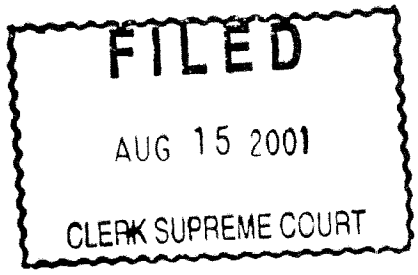
IN THE COURT OF APPEALS OF IOWA

No. 1-355 / 00-1234
Filed August 15, 2001



DEERIC DIXON,
Plaintiff-Appellant,

vs.

HY-VEE, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

Plaintiff appeals from the district court order granting defendant's motion for directed verdict on plaintiff's false arrest and false imprisonment claims. **AFFIRMED.**

Robert A. Wright, Jr., Des Moines, for appellant.

Kenneth R. Munro of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

MILLER, J.

Plaintiff DeEric Dixon appeals from the district court order granting defendant Hy-Vee, Inc.'s (Hy-Vee) motion for directed verdict on Dixon's false arrest and false imprisonment claims. He contends the court erred in determining there was insufficient evidence to allow the case to go to the jury. We affirm.

I. BACKGROUND FACTS

The facts of this case are largely undisputed. On November 15, 1996 John Notch was working as the shift manager at the Hy-Vee store on Army Post Road in Des Moines, Iowa. Notch was called to the front of the store with an emergency code. A fellow manager was stopping an unknown African-American male whom he suspected had shoplifted a bottle of liquor. Notch approached the suspect in the store parking lot. The suspect was soon joined in the parking lot by an African-American female and then another African-American male. The person whom Notch had stopped for the shoplifting then threw the bottle of liquor and the other male punched Notch in the face. All three individuals then got in the car and drove away, however Notch was able to get the license plate number of the vehicle. Notch called the police to report the incident and gave them a description of the car, its license plate number, and a description of the male who had tried to steal the bottle of liquor and had then thrown it.

The car was stopped by the police at East 14th and University Avenue in Des Moines. When the vehicle was stopped the police removed two African-American females and one African-American male from it and detained them while Notch was brought to the scene. The male was the plaintiff Dixon. Notch

identified Dixon as the person who had thrown the bottle of liquor and identified one of the females as the female who had been involved in the incident. Dixon was arrested and charged with robbery in the second degree. The case went to a jury trial. Dixon was acquitted. He subsequently brought this action for damages against Hy-Vee alleging that the negligence of Notch in identifying him led to his false arrest and imprisonment.

Following the presentation of Dixon's case at the civil jury trial, the district court granted Hy-Vee's motion for directed verdict. The court found as a matter of law that Hy-Vee could not be liable for Dixon's arrest and incarceration by the police based on the identification by its employee. The court based its conclusion on the fact Notch did not in any way detain or restrain Dixon, there was no evidence Hy-Vee demanded or requested Dixon's detention, restraint or arrest, and there was no evidence Hy-Vee was present at the time of Dixon's arrest or detention[1]. The court overruled Dixon's motion for a new trial.

Dixon challenges the court's grant of Hy-Vee's motion for directed verdict, contending he presented sufficient evidence at trial on his false arrest and imprisonment claims to generate a jury question.

II. STANDARD OF REVIEW

We review a ruling granting a motion for directed verdict for correction of errors at law. Iowa R. App. P. 4; *Balmer v. Hawkeye Steel*, 604 N.W.2d 639, 640 (Iowa 2000). We view the evidence in the same light as the district court to determine whether the evidence generated a jury question. *Balmer*, 604 N.W.2d

[1] The trial court's references to Hy-Vee were clearly intended to mean or include its employees, as Dixon's claims against Hy-Vee are based on the acts of its employees. Where appropriate in the context, our references to "Hy-Vee" are intended to mean Hy-Vee and its employees.

at 640-41. We view the evidence in the light most favorable to the nonmoving party and afford the nonmovant every legitimate inference that we can reasonably deduce from the evidence. *Lawrence v. Grinde*, 534 N.W.2d 414, 418 (Iowa 1995). In ruling on such a motion the district court must first decide whether the nonmoving party has presented substantial evidence on each element of the claim. *Balmer*, 604 N.W.2d at 641. Evidence is substantial if the jury could reasonably infer a fact from the evidence. *Id.* A directed verdict is appropriate if the evidence is not substantial. *Id.*

III. MERITS

False imprisonment is the unlawful restraint of an individual's personal liberty or freedom of locomotion. *Valadez v. City of Des Moines,* 324 N.W.2d 475, 477 (Iowa 1982); *Zohn v. Menard, Inc.*, 598 N.W.2d 323, 326 (Iowa Ct. App. 1999); 32 Am.Jur.2d *False Imprisonment* § 1 (1995). A false arrest is one way of committing the tort of false imprisonment. *Children v. Burton*, 331 N.W.2d 673, 678 (Iowa 1983). Although Dixon alleged false arrest in count 1 and false imprisonment in count 2 of this petition, they are not distinguishable and therefore amount only to a charge of false imprisonment rather than being distinct causes of action. *Fox v. McCurnin,* 205 Iowa 752, 757, 218 N.W. 499, 501 (1928); *see also Kraft v. City of Bettendorf*, 359 N.W.2d 466, 469 (Iowa 1984) (stating false arrest is indistinguishable from false imprisonment).

Our prior cases have stated that the two essential elements of the tort of false imprisonment are "(1) detention or restraint against a person's will, and (2) unlawfulness of the detention or restraint." *Nelson v. Winnebago Industries, Inc.,* 619 N.W.2d 385, 388 (Iowa 2000); *See also Valadez*, 324 N.W.2d at 477 (same)

(citing *Sergeant v. Watson Bros. Transp. Co.*, 244 Iowa 185, 196, 52 N.W.2d 86, 92 (1952)). Under the Restatement:

> (1) An actor is subject to liability to another for false imprisonment if
>
> (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and
>
> (b) his act directly or indirectly results in such a confinement of the other, and
>
> (c) the other is conscious of the confinement or is harmed by it.

Restatement (Second) of Torts § 35 (1965); *Nelson*, 619 N.W.2d at 388. "Accordingly, a private citizen at whose request, direction, or command a police officer makes an arrest without a warrant is liable if the arrest turns out to be unlawful." 32 Am.Jur.2d *False Imprisonment* § 40 (1995). "One who instigates or participates in the unlawful confinement of another is subject to liability to the other for false imprisonment." Restatement (Second) of Torts § 45A (1965); *see also* 32 Am.Jur.2d *False Imprisonment* § 40 (1995) ("Before a person may be found liable for causing false imprisonment through false arrest, that person must have personally and actively participated therein directly or by indirect procurement.")

It is clear from the record that Hy-Vee did not directly detain or confine Dixon in any way. It was the police, and the police alone, who directly detained, arrested and imprisoned Dixon. Therefore, the question is whether the trial court was correct in determining that Dixon did not present substantial evidence that Hy-Vee instigated, requested, or directed Dixon's arrest or detention by the police.

> Instigation consists of words or acts which direct, request, invite or encourage the false imprisonment itself. In the case of an arrest, it

> is the equivalent, in words or conduct, of "Officer, arrest that man!" It is not enough for instigation that the actor has given information to the police about the commission of a crime, or has accused the other of committing it, so long as he leaves to the police the decision as to what shall be done about any arrest, without persuading or influencing them.

Restatement (Second) of Torts § 45A cmt. c (1965). "There is no liability for merely giving information to legal authorities, who are left entirely free to use their own judgment, or for identifying the plaintiff as the person wanted." W. Page Keeton et al., *Prosser & Keeton on the Law of Torts* § 11 at 52 (5th Ed. 1984). *See also Lewis v. Farmer Jack Division, Inc.*, 327 N.W.2d 893, 894 (Mich. 1982) (holding supermarket was not liable for false arrest of plaintiff despite store employee's misidentification of plaintiff as robber and subsequent dismissal of robbery charge against plaintiff – arrest was not a "false arrest" because probable cause to arrest existed); *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 558 (Minn. Ct. App. 1995) ("A party is not liable for false imprisonment for conveying information about suspected criminal activity unless that party directly persuades or commands the police to detain the suspect."); *Danberg v. Sears, Roebuck and Co.*, 252 N.W.2d 168, 171 (Neb. 1977) (stating that one who merely tells an officer what he knows of a supposed offense or gives information to an officer tending to show that a crime has been committed, without requesting an arrest, is not liable for false arrest and imprisonment); *Wishnatsky v. Bergquist*, 550 N.W.2d 394, 399 (N.D. 1996) (holding there is no liability where a private citizen merely summons the police for assistance and does not specifically request the person be arrested or supply false information, or merely provides information to police and leaves the decision of whether to arrest to the officer's judgment and discretion); Landis, Annotation, *False Imprisonment:*

Liability of Private Citizen, Calling on Police for Assistance after Disturbance or Trespass, for False Arrest by Officer, 98 A.L.R. 3d 542 §§ 2 and 4 (1980) (citing cases where federal and state courts have held private citizen is not liable for false arrest or false imprisonment when he or she did not specifically request the officer arrest the alleged offender or supply false information to the police). Supplying false information means supplying information the supplier knows is false, and does not mean the mere good faith supplying of mistaken information. *See Powers v. Carvalho*, 368 A.2d 1242, 1248 (R.I. 1977) and cases cited therein. Dixon did not argue in resisting directed verdict and does not argue on appeal that Hy-Vee supplied information to the police that it knew to be false, and there is no substantial evidence it did so.

As stated above, the trial court found, as a matter of law, that Hy-Vee could not be held liable for false arrest or false imprisonment under the facts of this case. The court determined there was no proof Hy-Vee detained or restrained Dixon in any way and there was no evidence that Hy-Vee demanded or requested Dixon's detention or arrest. We agree with the conclusions of the trial court.

IV. CONCLUSION

We conclude the trial court was correct in determining Dixon failed to present substantial evidence that Hy-Vee instigated his arrest. Hy-Vee did not direct, request, invite or encourage Dixon's detention or arrest. Hy-Vee merely summoned the police to report an offense and provided identification information when requested. Hy-Vee left entirely to the officers' judgment and discretion what to do with this information and whether or not to arrest Dixon based on the

information. The court did not err in granting Hy-Vee's motion for a directed verdict.

AFFIRMED.