DEBRA McCANN ET AL., PLAINTIFFS, APPELLEES
v.
WAL-MART STORES, INC., DEFENDANT, APPELLANT[1]
210 F.3d 51 (1st Cir. 2000)
BOUDIN, Circuit Judge

This case involves a claim for false imprisonment. On December 11, 1996, Debra McCann and two of her children-Jillian, then 16, and Jonathan, then 12-were shopping at the Wal-Mart store in Bangor, Maine. After they returned a Christmas tree and exchanged a CD player, Jonathan went to the toy section and Jillian and Debra McCann went to shop in other areas of the store. After approximately an hour and a half, the McCanns went to a register and paid for their purchases. One of their receipts was time stamped at 10:10 p.m.

As the McCanns were leaving the store, two Wal-Mart employees, Jean Taylor and Karla Hughes, stepped out in front of the McCanns' shopping cart, blocking their path to the exit. Taylor may have actually put her hand on the cart. The employees told Debra McCann that the children were not allowed in the store because they had been caught stealing on a prior occasion. In fact, the employees were mistaken; the son of a different family had been caught shoplifting in the store about two weeks before, and Taylor and Hughes confused the two families.

Despite Debra McCann's protestations, Taylor said that they had the records, that the police were being called, and that the McCanns "had to go with her." Debra McCann testified that she did not resist Taylor's direction because she believed that she had to go with Taylor and that the police were coming. Taylor and Hughes then brought the McCanns past the registers in the store to an area near the store exit. Taylor stood near the McCanns while Hughes purportedly went to call the police. During this time, Debra McCann tried to show Taylor her identification, but Taylor refused to look at it.

After a few minutes, Hughes returned and switched places with Taylor. Debra McCann told Hughes that she had proof of her identity and that there must be some proof about the identity of the children who had been caught stealing. Hughes then went up to Jonathan, pointed her finger at him, and said that he had been caught stealing two weeks earlier. Jonathan began to cry and denied the accusation. At some point around this time Jonathan said that he needed to use the bathroom and Hughes told him he could not go. At no time during this initial hour or so did the Wal-Mart employees tell the McCanns that they could leave.

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[1] This case is edited for purposes of LRWR.

Although Wal-Mart's employees had said they were calling the police, they actually called a store security officer who would be able to identify the earlier shoplifter. Eventually, the security officer, Rhonda Bickmore, arrived at the store and informed Hughes that the McCanns were not the family whose son had been caught shoplifting. Hughes then acknowledged her mistake to the McCanns, and the McCanns left the store at approximately 11:15 p.m. In due course, the McCanns brought suit against Wal-Mart for false imprisonment.

The jury awarded the McCanns $20,000 in compensatory damages on their claim that they were falsely imprisoned in the Wal-Mart store by Wal-Mart employees. Wal-Mart has now appealed the verdict. Wal-Mart's claims of error depend on the proper elements of the tort of false imprisonment. Although nuances vary from state to state, the gist of the common law tort is conduct by the actor which is intended to, and does in fact, "confine" another "within boundaries fixed by the actor" where, in addition, the victim is either "conscious of the confinement or is harmed by it." Restatement (Second), Torts § 35 (1965). The few Maine cases on point contain no comprehensive definition, see Knowlton v. Ross, 95 A. 281 (1915); Whittaker v. Sandford, 85 A. 399 (1912), and the district court's definition seems to have been drawn from the Restatement.

While "confinement" can be imposed by physical barriers or physical force, much less will do-although how much less becomes cloudy at the margins. It is generally settled that mere threats of physical force can suffice, Restatement, supra, § 40; and it is also settled-although there is no Maine case on point-that the threats may be implicit as well as explicit, see id. cmt. a; 32 Am.Jur.2d False Imprisonment § 18 (1995) (collecting cases), and that confinement can also be based on a false assertion of legal authority to confine. 54 Restatement, supra, § 41. Indeed, the Restatement provides that confinement may occur by other unspecified means of "duress." Id. § 40A.

Against this background, we examine Wal-Mart's claim that the evidence was insufficient. We think that a reasonable jury could conclude that Wal-Mart's employees intended to "confine" the McCanns "within boundaries fixed by" Wal-Mart, that the employees' acts did result in such a confinement, and that the McCanns were conscious of the confinement.

The evidence, taken favorably to the McCanns, showed that Wal-Mart employees stopped the McCanns as they were seeking to exit the store, said that the children were not allowed in the store, told the McCanns that they had to come with the Wal-Mart employees and that Wal-Mart was calling the police, and then stood guard over the McCanns while waiting for a security guard to arrive. The direction to the McCanns, the reference to the police, and the continued presence of the Wal-Mart employees (who at one point told Jonathan McCann that he could not leave to go to the bathroom) were enough to induce reasonable people to believe either that they would be restrained physically if they sought to leave, or that the store was claiming lawful authority to confine them until the police arrived, or both.

Wal-Mart asserts that under Maine law, the jury had to find "actual, physical restraint," a phrase it takes from Knowlton, 95 A. at 283; see also Whittaker, 85 A. at 402. While there is no complete definition of false imprisonment by Maine's highest court, this is a good example of taking language out of context. In Knowlton, the wife of a man who owed a hotel for past bills entered the hotel office and was allegedly told that she would go to jail if she did not pay the bill; after discussion, she gave the hotel a diamond ring as security for the bill. She later won a verdict for false imprisonment against the hotel, which the Maine Supreme Judicial Court then overturned on the ground that the evidence was insufficient.

While a police officer was in the room and Mrs. Knowlton said she thought that the door was locked, the Supreme Judicial Court found that the plaintiff had not been confined by the defendants. The court noted that the defendants did not ask Mrs. Knowlton into the room (another guest had sent for her), did not touch her, and did not tell her she could not leave. The court also said that any threat of jail to Mrs. Knowlton was only "evidence of an intention to imprison at some future time." Knowlton, 95 A. at 283.1 In context, the reference to the necessity of "actual, physical restraint" is best understood as a reminder that a plaintiff must be actually confined-which Mrs. Knowlton was not.

Taking too literally the phrase "actual, physical restraint" would put Maine law broadly at odds with not only the Restatement but with a practically uniform body of common law in other states that accepts the mere threat of physical force, or a claim of lawful authority to restrain, as enough to satisfy the confinement requirement for false imprisonment (assuming always that the victim submits). It is true that in a diversity case, we are bound by Maine law, as Wal-Mart reminds us; but we are not required to treat a descriptive phrase as a general rule or attribute to elderly Maine cases an entirely improbable breadth.

Affirmed.