

LEXSEE 437 F.3D 1112

WINSTON JOHNSON, Plaintiff-Appellee, versus BARNES & NOBLE BOOK-SELLERS, INC., Defendant-Appellant.

No. 04-16113

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*437 F.3d 1112; 2006 U.S. App. LEXIS 2016; 19 Fla. L. Weekly Fed. C 223***January 27, 2006, Decided****January 27, 2006, Filed**

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Southern District of Florida. D. C. Docket No. 03-20488-CV-DLG.

Johnson v. Barnes & Noble Booksellers, Inc., 2004 U.S. Dist. LEXIS 25202 (S.D. Fla., Nov. 8, 2004)

LexisNexis(R) Headnotes

Civil Procedure > Trials > Jury Trials > Jury Instructions > General Overview

Civil Procedure > Appeals > Standards of Review > General Overview

Civil Procedure > Appeals > Standards of Review > Reversible Errors

[HN1] A circuit court reviews claims pertaining to jury instructions to determine whether the jury charges, considered as a whole, sufficiently instructed the jury so that the jurors understood the issues and were not misled. If jury instructions accurately reflect the law, the trial judge is given wide discretion as to the style and wording employed in the instruction. A court will reverse the trial court because of an erroneous instruction only if it is left with a substantial and ineradicable doubt as to whether the jury was properly guided in its deliberations.

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Disruptive Conduct > Disorderly Conduct & Disturbing the Peace > Elements

[HN2] Breach of the peace is defined by *Fla. Stat.* § 877.03 (2001).

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Disruptive Conduct > Disorderly Conduct & Disturbing the Peace > Elements

[HN3] See *Fla. Stat.* § 877.03 (2001).

Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Scope of Protection

[HN4] The United States Supreme Court has stated that no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

Torts > Intentional Torts > False Imprisonment > Defenses > Justification

Torts > Intentional Torts > False Imprisonment > Elements

[HN5] In Florida, the tort of false imprisonment is defined as the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and the deprivation of his liberty. In a false imprisonment action the plaintiff is required only to establish imprisonment contrary to his will and the unlawfulness of the detention. Once a plaintiff has established his detention by one who has no authority to detain him, the defendant may challenge the claim of an unlawful detention by asserting the lawfulness of the detention as an affirmative defense.

Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Disruptive Conduct > Disorderly Conduct & Disturbing the Peace > Elements

Criminal Law & Procedure > Arrests > Warrantless Arrest

[HN6] *Fla. Stat. § 877.03* (2001) defines a breach of the peace as occurring when a person commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting. Florida courts have narrowly interpreted the meaning of this statute and have required a showing that a breach of the peace presents an imminent threat to the public security or morals to justify a citizen taking immediate action. Moreover, Florida law requires that in order to effectuate a citizen's arrest, the breach must be committed in the presence of the private citizen. Indeed, pursuant to Florida law, not even a police officer can effectuate a warrantless arrest for a misdemeanor, if the misdemeanor was not committed in his presence. *Fla. Stat. § 901.15(1)*.

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Disruptive Conduct > Disorderly Conduct & Disturbing the Peace > Elements

[HN7] Common law defines a breach of the peace as a public offense done by violence, or one causing or likely to cause an immediate disturbance of public order.

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Disruptive Conduct > Disorderly Conduct & Disturbing the Peace > General Overview
Criminal Law & Procedure > Arrests > Warrantless Arrest

[HN8] Under common law, a private person may arrest for a misdemeanor only if it was committed in his presence and it involved a breach of the peace.

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Disruptive Conduct > Disorderly Conduct & Disturbing the Peace > General Overview
Torts > Intentional Torts > False Imprisonment > General Overview

[HN9] A private person is privileged to impose confinement upon another for the purpose of terminating or preventing the renewal of an affray or an equally serious breach of the peace which is being or has been committed in the actor's presence or of preventing such other from participating therein, if (a) the other is or the actor reasonably believes him to be participating or about to participate in the affray, and (b) the confinement or force is not intended or likely to cause death or serious bodily harm, and (c) the actor reasonably believes that the force or confinement is necessary to prevent the other from participating in the affray or other equally serious breach of the peace.

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

Civil Procedure > Trials > Jury Trials > Verdicts > General Overview

Civil Procedure > Judgments > Relief From Judgment > Additurs & Remittiturs > Remittiturs

[HN10] The United States Court of Appeals for the Eleventh Circuit cannot disturb a jury award stemming from a Florida state law claim where the trial court refused to alter the amount, unless the verdict is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate. The verdict must be so excessive or so inadequate so as at least to imply an inference that the verdict evinces or carries an implication of passion or prejudice, corruption, partiality, improper influences, or the like.

Torts > Intentional Torts > False Imprisonment > Remedies

[HN11] Pursuant to Florida law, damages recoverable in an action for false imprisonment include bodily injury, physical suffering, physical inconvenience and discomfort, loss of time, losses in the plaintiff's business or employment, and expenses incurred due to the imprisonment. Damages are also recoverable for mental suffering such as embarrassment, humiliation, deprivation of liberty, and disgrace and injury to the person's feelings and reputation. *Fla. Stat. § 768.74(5)*.

COUNSEL: For Barnes & Noble Booksellers, Inc., Appellant: Jessica S. Forbes, Edward W. Levine, Wagenfeld Levine, MIAMI, FL.

For Winston Johnson, Appellee: Matthew W. Dietz, Law Office of Matthew Dietz, CORAL GABLES, FL.

JUDGES: Before EDMONDSON, Chief Judge, BARKETT, Circuit Judge, and HUNT, * District Judge.

* Honorable Willis B. Hunt, Jr., United States Senior District Judge for the Northern District of Georgia, sitting by designation.

OPINION

[*1114] PER CURIAM:

Barnes & Noble Booksellers, Inc. appeals the denial of its motion for a new trial after a jury verdict finding that Barnes & Noble falsely imprisoned Winston Johnson. The jury awarded Johnson \$ 117,000 for emotional pain and mental anguish. Barnes & Noble argues that it is entitled to a new trial because the district court erroneously refused to instruct the jury with Barnes & Noble's

proposed jury instruction on breach of the peace. Barnes & Noble also argues that the jury award of \$ 117,000 was excessive.

BACKGROUND

Johnson's lawsuit arose from an incident at a Barnes & Noble store while he was there to purchase a compact disk and a book. At trial, Johnson testified that after purchasing the compact disk, he asked a female clerk for assistance in locating the book. As the store clerk stooped down to retrieve a book from [**2] the bottom of the shelf, she, or her shirt, was touched by Johnson. Johnson claimed that he was merely trying to help the store clerk with her shirt, which she was trying to reach in order to tuck it in, while the store clerk maintained that Johnson inappropriately grabbed her buttocks. The store clerk left Johnson and reported to her supervisors that Johnson had touched her inappropriately. Although not having observed the incident, two store managers and a security guard approached Johnson, accused him of having touched the store employee inappropriately, which Johnson adamantly denied, and then escorted Johnson to an office where he was detained for one to two hours. During this detention, he was interrogated, photographed and subjected to racially discriminatory remarks. When [1115] the police arrived, they questioned Johnson about the incident, returned his ID and driver's license, which had been taken from him by the Barnes & Noble employees, and told him to leave the store. Johnson was not arrested.

Johnson subsequently filed suit against Barnes & Noble, claiming false imprisonment.¹ The jury returned a verdict, finding Barnes & Noble liable for falsely imprisoning Johnson and awarding [**3] Johnson \$ 117,000. In a post-verdict motion for a new trial, Barnes & Noble argued that the jury was erroneously instructed and that the verdict was excessive. The district court upheld the jury's verdict and denied the motion for a new trial. Barnes & Noble now appeals.

¹ Johnson also claimed he was discriminated against in violation of 42 U.S.C. § 1981. The jury found against Johnson on this claim, and Johnson does not appeal it.

DISCUSSION

I.

[HN1] We review claims pertaining to jury instructions to determine "whether the jury charges, considered as a whole, sufficiently instructed the jury so that the jurors understood the issues and were not misled." *Bearint ex rel. Bearint v. Dorell Juvenile Group, Inc.*, 389 F.3d 1339, 1351 (11th Cir. 2004) (quoting *Carter v. DecisionOne Corp.*, 122 F.3d 997, 1005 (11th Cir. 1997)

(citation omitted)). If jury instructions accurately reflect the law, the trial judge is given wide discretion as to the style and wording [**4] employed in the instruction. *Bearint*, 389 F.3d at 1351. We will reverse the trial court because of an erroneous instruction only if we are "left with a substantial and ineradicable doubt as to whether the jury was properly guided in its deliberations." *Bearint*, 389 F.3d at 1351 (quoting *Carter*, 122 F.3d at 1005).

In this case, the district court instructed the jury on the Florida law of false imprisonment using the pattern Florida false imprisonment instruction as follows:

The issue for your determination on the false imprisonment claim of plaintiff against defendant is whether the defendant intentionally caused the plaintiff to be restrained against his will.

Barnes & Noble argued at trial that it was additionally entitled to an instruction that the jury could rule for Barnes & Noble if it found that Barnes & Noble acted reasonably by detaining Johnson because Johnson had breached the peace. It specifically requested the following instruction:

On the defense to the false imprisonment claim, the first issue for your determination is whether the defendants had the legal authority to restrain the Plaintiff under [**5] the rules governing a citizens arrest. A citizens arrest can occur on the basis of misdemeanor if it was committed in the presence of the citizen or involved a breach of the peace.

[HN2] 'Breach of the Peace' is defined by § 877.03, Fla. Stat. (2001), as follows:

[HN3] Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

If you find that the conduct of the Plaintiff constituted a breach of the peace, thus giving the defendants lawful authority to detain the Plaintiff, then you must

determine if the detention was conducted [*1116] in a reasonable manner and for a reasonable amount of time.

The district court refused to give the instruction, ruling that as a matter of law the conduct at issue did not constitute a breach of the peace, warranting a citizen's arrest under Florida law.

As [HN4] the Supreme Court reiterated [**6] in *Terry v. Ohio*,

No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

392 U.S. 1, 9, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) (quoting *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251, 11 S. Ct. 1000, 35 L. Ed. 734 (1891)). [HN5] In Florida, the tort of false imprisonment is defined as "the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and the deprivation of his liberty." *Escambia County School Board v. Bragg*, 680 So. 2d 571, 572 (Fla. Dist. Ct. App. 1996) (quoting *Johnson v. Weiner*, 155 Fla. 169, 19 So. 2d 699, 700 (Fla. 1944)). In a false imprisonment action the plaintiff is required only to "establish imprisonment contrary to his will and the unlawfulness of the detention." *Rivers v. Dillard's Dep't Store, Inc.*, 698 So. 2d 1328, 1331 (Fla. Dist. Ct. App. 1997) (quoting *Rotte v. City of Jacksonville*, 509 So. 2d 1252 (Fla. Dist. Ct. App. 1987)); [**7] *Everett v. Florida Institute of Technology*, 503 So. 2d 1382, 1383 (Fla. Dist. Ct. App. 1987) (requiring only "allegations that a person [was] . . . unlawfully restrained without color of authority"); see *City of St. Petersburg v. Austrino*, 898 So. 2d 955, 957 (Fla. Dist. Ct. App. 2005).

Once a plaintiff has established his detention by one who has no authority to detain him, the defendant may challenge the claim of an unlawful detention by asserting the lawfulness of the detention as an affirmative defense. *Rivers*, 698 So. 2d at 1331. Barnes & Noble argues that Johnson's detention was lawful in this case based on the right of a citizen to effectuate an arrest for breach of the peace. [HN6] Section 877.03, *Florida Statutes* defines a breach of the peace as occurring when a person commits "such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or

engages in brawling or fighting[.]" Fla. Stat. § 877.03.² Florida courts have narrowly interpreted the meaning of this statute, *State v. Saunders*, 339 So. 2d 641, 643 (Fla. 1976) [**8] (rejecting an expansive interpretation of Section 877.03) (citations omitted), and have required a showing that a breach of the peace presents an imminent threat to the public security or morals to justify a citizen taking immediate action. *State v. Furr*, 723 So. 2d 842, 844 (Fla. Dist. Ct. App. 1999) (finding drunk driving amounts to a breach of the peace because of the immediate threat to life involved in driving while intoxicated) (citing *Edwards v. State*, 462 So. 2d 581 (Fla. Dist. Ct. App. 1985)). Moreover, Florida law requires that in order to effectuate a citizen's arrest, the breach must "be committed in the presence of the private citizen." *Steiner v. State*, 690 So. 2d 706, 708 (Fla. Dist. Ct. App. 1997). Indeed, pursuant to Florida law, not even a police officer can effectuate a warrantless arrest for a misdemeanor, if the misdemeanor was not committed in his presence. Fla. Stat. § 901.15(1); [*1117] *B.D.K. v. State*, 743 So. 2d 1155, 1157 (Fla. Dist. Ct. App. 1999) (citing *Smiley v. State*, 354 So. 2d 922 (Fla. Dist. Ct. App. 1978)); see *Nickell v. State*, 722 So. 2d 924, 925 (Fla. Dist. Ct. App. 1998); [**9] *Donner v. Hetherington*, 399 So. 2d 1011, 1012 (Fla. Dist. Ct. App. 1981).³

2 [HN7] Common law defines a breach of the peace as "a public offense done by violence, or one causing or likely to cause an immediate disturbance of public order." *Restatement 2d of Torts*, § 116.

3 [HN8] Under common law: "A private person may arrest for a misdemeanor only if it was committed in his presence and it involved a breach of the peace." *Moll v. U.S.*, 413 F.2d 1233, 1236 (5th Cir. 1969) (citing 4 Wharton, Criminal Law and Procedure §§ 1601-03; 5 Am.Jur.2d, Arrest §§ 34-36; 6 C.J.S. Arrest § 8); see also *Restatement 2d of Torts*, § 141 [HN9] ("[A] private person is privileged . . . to impose confinement upon [another] for the purpose of terminating or preventing the renewal of an affray or an equally serious breach of the peace which is being or has been committed in the actor's presence or of preventing such other from participating therein, if (a) the other is or the actor reasonably believes him to be participating or about to participate in the affray, and (b) the confinement or force is not intended or likely to cause death or serious bodily harm, and (c) the actor reasonably believes that the force or confinement is necessary to prevent the other from participating in the affray or other equally serious breach of the peace.").

[**10] In this case, it is undisputed that the store clerk's allegation of Johnson's conduct, if true, would constitute a misdemeanor. *Fla. Stat. § 784.03*. Johnson was detained, however, by Barnes & Noble employees who had been told, but had not witnessed, the alleged misdemeanor. Moreover, there were no allegations that Johnson had continued this behavior or was at the time of the detention disruptive or committing other "such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them." Under the facts presented here - showing no imminent threat and actions not committed in the presence of those detaining Johnson - we find that the district court did not err in denying the requested instruction for breach of the peace, and accordingly, Barnes & Noble is not entitled to a new trial on liability.

II.

Alternatively, Barnes & Noble argues that the damages award of \$ 117,000 is excessive and should be reversed. [HN10] This Court cannot disturb a jury award stemming from a Florida state law claim where the trial court refused to alter the amount, unless the verdict is "so inordinately [**11] large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate." *Ashcroft v. Calder Race Course, Inc.*, 492 So. 2d 1309, 1314 (Fla. 1986) (citing *Bould v. Touchette*, 349 So. 2d 1181, 1184-85 (Fla. 1977)); see also *Lassitter v. Int'l Union of Operating Engineers*, 349 So. 2d 622, 627 (Fla. 1976) ("The verdict must be so excessive or so inadequate so as at least to imply an inference that the verdict evinces or carries an implication of passion or prejudice, corruption, partiality, improper influences, or the like.") (citation omitted). [HN11] Pursuant to Florida law, "damages recoverable

in an action for false imprisonment include bodily injury, physical suffering, physical inconvenience and discomfort, loss of time, losses in the plaintiff's business or employment, and expenses incurred due to the imprisonment." *Normius v. Eckerd Corp.*, 813 So. 2d 985, 987 (Fla. Dist. Ct. App. 2002) (citing *S.H. Kress & Co. v. Powell*, 132 Fla. 471, 180 So. 757, 763 (Fla. 1938)). "Damages are also recoverable for mental suffering such as embarrassment, humiliation, deprivation [**12] of liberty, and disgrace and injury to the person's feelings and reputation." *Id.*; see also *Fla. Stat. § 768.74(5)*.

Barnes & Noble argues that Johnson did not suffer any actual damages such as medical costs, and the amount awarded was accordingly excessive. Johnson argues [*1118] that the verdict was reasonable under Florida law. He testified at trial that he suffered embarrassment when he had to explain the incident to his wife and children, that he developed a facial twitch, which he attributes to the incident, that he has significantly altered his shopping habits, that he has lost weight, that he has been unable to sleep, and that he was barred from entering a Barnes & Noble store for the rest of his life. In addition, plaintiff's expert witness testified at trial that Barnes & Noble had no policies and procedures in place that would have prevented the unlawful detention of individuals and that employees were permitted to exercise unbridled discretion when handling situations with customers.

Based on all the relevant factors, we find that the award of \$ 117,000 in this case was within the range of permissible awards and we cannot say that the award is [**13] "so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate." Accordingly, the jury's verdict is AFFIRMED.