

Casino Holds Great-Grand Mother for Almost Three Hours and Conducts Strip Search

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Myrna Jones, a 65-year-old great-grandmother from was held for hours and strip searched at the Yonkers Raceway casino in search for a missing winner's slip. Her problems began when was playing \$1 video slot machines and won \$80.

Jones says she was playing \$1 slot machines. She won \$80, but the machine did not spit out a paper winner's slip, so she called security and they called a mechanic to open the machine.

Meanwhile, she says she was taken to a room and interrogated by a man she says turned out to be a plain clothes state trooper who then accused her of hiding the winning slip, in an apparent scam to get another.

"He said, 'On camera it shows you put the ticket in your bra,'" Jones said. "I said no it shows me take out a dollar and put it in the machine."

But since a first look at the machine did not turn up the ticket, she was ordered into a room where a security woman conducted a strip search.

"I pulled up the sweater and unhooked the bra and she told me to pull up my shirt," Jones said.

"They kept me down there for two and a half hours. Then they came and said they found the ticket. I said where was the ticket? He said it was in the machine."

She has a solid torts case of battery and false imprisonment, among other things. For false imprisonment, courts will look at the time and manner of the seizure and search. First, most such searches can only be done by police. Security staff can only hold an individual unless that individual consents to a search. Second, an individual cannot be held for excessive periods or in an excessive manner. This is highly contextual and the age of the individual is relevant. For the full story, [click here](#)

This case is not unlike the famous Coblyn case below that explains the standard:

Coblyn v. Kennedy's, Inc.

268 N.E.2d 860

Supreme Judicial Court of Massachusetts, 1971

SPIEGEL, J.

This is an action of tort for false imprisonment. At the close of the evidence the defendants filed a motion for directed verdicts which was denied. The jury

returned verdicts for the plaintiff in the sum of \$ 12,500. The case is here on the defendants' exceptions to the denial of their motion and to the refusal of the trial judge to give certain requested instructions to the jury.

We state the pertinent evidence most favorable to the plaintiff. On March 5, 1965, the plaintiff went to Kennedy's, Inc. (Kennedy's), a store in Boston. He was seventy years of age and about five feet four inches in height. He was wearing a woolen shirt, which was "open at the neck," a topcoat and a hat. "[A]round his neck" he wore an ascot which he had "purchased . . . previously at Filenes." He proceeded to the second floor of Kennedy's to purchase a sport coat. He removed his hat, topcoat and ascot, putting the ascot in his pocket. After purchasing a sport coat and leaving it for alterations, he put on his hat and coat and walked downstairs. Just prior to exiting through the outside door of the store, he stopped, took the ascot out of his pocket, put it around his neck, and knotted it. The knot was visible "above the lapels of his shirt." The only stop that the plaintiff made on the first floor was immediately in front of the exit in order to put on his ascot.

Just as the plaintiff stepped out of the door, the defendant Goss, an employee, "loomed up" in front of him with his hand up and said: "Stop. Where did you get that scarf?" The plaintiff responded, "[W]hy?" Goss firmly grasped the plaintiff's arm and said: "[Y]ou better go back and see the manager." Another employee was standing next to him. Eight or ten other people were standing around and were staring at the plaintiff. The plaintiff then said, "Yes, I'll go back in the store" and proceeded to do so. As he and Goss went upstairs to the second floor, the plaintiff paused twice because of chest and back pains. After reaching the second floor, the salesman from whom he had purchased the coat recognized him and asked what the trouble was. The plaintiff then asked: "[W]hy 'these two gentlemen stop me?'" The salesman confirmed that the plaintiff had purchased a sport coat and that the ascot belonged to him.

The salesman became alarmed by the plaintiff's appearance and the store nurse was called. She brought the plaintiff into the nurse's room and gave him a soda mint tablet. As a direct result of the emotional upset caused by the incident, the plaintiff was hospitalized and treated for a "myocardial infarct."

Initially, the defendants contend that as a matter of law the plaintiff was not falsely imprisoned. They argue that no unlawful restraint was imposed by either force or threat upon the plaintiff's freedom of movement. *Wax v. McGrath*, 255 Mass. 340, 342. However, "[t]he law is well settled that '[a]ny general restraint is sufficient to constitute an imprisonment . . . ' and '[a]ny demonstration of physical power which, to all appearances, can be avoided only by submission, operates as effectually to constitute an imprisonment, if submitted to, as if any amount of force had been exercised.' 'If a man is restrained of his personal liberty by fear of a personal difficulty, that amounts to a false imprisonment' within the legal meaning of such term." *Jacques v. Childs Dining Hall Co.* 244 Mass. 438, 438-439.

We think it is clear that there was sufficient evidence of unlawful restraint to submit this question to the jury. Just as the plaintiff had stepped out of the door of the store, the defendant Goss stopped him, firmly grasped his arm and told him that he had "better go back and see the manager." There was

another employee at his side. The plaintiff was an elderly man and there were other people standing around staring at him. Considering the plaintiff's age and his heart condition, it is hardly to be expected that with one employee in front of him firmly grasping his arm and another at his side the plaintiff could do other than comply with Goss's "request" that he go back and see the manager. The physical restraint imposed upon the plaintiff when Goss grasped the plaintiff's arm readily distinguishes this case from *Sweeney v. F. W. Woolworth Co.* 247 Mass. 277, relied upon by the defendants.

In addition, as this court observed in the *Jacques* case, *supra*, at p. 441, the "honesty and veracity [of the plaintiff] had been openly . . . challenged. If she had gone out before . . . [exonerating herself], her departure well might have been interpreted by the lookers on as an admission of guilt, or of circumstances from which guilt might be inferred. The situation was in the control of the defendant. The restraint or duress imposed by the mode of investigation . . . the jury could say was for the accomplishment of the defendant's purpose, even if no threats of public exposure or of arrest were made, and no physical restraint of . . . [the plaintiff] was attempted."

The defendants next contend that the detention of the plaintiff was sanctioned by G. L. c. 231, § 94B, inserted by St. 1958, c. 337. This statute provides as follows: "In an action for false arrest or false imprisonment brought by any person by reason of having been detained for questioning on or in the immediate vicinity of the premises of a merchant, if such person was detained in a reasonable manner and for not more than a reasonable length of time by a person authorized to make arrests or by the merchant or his agent or servant authorized for such purpose and if there were reasonable grounds to believe that the person so detained was committing or attempting to commit larceny of goods for sale on such premises, it shall be a defence to such action. If such goods had not been purchased and were concealed on or amongst the belongings of a person so detained it shall be presumed that there were reasonable grounds for such belief."

The defendants argue in accordance with the conditions imposed in the statute that the plaintiff was detained in a reasonable manner for a reasonable length of time and that Goss had reasonable grounds for believing that the plaintiff was attempting to commit larceny of goods held for sale.

It is conceded that the detention was for a reasonable length of time. See *Proulx v. Pinkerton's Natl. Detective Agency, Inc.* 343 Mass. 390, 392-393. We need not decide whether the detention was effected in a reasonable manner for we are of opinion that there were no reasonable grounds for believing that the plaintiff was committing larceny and, therefore, he should not have been detained at all. However, we observe that Goss's failure to identify himself as an employee of Kennedy's and to disclose the reasons for his inquiry and actions, coupled with the physical restraint in a public place imposed upon the plaintiff, an elderly man, who had exhibited no aggressive intention to depart, could be said to constitute an unreasonable method by which to effect detention. . . .

The pivotal question before us as in most cases of this character is whether the evidence shows that there were reasonable grounds for the detention. At

common law in an action for false imprisonment, the defence of probable cause, as measured by the prudent and cautious man standard, was available to a merchant. . . . Historically, the words "reasonable grounds" and "probable cause" have been given the same meaning by the courts. In the case of *United States v. Walker* . . . it was said: "'Probable cause' and 'reasonable grounds' are concepts having virtually the same meaning." The following cases have expressly stated that the words may be used interchangeably and without distinction. *Draper v. United States*. . . . In the case of *Lukas v. J. C. Penney Co.* . . . the Oregon Supreme Court construed the meaning of the words "reasonable grounds" in its "shoplifting statute" as having the same meaning as they have in a statute authorizing arrest without a warrant and applied the probable cause standard to the facts before it.

The defendants assert that the judge improperly instructed the jury in stating that "grounds are reasonable when there is a basis which would appear to the reasonably prudent, cautious, intelligent person." In their brief, they argue that the "prudent and cautious man rule" is an objective standard and requires a more rigorous and restrictive standard of conduct than is contemplated. . . . The defendants' requests for instructions, in effect, state that the proper test is a subjective one . . . whether the defendant Goss had an honest and strong suspicion that the plaintiff was committing or attempting to commit larceny.

We do not agree. As we have attempted to show, the words "reasonable grounds" and "probable cause" have traditionally been accorded the same meaning. In the case of *Terry v. Ohio* . . . involving the question whether a police officer must have probable cause within the Fourth Amendment to "stop-and-frisk" a suspected individual, the Supreme Court of the United States held that the "probable cause" requirement of the Fourth Amendment applies to a "stop-and-frisk" and that a "stop-and-frisk" must "be judged against an objective standard: would the facts available to the officer at the moment . . . 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? . . . Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction." . . .

If we adopt the subjective test as suggested by the defendants, the individual's right to liberty and freedom of movement would become subject to the "honest . . . suspicion" of a shopkeeper based on his own "inarticulate hunches" without regard to any discernible facts. In effect, the result would be to afford the merchant even greater authority than that given to a police officer. In view of the well established meaning of the words "reasonable grounds" we believe that the Legislature intended to give these words their traditional meaning. This seems to us a valid conclusion since the Legislature has permitted an individual to be detained for a "reasonable length of time." This would be at least analogous to a "stop" within the meaning of the *Terry* case.

We also note that an objective standard is the criterion for determining probable cause or reasonable grounds in malicious prosecution and false arrest cases. . . . We see no valid reason to depart from this precedent in regard to cases involving false imprisonment.

Applying the standard of reasonable grounds as measured by the reasonably prudent man test to the evidence in the instant case, we are of opinion that the evidence warranted the conclusion that Goss was not reasonably justified in believing that the plaintiff was engaged in shoplifting. There was no error in denying the motion for directed verdicts and in the refusal to give the requested instructions.

Exceptions overruled.

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1 Response to “Casino Holds Great-Grand Mother for Almost Three Hours and Conducts Strip Search”

Commoner

9/27/2013 11:00 AM



Professor, I really enjoyed this post. Would you agree that in the Coblyn case the judge could have additionally differentiated between the G. L. c. 231, § 94B, inserted by St. 1958, c. 337 and the case at hand by quoting the last sentence back at the defendents “If such goods had not been purchased and were concealed on or amongst the belongings of a person so detained it shall be presumed that there were reasonable grounds for such belief” because

A.The goods in this case WERE purchased and

B.The goods did NOT appear to be concealed at the time of the apprehension,as the elderly man was already wearing the scarf around his throat.

Also, the age definitely is a decisive factor in this case. I am 6’3’ and I weigh over 250. If a store employee grabbed me for any reason, I would immediately verbally and failing that physically extricate myself, and I might also knock out some teeth. Picking on old people is a cowardly power trip!

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