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## How Much Detention Constitutes False Imprisonment

Nancy F. Halliday\*

THE ESSENCE OF THE TORT of false imprisonment is the deprivation of an individual's liberty without lawful justification.<sup>1</sup> This deprivation is accomplished by the detention or total restraint of a person against his will, through either words or physical acts which threaten him with personal harm.<sup>2</sup> False imprisonment is usually distinguished from false arrest in that false imprisonment can exist between private individuals for their own ends, while false arrest exists where there is an attempt to enforce the process of law by exercise of legal authority.<sup>3</sup> It is not necessary, therefore, that the unlawful act leading to detention or arrest be done through any legal or judicial proceeding.<sup>4</sup>

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<sup>1</sup> *Lindquist v. Friedman's, Inc.*, 366 Ill. 232, 8 N. E. 2d 625 (1937); (Court said it is sufficient to show that at any time or place defendant in any manner restrained plaintiff of his liberty without sufficient legal authority); *Pilos v. First National Stores, Inc.*, 319 Mass. 475, 66 N. E. 2d 576 (1946) (Store employee dragged plaintiff to back of store and it was a jury question on illegality of detention); *McCrorry Stores Corp. v. Satchell*, 148 Md. 279, 129 A. 348 (1925) (Held unlawful detention where store manager grabbed plaintiff's purse and went through it); *S. H. Kress & Co. v. Rust*, 132 Tex. 89, 120 S. W. 2d 425 (1938) (Unlawful detention where a lady customer was forced to return to store and was disrobed completely and searched); *J. J. Newberry Co. v. Judd*, 259 Ky. 309, 82 S. W. 2d 359 (1935) (Woman customer taken to basement of store, detained for five hours and searched; held unlawful detention); *Great Atlantic & Pacific Tea Co. v. Smith*, 281 Ky. 583, 136 S. W. 2d 759 (1940); *Roberts v. Thomas*, 135 Ky. 63, 121 S. W. 961 (1909); *Johnson v. Norfolk & W. Ry. Co.*, 82 W. Va. 692, 97 S. E. 189 (1918); *Griffin v. Clark*, 55 Ida. 364, 42 P. 2d 297 (1935); 22 Am. Jur. 353; *Kirk, Torts—False Imprisonment—Arrest Without a Warrant*, 16 Ala. L. Rev. 217 (1963).

<sup>2</sup> *State ex rel. Sovine v. Stone*, 140 S. E. 2d 801 (West Va. 1965); *White v. Levy Brothers, Inc.*, 306 S. W. 2d 829 (Ky. 1957); *Meinecke v. Skaggs*, 123 Mont. 308, 213 P. 2d 237 (1949); *Sweeney v. F. W. Woolworth Co.*, 247 Mass. 277, 142 N. E. 50 (1924); *Great Atlantic & Pacific Tea Co. v. Billups*, 253 Ky. 126, 69 S. W. 2d 5 (1934) (There was neither reasonable apprehension nor submission where plaintiff paid for articles after accusation and went on her way); *Gust v. Montgomery Ward & Co.*, 234 Mo. App. 611, 136 S. W. 2d 94 (1939) (False imprisonment can result from actual force or only from fear of force, or by words alone); *Jacques v. Childs Dining Hall Co.*, 244 Mass. 438, 138 N. E. 843 (1923); *S. H. Kress & Co. v. Rust*, *supra* n. 1; *Lukas v. J. C. Penney Company*, 233 Or. 345, 378 P. 2d 717 (1963).

<sup>3</sup> 22 Am. Jur. 354; *Lavarato, "Shoplifters" Beware?*, 11 Drake L. Rev. 31 (1962).

<sup>4</sup> *Garnier v. Squires*, 62 Kan. 321, 62 P. 1005 (1900).

Any *intentional unlawful confinement* of an individual, without his consent, for any length of time, no matter how short in duration, constitutes false imprisonment.<sup>5</sup> This statement, however, leaves unanswered the question of what constitutes a lawful confinement.

### Reasonable Lawful Detention

An individual may be reasonably detained by one who has lawful privilege (police officer, marshal, or other law enforcement officer, private individual believing felony has been committed, owner or manager of mercantile establishment in many jurisdictions) and who has been given reasonable grounds to exercise his legal authority.<sup>6</sup> The reasonableness of the length and manner of detention in such privileged cases is usually regarded as a question of fact for determination by the jury.<sup>7</sup> The length of detention which has been determined to be unreasonable varies considerably, depending on the circumstances surrounding the detention or arrest.<sup>8</sup>

<sup>5</sup> *Garnier v. Squires*, *supra* n. 4 (Plaintiff held at gun point for 30 minutes to forcibly compel payment of money); *Miller v. Ashcraft*, 98 Ky. 314, 32 S. W. 1085 (1895) (Plaintiff's detention continued for only a few minutes, but Court said any deprivation of liberty for however short a time without plaintiff's consent, against his will, constitutes false imprisonment); *Whitman v. Atchison, T. & S. F. Ry. Co.*, 85 Kan. 150, 116 P. 234 (1911) (Plaintiff relied on statement of train conductor to remain 15 minutes to give a statement just after breaking his leg; Court held it was unlawful restraint without legal cause); *Lukas v. J. C. Penney Company*, *supra* n. 2; *Griffin v. Clark*, *supra* n. 1; 1 *Harper & James, Law of Torts*, 226 (1956); 22 *Am. Jur.* 354 (Quoting the American Law Institute definition of false imprisonment: "An act which . . . is a legal cause of a confinement of another . . . for any time, no matter how short in duration makes the actor liable . . . if . . . confinement is not otherwise privileged.").

<sup>6</sup> *Harness v. Steele*, 159 Ind. 286, 64 N. E. 875 (1902); *Garnier v. Squires*, *supra* n. 4 (Defendant had no privilege, unjustifiable restraint); *Jacques v. Childs Dining Hall Company*, *supra* n. 2; *Johnson v. Chesapeake & O. Ry. Co.*, 259 Ky. 789, 83 S. W. 2d 521 (1935); *Proulx v. Pinkerton's National Detective Agency, Inc.*, 343 Mass. 390, 178 N. E. 2d 575 (1961); *Lester v. Albers Super Markets, Inc.*, 94 Ohio App. 313, 114 N. E. 2d 529 (1952); 22 *Am. Jur.* 368; 1 *Harper & James, Law of Torts*, 230 (1956).

<sup>7</sup> *Pilos v. First Nat. Stores, Inc.*, *supra* n. 1; *Johnson v. Chesapeake & O. Ry. Co. et al.*, *supra* n. 6; *Leisure v. Hicks*, 336 Mich. 148, 57 N. W. 2d 473 (1953); *Little Stores v. Isenberg*, 26 Tenn. App. 357, 172 S. W. 2d 13 (1943); *Mildon v. Bybee*, 13 Utah 2d 400, 375 P. 2d 458 (1962); 35 *C. J. S.* 760; 23 *O. Jur.* 2d 434; *Lavarato, op. cit. supra* n. 3.

<sup>8</sup> *Miller v. Ashcraft*, *supra* n. 5 (detention for few minutes); *Garnier v. Squires*, *supra* n. 4 (detention for 30 minutes); *Kroeger v. Passmore*, 36 *Mont.* 504, 93 P. 805 (1908) (detention for 45 minutes); *Gadsden General Hospital v. Hamilton*, 212 Ala. 531, 103 So. 553 (1925) (detention for 11

(Continued on next page)

### Arrest by Officer Without a Warrant

Under state statute in many jurisdictions, an officer may arrest without a warrant where there are reasonable grounds to believe a felony has been committed.<sup>9</sup> The arresting officer must have cause which would indicate to a reasonable man that the individual to be arrested is guilty.<sup>10</sup>

If the words and conduct of a police officer give an individual being detained reasonable grounds for believing that the officer has present intention to make the arrest, and he submits to the officer, believing in good faith that he has been or is about to be arrested, a false arrest may be effected.<sup>11</sup> These elements of intention and reasonable grounds for belief become very important in an arrest situation, particularly where no manual seizure is employed, and verbal coercion is the only type of restraint used. Whether or not these elements exist in a false imprisonment action based on such an arrest is also a question of fact for jury determination.<sup>12</sup>

In *Johnson v. Norfolk*,<sup>13</sup> a judgment was awarded plaintiff, where she had been led to believe she was under arrest by a police officer, after having been accompanied by him for several hours on a train to another city, although there was no physical restraint.

In *Callahan v. Searles*, plaintiff recovered under what the Court called a "technical false imprisonment." Plaintiff was not arrested by the defendant's order, but was detained by a police officer, though only for a few minutes.<sup>14</sup>

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hours); *Clements v. Canon*, 170 Okla. 340, 40 P. 2d 640 (1935) (Quoting from 25 C. J. 493, said "What is a reasonable time depends on the facts of each case."); *Pratt v. Gross*, 263 Ky. 521, 92 S. W. 2d 788 (1936) (four days detention); *Leger v. Warren*, 62 Ohio St. 500, 57 N. E. 506 (1900) (detention for more than five days).

<sup>9</sup> *Johnson v. Chesapeake & O. Ry. Co.*, *supra* n. 7; *Gorlack v. Ferrari*, 184 Cal. App. 2d 702, 7 Cal. Rptr. 699 (1960); *Harness v. Steele*, *supra* n. 6; *Johnson v. Reddy*, 163 O. S. 347, 126 N. E. 2d 911 (1955); *Leisure v. Hicks*, *supra* n. 7; *Potter v. Swindle*, 77 Ga. 419, 3 S. E. 94 (1887); *Rounds v. Bucher*, 137 Mont. 39, 349 P. 2d 1026 (1960).

<sup>10</sup> *Leisure v. Hicks*, *supra* n. 7; *Garner, Torts—Unprivileged Arrest as a Basis for False Imprisonment Action*, 3 Ark. L. Rev. 484 (1949).

<sup>11</sup> *Johnson v. Norfolk & W. Ry. Co.*, *supra* n. 1; *Callahan v. Searles*, 78 Hun. 238, 28 N. Y. Supp. 904 (1894); *State ex rel. Sovine v. Stone*, *supra* n. 2.

<sup>12</sup> *Johnson v. Norfolk & W. Ry. Co.*, *supra* n. 1; *State ex rel. Sovine v. Stone*, *supra* n. 2; 53 Am. Jur. 171.

<sup>13</sup> *Johnson v. Norfolk & W. Ry. Co.*, *supra* n. 1.

<sup>14</sup> *Callahan v. Searles*, *supra* n. 11.

### Arrest by Officer of Wrong Person Under Warrant (Mistaken Identity)

The rule is well supported that an arresting officer is liable if he fails to exercise due diligence in determining whether or not an individual about to be arrested is the party named in the warrant.<sup>15</sup> He may also be liable if he detains the person an undue length of time after having served the warrant, without taking proper precautions to establish his identity.<sup>16</sup> If, however, the officer in good faith arrests a person after taking proper precautions, and if the officer has reasonable grounds for believing he is arresting the individual named in the warrant, the officer will be protected.<sup>17</sup>

In the recent case of *State v. Stone*, the plaintiff was denied recovery for false imprisonment where the defendant constable, in seeking to serve a felony warrant, was mistakenly directed to the plaintiff's place of employment, the plaintiff having the same name as the individual named in the warrant. The defendant questioned plaintiff concerning her identity for 15 to 45 minutes and departed without taking the plaintiff into custody. There was no arrest, and there had been no manual touching. The Court said: "the experience plaintiff suffered was one to which all citizens must submit where circumstances lead officers to believe an individual is the likely person named in felony warrants they serve." The Court ruled as a matter of law that the evi-

<sup>15</sup> *Mildon v. Bybee*, *supra* n. 7 (Court stated on pg. 459, ". . . we agree that a peace officer will not necessarily be held liable for mistaking the identity of the person named in a warrant of arrest . . . if he has exercised reasonable diligence and care . . ."; *Wallner v. Fidelity & Deposit Co. of Maryland*, 253 Wis. 66, 33 N. W. 2d 215 (1948); *Walton v. Will*, 66 Cal. App. 2d 509, 152 P. 2d 639 (1944); *O'Neill v. Keeling*, 227 Ia. 754, 288 N. W. 887 (1939); *Blocker v. Clark*, 126 Ga. 484, 54 S. E. 1022 (1906); 127 A. L. R. 1057, 10 A. L. R. 2d 752; 22 Am. Jur. 405; 1 Restatement of the Law of Torts 283; *Dawson*, Torts—False Imprisonment—Mistaken Identity in Arrest with a Warrant, 17 Ark. L. Rev. 206 (1963).

<sup>16</sup> *Blocker v. Clark*, *supra* n. 15; *Potter v. Swindle*, *supra* n. 9; *Simpson v. Boyd*, 212 Ala. 14, 101 So. 664 (1924); *Wallner v. Fidelity & Deposit Co. of Maryland*, *supra* n. 15; *Walton v. Will*, *supra* n. 15; *Kittredge v. Frothingham*, 114 Me. 537, 96 Atl. 1063 (1916) (New trial granted to defendant where plaintiff was detained from 2:30 Saturday until Monday while defendant ascertained identity); 22 Am. Jur. 405, 4 Am. Jur. 74; 10 A. L. R. 2d 753, 127 A. L. R. 1058.

<sup>17</sup> *Kittredge v. Frothingham*, *supra* n. 16; *Mildon v. Bybee*, *supra* n. 15; *Stork v. Evert*, 47 Ohio App. 256, 191 N. E. 794 (1934) (Plaintiff was arrested due to a mistake in identity, but the officer was relieved because plaintiff had by his language and conduct caused defendant to believe he was the individual named); *O'Neill v. Keeling*, *supra* n. 15.

dence was insufficient to support the verdict against the defendant.<sup>18</sup>

Plaintiff, in the case of *Wallner v. Fidelity*, brought an action for false arrest on the basis of a confinement in jail for one night and a day and a half. The lower court rendered a verdict for the defendant, and this decision was reversed on appeal on the grounds that the defendant had made no effort to connect or disassociate the plaintiff from the person named in the warrant.<sup>19</sup> This same question of whether or not an officer used due diligence in ascertaining the identity of the plaintiff, after detaining him in jail for several hours, was submitted to the jury in *Mildon v. Bybee*.<sup>20</sup>

### Legality of Detention After Arrest

An officer without a warrant arresting a person whom he suspects, on reasonable grounds, of having committed a felony, has a duty to take that person before a magistrate to be charged with the offense, *as soon as he can reasonably do so*.<sup>21</sup> An unreasonable delay in releasing a person entitled to be released, or delay in taking him before a magistrate or in denying his privilege to give bond<sup>22</sup> will constitute a false imprisonment.<sup>23</sup>

<sup>18</sup> State ex rel. Sovine v. Stone, *supra* n. 2; O'Neill v. Keeling, *supra* n. 15, (Court stated an officer making an arrest under a valid warrant in which person to be arrested is described by name only is not liable for false imprisonment if the person arrested is commonly known by that name); Hill v. Taylor, 50 Mich. 549, 15 N. W. 899 (1883) (Court said mere statement by officer that he has a warrant or reading of summons to plaintiff is not confinement if latter does not submit thereto, and if officer does not actually take him into custody. Court said here there could be no false imprisonment where plaintiff was not arrested and there was no manual seizure nor its equivalent in personal coercion.)

<sup>19</sup> Wallner v. Fidelity & Deposit Co. of Maryland, *supra* n. 15.

<sup>20</sup> Mildon v. Bybee, *supra* n. 15.

<sup>21</sup> Harness v. Steele, 159 Ind. 286, 64 N. E. 875 (1902); Gorlack v. Ferrari, 184 Cal. App. 2d 702, 7 Cal. Rptr. 699 (1960); Johnson v. Reddy, 163 Ohio St. 347; 126 N. E. 2d 911 (1955); Leisure v. Hicks, 336 Mich. 148, 57 N. W. 2d 473 (1953). Rounds v. Bucher, 137 Mont. 39, 349 P. 2d 1026 (1960).

<sup>22</sup> Harbison v. Chicago, R. I. & P. Ry. Co., 327 Mo. 440, 37 S. W. 2d 609 (1931) (Officer in charge of plaintiff under arrest wrongfully denied him opportunity to give bond and was held liable for false imprisonment regarding the subsequent detention).

<sup>23</sup> Rounds v. Bucher, *supra* n. 9; Harbison v. Chicago R. I. & P. Ry. Co., *supra* n. 22; Gorlack v. Ferrari, *supra* note 21 (Plaintiff who was held more than 36 hours without being taken before a magistrate was denied recovery, but here plaintiff had chosen option to have officer complete the investigation to save money; the court said he could not take advantage of a delay

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A delay in taking the plaintiff before a magistrate after arrest from 4:00 P.M. on Saturday until 11:00 A.M. on Monday morning was held not to be an unreasonable detention in *Rounds v. Bucher & Commercial Insurance Company*, where plaintiff had failed to prove that a magistrate was available that morning before 11:00 A.M.<sup>24</sup>

Delays held to be unreasonable in bringing plaintiff before a magistrate have ranged from a few hours to several days. While in the case of *Strain v. Irwin*,<sup>25</sup> plaintiff recovered after having been detained in custody for only a few hours, a detention for several days without an appearance before a judicial officer was deemed to be unreasonable in *Pratt v. Gross*<sup>26</sup> and *Leger v. Warren*.<sup>27</sup> Plaintiffs in these latter two cases were imprisoned for a lengthy period and then released without being charged. The court in *Potter v. Swindle*<sup>28</sup> stated that an imprisonment for several days with no warrant being issued was little short of kidnapping. Liability based on the length of period of confinement with no warrant issued and no appearance before a judicial officer was adjudged a jury question in *Leisure v. Hicks*.<sup>29</sup>

### Officer Arrest in Ohio

Section 2935.05 Ohio Revised Code, relating to the duty of a peace officer arresting without a warrant, reads as follows:

When a [sheriff, \* \* \* or police officer] has arrested a person without a warrant, he must *without unnecessary delay* take the person arrested before a court or magistrate, having jurisdiction of the offense \* \* \*. (Emphasis supplied.)

Thus, under certain circumstances in Ohio also, lawful arrest can be made without a warrant, but the individual can only be held for a reasonable time in order to obtain a warrant for his

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in which he had acquiesced); *Clements v. Canon*, 170 Okla. 340, 40 P. 2d 640, (1935); *Harness v. Steele*, *supra* n. 21, 79 A. L. R. 13, 22 Am. Jur. 366; 1 Re-statement of Law of Torts 315; *Dodd, Torts—False Imprisonment*, 8 Mo. L. Rev. 336 (1943).

<sup>24</sup> *Rounds v. Bucher*, *supra* n. 9.

<sup>25</sup> *Strain v. Irwin*, 195 Ala. 414, 70 So. 734 (1915).

<sup>26</sup> *Pratt v. Gross*, 263 Ky. 521, 92 S. W. 2d 788 (1936).

<sup>27</sup> *Leger v. Warren*, 62 Ohio St. 500, 57 N. E. 506 (1900).

<sup>28</sup> *Potter v. Swindle*, 77 Ga. 419, 3 S. E. 94 (1887).

<sup>29</sup> *Leisure v. Hicks*, *supra* n. 21.

detention.<sup>30</sup> As to what length of time has been deemed reasonable in Ohio, the following cases are indicative:

*Leger v. Warren* held that a detention of five days during which no warrant was issued, was unreasonable.<sup>31</sup> *Conrad v. Lengel* held that a detention for one hour without a warrant was not unreasonable.<sup>32</sup> In *Johnson v. Reddy*, plaintiff was arrested at 3:00 P.M. and complaint and warrant were issued at 9:00 A.M. the next day.<sup>33</sup> The question of whether defendant acted with all practicable speed was properly one for the jury. In *Frecka v. McGuire*, a detention from 10:00 P.M. in the evening until the next day was not deemed unreasonable.<sup>34</sup>

### Detention or Arrest by Citizen

It has been recognized in many jurisdictions that the owner of a mercantile establishment who has reasonable grounds to believe that larceny has been or is being committed, has the right to detain a suspected party<sup>35</sup> for a reasonable time for a reasonable investigation. This has been held to mean the time necessary for the merchant to obtain a statement from the individual and to check his records regarding the ownership of the merchandise in question.<sup>36</sup>

In a citizen arrest as in an officer arrest, if during the period of unlawful detention no physical force is actually used, the sub-

<sup>30</sup> *Leger v. Warren*, *supra* n. 27.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Conrad v. Lengel*, 110 Ohio St. 532, 144 N. E. 278 (1924).

<sup>33</sup> *Johnson v. Reddy*, 163 Ohio St. 347, 126 N. E. 2d 911 (1955).

<sup>34</sup> *Frecka v. McGuire*, 6 Ohio L. Abs. 262 (Ohio App. 1928).

<sup>35</sup> *Bettolo v. Safeway Stores, Inc.*, 11 Cal. App. 2d 430, 54 P. 2d 24 (1936) (Search of customer showed he had not stolen anything, yet court held no false imprisonment, because of sufficient probable cause for detention); *J. C. Penney Co. v. O'Daniell*, 263 F. 2d 849 (10th Cir. 1959) (Court held that detention and arrest has to be done to protect defendant's property and said that test for probable cause was whether a reasonable man in defendant's position would believe from the circumstances that probable cause existed); *Jacques v. Childs Dining Hall Co.*, 244 Mass. 438, 138 N. E. 843 (1923); *Teel v. May Department Stores Co.*, 348 Mo. 696, 155 S. W. 2d 74 (1941); *S. H. Kress & Co. v. Bradshaw*, 186 Okla. 588, 99 P. 2d 508 (1940); *Little Stores v. Isenberg*, 26 Tenn. App. 357, 172 S. W. 2d 13 (1943); *Collyer v. S. H. Kress Co.*, 54 P. 2d 20 (Cal. 1936).

<sup>36</sup> *Bettolo v. Safeway Stores, Inc.*, *supra* n. 35 (15 minutes held to be reasonable); *Collyer v. S. H. Kress Co.*, *supra* n. 35 (20 minutes held to be reasonable); *Jacques v. Childs Dining Hall*, *supra* n. 35 (Jury question—20 to 30 minutes held to be unreasonable); *Montgomery Ward & Co. v. Freeman*, 199 F. 2d 720 (4th Cir. 1952) (Jury question as to the reasonableness of detention); 22 Am. Jur. 368; Leonard, *False Arrest—Shoplifters—Defense of Lawful Detention—General Business Law*, 25 Albany L. Rev. 173 (1961).

mission must be to a reasonably apprehended force.<sup>37</sup> Circumstances in which an individual merely considers himself restrained are not sufficient to constitute false imprisonment.<sup>38</sup>

Defendant in *Lindquist v. Friedman's Inc.*,<sup>39</sup> without inquiry of any sort, detained plaintiff for 10 to 15 minutes. Plaintiff was allowed recovery since she was innocent of any wrongful intent in offering a counterfeit bill which would have deceived the average person.

A detention of 20 to 30 minutes was held to be unreasonable in *Teel v. May*,<sup>40</sup> where defendant told plaintiff he could not leave until he signed a confession after plaintiff had returned the goods. This was also the holding of the court in *Fleisher v. Ensminger*,<sup>41</sup> where defendant's language and conduct led plaintiff to believe she would be forcibly detained if she attempted to leave during the questioning. Similarly in *Jacques v. Childs Dining Hall*<sup>42</sup> plaintiff was detained pending an investigation to determine whether or not payment had been made for food purchased. The jury held the detention to be unreasonable and for an unreason-

<sup>37</sup> *Proulx v. Pinkerton's National Detective Agency, Inc.*, 343 Mass. 390, 178 N. E. 2d 575 (1961). (Judgment for defendant where plaintiff had been interviewed privately by detectives for one hour; plaintiff had not been subjected to conduct indicating any restraint and was not accused of stealing); *Lukas v. J. C. Penney Company*, 233 Or. 345, 378 P. 2d 717 (1963) (Judgment for plaintiff where defendant store wrongfully detained plaintiff on shoplifting charge; court stated that defendant's display of physical force without first identifying itself had made plaintiff apprehensive of injury); *Great Atlantic & Pacific Tea Co. v. Smith*, 281 Ky. 583, 136 S. W. 2d 759 (1940). (Plaintiff recovered where she was grabbed by defendant's agent, accused of theft and thereafter forcibly detained against her will); *Gust v. Montgomery Ward & Co.*, 234 Mo. App. 611, 136 S. W. 2d 94 (1939) (Plaintiff recovered where defendant restrained plaintiff in violent and abusive manner and violently searched her on sidewalk in front of store; *Great Atlantic & Pacific Tea Co. v. Billups*, 253 Ky. 126, 69 S. W. 2d 5 (1934); *Jacques v. Childs Dining Hall Co.*, *supra* n. 35; *Griffin v. Clark*, 55 Ida. 364, 42 P. 2d 297 (1935); *Fleisher v. Ensminger*, 140 Md. 604, 118 A. 153 (1922) (Here plaintiff saleslady recovered where she was detained by defendant employer whose language and conduct reasonably led her to believe that she would be forcibly detained if she attempted to leave.)

<sup>38</sup> *Proulx v. Pinkerton's National Detective Agency, Inc.*, *supra* n. 37; *Hoffman v. Clinic Hospital*, 213 N. C. 669, 197 S. E. 161 (1938); *Gill v. Montgomery Ward & Co. Inc.*, 284 App. Div. 36, 129 N. Y. S. 2d 288 (1954); *Great Atlantic & Pacific Tea Co. v. Billups*, *supra* n. 37 (Court said what the defendant said and did to plaintiff were not sufficient to induce any reasonable apprehension); *Sweeney v. F. W. Woolworth Co.*, 247 Mass. 277, 142 N. E. 50 (1924); *Fenn v. Kroeger Grocery*, *supra* n. 35.

<sup>39</sup> *Lindquist v. Friedman's, Inc.*, 366 Ill. 232, 8 N. E. 2d 625 (1937).

<sup>40</sup> *Teel v. May Dept. Stores*, *supra* n. 35.

<sup>41</sup> *Fleisher v. Ensminger*, *supra* n. 37.

<sup>42</sup> *Jacques v. Childs Dining Hall Co.*, *supra* n. 35.

able time since the inattention and carelessness of the defendant's cashier was the source of the confusion.

In *Jorgensen v. Pennsylvania Railroad*, plaintiff recovered where he had been held incommunicado while questioned for two and one-half hours with respect to a charged theft.<sup>43</sup> The jury decided that the defendant's actions exceeded those reasonably necessary for the type of investigation which might reasonably have been held. A detention for three and one-half hours by threats and suggestions of arrest and prosecution for the purpose of inducing an execution of a confession regarding missing bank deposits was held to be unreasonable in *Parrott v. Bank of America National Trust*,<sup>44</sup> as was a detention for 5 hours in *J. J. Newberry v. Judd*<sup>45</sup> where plaintiff was accused of stealing and subjected to a search in defendant's basement.

### Citizen Arrest in Ohio

In Ohio a private person is given authority by statute to arrest without a warrant in cases where there is reasonable ground to believe that a felony has been committed.<sup>46</sup>

The owner or manager of a mercantile establishment is also given authority by statute, when he has reasonable grounds for believing that a customer has not paid for merchandise being taken from the store, to detain the patron for a reasonable time in order to conduct a reasonable investigation.<sup>47</sup> In order to establish imprisonment by the proprietor, the patron must show that he has been unreasonably detained against his will either by force or threat which cause him apprehension.<sup>48</sup>

In *Isaiah v. Great Atlantic & Pacific Tea*, the court said the jury would be justified in concluding that a prima facie case of false imprisonment was established when defendant employee took plaintiff by arm and required him to go to a room in the

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<sup>43</sup> *Jorgensen v. Pennsylvania Railroad Company*, 25 N. J. 541, 138 A. 2d 24 (1958).

<sup>44</sup> *Parrott v. Bank of America Nat. Trust & Savings Ass'n.*, 97 Cal. App. 2d 14, 217 P. 2d 89 (1950).

<sup>45</sup> *J. J. Newberry Co. v. Judd*, 259 Ky. 309, 82 S. W. 2d 359 (1935).

<sup>46</sup> Sec. 2935.04 Ohio Rev. Code.

<sup>47</sup> Sec. 2935.041 Ohio Rev. Code.

<sup>48</sup> *Isaiah v. Great Atlantic & Pacific Tea Co.*, 111 Ohio App. 537, 174 N. E. 2d, 128 (1959); *Lester v. Albers Super Markets, Inc.*, 94 Ohio App. 313, 114 N. E. 2d 529 (1952).

rear of the store for questioning. Plaintiff here through fear or by force was compelled to submit to the will of the employee.<sup>49</sup>

In *Lester v. Albers Super Markets*, plaintiff was told by defendant manager that a bag of goods she had purchased at another store would have to be searched, after which she would be released. The court in denying her recovery said she was detained only a reasonable time. Testimony showed she was in the store only 5 to 15 minutes.<sup>50</sup>

### Conclusion

The unlawful restraint of a person's freedom of movement, constituting false imprisonment, can arise from words or acts which cause reasonable apprehension. The actual time span of the detention may be no more than momentary.

The right to detain another for a reasonable time is extended to individuals having legal authority. What constitutes a reasonable time for lawful detention depends almost entirely on the facts and circumstances surrounding each particular case. The question of reasonableness in every instance may depend on a variety of factors including judicial accessibility and facilities, the required duties of the arresting officer, probable cause, the physical or mental condition of the person being detained, and the apparent intentions of all parties.

It appears from the majority of the cases researched that an arresting officer has more latitude, in both the manner and length of detention in making an arrest, than does a citizen acting on similar probable cause. Both the officer and the citizen must exercise diligence in the investigation which prompts the detention or arrest, and the lack of due care or the use of more forceful coercion in restraining the plaintiff than is reasonably necessary under the circumstances, will lead to liability.

<sup>49</sup> *Isaiah v. Great Atlantic & Pacific Tea Co.*, *supra* n. 48.

<sup>50</sup> *Lester v. Albers Super Markets, Inc.*, *supra* n. 48.