses taken from their

³The videotapes showed that Trooper Wise grabbed Harrison’s shirt in removing him from the chair.

driver's licenses and had them questioned extensively under a district attorney's subpoena. Wise's version of the incident insisting that plaintiffs voluntarily accompanied him to the private room, even though he kept telling them they were not under arrest, was rejected by the trial judge, and that decision was supported by credible evidence.

On this record, I cannot say that the lower courts erred in concluding Wise and Kavanaugh placed the three plaintiffs under arrest. Thus, in my view, it is necessary to determine whether the troopers had the reasonable cause or probable cause required by Article 213 to do so.

As stated above, probable cause to arrest exists when the facts and circumstances, either personally known to the arresting officer or of which he has reasonable and trustworthy information, are sufficient to justify a person of ordinary caution in believing that the person to be arrested has committed a crime. In the present case, the State Police really do not argue that they had probable cause to arrest plaintiffs; rather, they rely on the contention that plaintiffs were not taken to the private room against their will, a contention correctly rejected by the lower courts. Nevertheless, I discuss briefly the absence of the necessary probable cause.

The facts and circumstances relied on by the troopers were the information furnished by Harrah's lead surveillance man and the knowledge obtained personally from their observing live and videotaped conduct by plaintiffs on the monitors.⁴ Harrah's lead man, while asserting Trout definitely was cheating, reported as to plaintiffs only "that he [Trout] was having interactions with Mr. Reeves, Romero and Mr. Harrison and that it appeared to me that they knew each other and perhaps maybe were together as a group." This information hardly provided probable cause for the

⁴Trooper Wise added that he was additionally suspicious because cheaters frequently search out "weak dealers."

arrest or extended detention of Harrison and Romero.

The troopers themselves watched the conduct of the players on monitors, both live and on videotape, for twenty to thirty minutes. They testified that they observed, and the videotapes reviewed by this court showed, Trout conversed frequently with Reeves; Trout went into Reeves' chips and made change; Trout placed bets in the circle for Reeves and gave him advice on drawing cards; Trout "tunneled" one of Reeves' bets, and Reeves ultimately took back the chip Trout used for "tunneling;" Reeves conversed frequently with Romero and with Harrison; and Romero and Harrison "high-fived" across the table on one occasion. However, the tapes showed no such interaction between Trout and the other two plaintiffs, and there was no audio recording to reveal conversation and comments. True, Reeves and Romero displayed their apparent friendship, but this conduct clearly was not unusual in the highly emotional gambling atmosphere with free-flowing complimentary alcoholic beverages.

The facts and circumstances available to the arresting officers fell far short of constituting probable cause to arrest Harrison and Romero or to detain them for a lengthy period. Although there arguably was sufficient probable cause to hold Reeves for extended questioning, Harrison and Romero did little more than act friendly with Reeves in an atmosphere of celebration and enjoyment. The "capping" by Trout was open and obvious on the tapes, and was immediately detected and halted when the experienced dealer took over the table. There was no evidence of any diversionary conduct by Harrison or Romero simultaneous with the numerous videotaped incidents of "capping" by Trout, except for Trooper Wise's testimony that Harrison was talking to the dealer on one occasion that Trout "capped" a bet. Moreover, as Trooper Wise pointed out, casino cheaters frequently take advantage of innocent conduct by other

players or persons in the casino that distracts the dealer momentarily.⁵ Finally, even if Reeves provided some inconsistent answers during the individual questioning, this would not constitute probable cause to arrest plaintiffs in the first place, and at most merely constituted a basis for additional questioning of Reeves during the already extensive detention.

Thus, I conclude that the record supports the judgments of the lower courts holding the State Police liable for the damages sustained by Harrison and Romero and would affirm this aspect of the lower courts' judgment.

⁵Wise maintained that Trout used plaintiffs as "boomers," even if they were unknowing facilitators.