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## Motive as an Essential Element of the Crime of False Imprisonment

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## NOTES

### MOTIVE AS AN ESSENTIAL ELEMENT OF THE CRIME OF FALSE IMPRISONMENT

Every crime has its own peculiar mental element.<sup>1</sup> To prove a defendant guilty of the crime of which he is accused, the state must show that at the time the act was done the defendant had the requisite *mens rea*. The extreme burden of this rule is counteracted, however, by the familiar doctrine that a man "is presumed to intend the natural and probable consequences of his voluntary acts."<sup>2</sup> This doctrine does not render the above rule ineffective but shifts the burden of proof to the defendant to show that his acts were not accompanied by the usual mental attitude. Just what the mental attitude that will bring a person within the pale of criminal jurisprudence is, cannot be stated in any general rule applicable to all crimes. We must look to the decisions covering the particular crime in question.<sup>3</sup> In the crime of assault and battery, for example, the mere intent to inflict an injury is held to be sufficient.<sup>4</sup> In the crime of larceny, on the other hand, it must appear that the

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<sup>1</sup>Sayre, *Mens Rea*, 45 H. L. R. 974.

<sup>2</sup>Clark and Marshall, *Crimes* (3rd. Ed.), sec. 42, pg. 64.

<sup>3</sup>For a complete discussion see Sayre, *Mens Rea*, 45 H. L. R. 974.

<sup>4</sup>*Commonwealth v. Eyre*, 1 S. & R. 347.

defendant fraudulently intended to deprive the owner of his property permanently. The absence of any one of these elements is fatal to the prosecution.<sup>5</sup> This wide discrepancy between the mental elements of the various crimes has led many writers on the subject, in an effort to erect some bulwark beyond which a court of justice will not peer, to lay down the general dogma that motive is not an essential element of any crime.<sup>6</sup> That is to say, the desire prompting the act, the mental processes causing the defendant to proceed as he did, ought not to be considered by the jury in determining his guilt or innocence; the fact that his purpose for doing the act in question was highly commendable cannot be set up as a defense in any trial in the criminal courts. This position was attacked in a recent issue of this Law Review by Dean Hitchler,<sup>7</sup> who pointed out several instances in which motive has been held to be an element of certain crimes.

The recent case of *Commonwealth v. Trunk*,<sup>8</sup> decided by the Supreme Court of Pennsylvania, lends great weight to the position taken by Dean Hitchler by unequivocally holding that motive is an essential element of the crime of false imprisonment. An examination of that case, together with the authorities cited, and of the meagre extra-territorial decisions on point, presents an interesting picture of the problems involved.

The undisputed facts of the *Trunk* case established two different occasions of unlawful restraint of the prosecutor. First, his confinement in the lockup of a township other than that in which the alleged crime was committed and in which he was apprehended, for five days without any arraignment before a magistrate. Second, the procuring of his release from the county jail without valid authority and his subsequent confinements for short periods of time in a state constabulary barracks and in a lockup in the Borough of Norristown. The defendants were a township police officer, a county detective, and an assistant district attorney. The acts done were performed in pursuance of an investigation of an alleged arson case and there was no evidence that any of the men acted from any other motive than a sense of duty.

In addressing the jury, the trial court charged:

"motive is not a factor in the correct determination of the guilt or innocence of the defendants."

On appeal the Superior Court did not consider this phase of the case, disposing of the appeal on other grounds.<sup>9</sup> The Supreme Court, however, reversing the two prior courts took a different view in regard to the counts charging false imprisonment. Schaffer, J., delivering the opinion of the court, said:

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<sup>5</sup>Clark and Marshall, *Crimes* (3rd. Ed.), sec. 326.

<sup>6</sup>*Rex v. Sheppard*, Russell & Ryan 169, Beale's Cases, 174; *U. S. v. Harmon*, 45 Fed. 414, Beale's Cases, 180, Wharton's *Crim. Law* (9th Ed.), pg. 146; 16 C. J. pg. 78; Clark and Marshall, *Crimes*, pg. 76; *May's Crim. Law*, pg. 25; *People v. Corrigan*, 195 N. Y. 1, 87 N. E. 792.

<sup>7</sup>Motive as an Element of Crime, 35 D. L. R. 105.

<sup>8</sup>311 Pa. 555.

<sup>9</sup>*Commonwealth v. Trunk et al*, 105 Pa. Super. Ct. 569.

"While it may be true that motive is not a factor so far as the assault and battery charges are concerned, . . . it is a most important factor in the charge of false imprisonment . . . The trial judge should have taken into account the fact that they were police officers investigating crime. Their motive, their reason for arresting and holding him (the prosecutor) was a most important part of their defense, because it tended to *justify*<sup>10</sup> the original act of taking into custody and his detention at least for a certain time. The motives, good faith and purpose of the defendants are legitimate matters of defense to be considered by the jury in passing upon the false imprisonment indictments, as they negative the idea of criminality."<sup>11</sup>

And still further on in the opinion, this:

"The good faith of the defendants, who were public officers criminally charged with false imprisonment, was a matter proper for the consideration of the jury."<sup>12</sup>

This is apparently the first case to come before the Supreme Court of Pennsylvania involving the crime of false imprisonment. In fact, a diligent search through the reports has disclosed no cases involving the crime decided in any court of record in Pennsylvania save one decided by the Superior Court since the principal case came down.<sup>13</sup> In that case, James, J., admitted his inability to find any cases but sustained an indictment for false imprisonment on the ground that the offense was indictable at common law in England.<sup>14</sup> In the *Trunk* case the point was not raised by counsel nor considered by the court.

Before going into a consideration of false imprisonment as a crime, we will first consider the analogous civil offense, trespass for false imprisonment, since the court relied chiefly on a case of this type in support of its holding.<sup>15</sup>

The law seems to be well settled, both in Pennsylvania and elsewhere, that in the civil action the plaintiff satisfies the burden of proof by showing the fact of imprisonment. The burden then shifts to the defendant to show that the arrest was by authority of law, every restraint of the person being presumed to be unlawful until the contrary is shown.<sup>16</sup> Proof by the defendant that he acted with legal authority operates as a complete defense to the

<sup>10</sup>Italics added.

<sup>11</sup>In support of this statement the court cited, *McCarthy v. DeArmitt*, 99 Pa. 63, trespass for false imprisonment; and *Taylor v. The Shipbuilding Co.*, 275 Pa. 229, trespass in the nature of case for malicious prosecution.

<sup>12</sup>Citing as authority, *Commonwealth v. Cheney*, 141 Mass. 102, 6 N. E. 724; and 11 R. C. L., pg. 793, sec. 4.

<sup>13</sup>*Commonwealth v. Brewer*, 167 Atl. 386.

<sup>14</sup>*Ibid.*, citing 4 Blackstone's Commentaries 218.

<sup>15</sup>Ante note 11.

<sup>16</sup>*McCarthy v. DeArmitt*, 99 Pa. 63; *McAleer v. Good*, 216 Pa. 473; *Fleisher v. Ensminger*, 140 Md. 604, 118 Atl. 153; *Laroque v. Dorsey*, 299 Fed. 556; *Weigand v. Meade*, 108 N. J. L. 471, 158 Atl. 825; *Hanser v. Bieher*, 271 Mo. 326, 197 S. W. 68.

action.<sup>17</sup> If the defendant is unable to justify his conduct by showing such authority, the plaintiff's case is complete. Defendant's motive, good faith, misapprehension of fact or law, nor any other evidence of innocent intent will excuse him from liability.<sup>18</sup> The question then arises as to the amount of damages to which plaintiff is entitled. It is here that defendant's motive becomes important. The cases are apparently in unanimous accord to the effect that the plaintiff must prove malice in fact to be entitled to punitive or exemplary damages.<sup>19</sup> *McCarthy v. DeArmitt*<sup>20</sup> cited in the *Trunk* case is the leading Pennsylvania case on the point. During the course of the opinion the court said:

"If an officer wantonly and maliciously arrests an innocent man, he ought to be liable in quite as heavy punitive damages as a private person would be for the causeless and malicious prosecution; but if without malice, and in an honest effort to bring a felon to justice, he takes an innocent man, who was unjustly suspected, he should not suffer at all."

The analogy thus drawn by the court between the question of punitive damages in an action for false imprisonment and the question of criminal responsibility for the same offense is based upon sound reason. Since criminal prosecutions are punitive in their nature, certainly there should be no criminal responsibility for an offense that would not entitle the plaintiff to punitive damages in a civil action.

The reliance of the court upon a civil case involving malicious prosecution<sup>21</sup> is, however, hard to justify. That action was invented by the courts to supplement rather than to supplant the action of false imprisonment and is in many respects different from that tort. The gist of the action of false imprisonment is the unlawful restraint of the person,<sup>22</sup> while the gist of the action of malicious prosecution is the malicious institution of legal process.<sup>23</sup> Where the plaintiff's person has been restrained, even though no writ has been issued, the former action will lie,<sup>24</sup> while if a writ has been issued, even though plaintiff's person has not been molested, the latter action will lie.<sup>25</sup> Public policy,

<sup>17</sup> *ibid.*

<sup>18</sup> *McAleer v. Good*, 216 Pa. 473; 65 Atl. 934; *Hanser v. Bieher*, 271 Mo. 326, 197 S. W. 68; *Miller v. Turner*, 49 Cal. App. 653, 194 Pac. 66; *Laroque v. Dorsey*, 299 Fed. 556; *Wiegand v. Smith*, 108 N. J. L. 471, 158 Atl. 825; cases collected in 19 A. L. R. 673.

<sup>19</sup> *Samuel v. Blackwell*, 77 Pa. Super. Ct. 540; *Fleisher v. Ensminger*, 140 Md. 604, 118 Atl. 153; *Marshal v. Cleaver*, 4 Pen. (Del. Super.) 450; 12 Amer. & Eng. Encyc. Law. (2nd Ed.) 726; 11 R. C. L. 794.

<sup>20</sup> 99 Pa. 63.

<sup>21</sup> *Ante* note 11.

<sup>22</sup> *McCarthy v. DeArmitt*, 99 Pa. 63, and cases cited in notes 18 and 19 *ante*.

<sup>23</sup> *Muir v. Hankale et al*, 273 Pa. 233.

<sup>24</sup> *Lentz v. Raum*, 59 Pa. Super. Ct. 260.

<sup>25</sup> *Roessining v. Pittsburgh R. R. Co.*, 226 Pa. 526; *Mahaffey v. Byers*, 151 Pa. 96; *Muir v. Hankale et al*, 273 Pa. 233.

based on a desire to protect unsuccessful litigants who have in good faith pursued their legal rights, has led the courts to refuse to grant the plaintiff a remedy in the action of malicious prosecution unless he can affirmatively prove malice and lack of probable cause. No such public policy exists for protecting a defendant who has imprisoned an innocent person and, as has been seen, the doctrine has not been applied to false imprisonment as a civil wrong.<sup>26</sup> Certainly if the the analogy breaks down when applied to the civil injury, it cannot be applied to the criminal offense.

The court cited only one criminal case in support of its holding, that case being *Commonwealth v. Cheney*,<sup>27</sup> a Massachusetts decision. In that case the defendant arrested the prosecutor without a warrant on a charge of drunkenness, a misdemeanor. It turned out that prosecutor was not drunk at the time the arrest was made. On the question of defendant's motive or good faith the court said:

"Before the defendant arrested Hayes, he was bound to exercise his sound judgment, and determine whether it was his duty under all the circumstances, to make the arrest. But when he had exercised his discretion, we cannot see, if he acted in good faith, upon reasonable and probable cause of belief, without rashness or negligence, that he is to be regarded as a criminal because he is found to be mistaken."

It is to be noted that this principle is different than that applied in civil cases. To justify an arrest without a warrant for a misdemeanor in an action for false imprisonment, defendant must prove that the crime was being committed at the time the arrest was made. "Probable cause of belief" will not excuse him if it appears that plaintiff was guilty of no wrong.<sup>28</sup> The reason of the rule is well expressed and the case seems to be in complete accord with the *Trunk* case.

The statement in Ruling Case Law<sup>29</sup> relied upon by the court was based entirely upon the doctrine laid down in *Commonwealth v. Cheney* above. Since it cannot, therefore, add anything to our knowledge of the state of the authorities, it is just as well left unquoted.

There seems to be no other case in which defendant's good faith or praiseworthy motive has been held to be a complete defense to a prosecution for false imprisonment. Indeed *Commonwealth v. Cheney* is in apparent conflict with an earlier decision of the Supreme Court of Massachusetts. In *Commonwealth v. Nickerson*<sup>30</sup> that court made a broad statement to the effect

<sup>26</sup>Ante note 16.

<sup>27</sup>141 Mass. 102, 6 N. E. 742.

<sup>28</sup>*Hendrix v. Beach Dev. Co.*, 168 N. Y. S. 316, 181 App. Div. 288; *DeSilva v. N. Y. Cent. R. Co.*, 169 N. Y. S. 924, 182 App. Div. 497; *Pinkerton v. Verberg*, 78 Mich. 573, 44 N. W. 579.

<sup>29</sup>11 R. C. L., pg. 793, sec. 4.

<sup>30</sup>87 Mass. 518.

that every unauthorized restraint of a person's liberty was indictable; but an examination of the facts of the case reveals no end of bad faith and dire, selfish motives, so that the question of motive really was not involved.

In only four other jurisdictions has the point been decided, so far as we have been able to discover. Two of these, Texas and Delaware, take the view that although defendant's good faith is not a complete defense, it may be considered by the jury in fixing the punishment.<sup>31</sup> This view is doubtless arrived at by a strict application of the rules governing the civil injury without any consideration being given to the fundamental differences between crimes and torts. Of course this position is impossible of application in Pennsylvania and other states in which the punishment is fixed by the court. In Kentucky<sup>32</sup> and Arkansas<sup>33</sup> the rule seems to be that defendant's motive is not a matter for the consideration of the jury in passing on the question of guilt or innocence. Since in those states the court fixes the punishment, the rule applied in Texas and Delaware is inapplicable. It is logical to assume, however, that the court will take defendant's motives into consideration in passing upon the sentence, so that, in practical effect the doctrine applied in all four of these states is the same. The great injustice done by an application of this doctrine is well illustrated by the language of the court in *Mitchell v. State*:<sup>34</sup>

"A person called upon by a police officer to aid in the safe keeping of a prisoner renders assistance at his peril. He is bound to know whether the officer acts under a legal and valid warrant."

Thus illustrated, the doctrine that defendant's motive should not be considered by the jury in passing upon the question of guilt or innocence is untenable, at least from a substantive point of view. The mere suggestion that a dutiful citizen should be branded a criminal because he obeyed the command of a police officer shocks the conscience of even the most case hardened logician.<sup>35</sup>

But it has been strenuously argued that to allow defendant to set up his motive as a defense is to render conviction virtually impossible by beclouding

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<sup>31</sup>State v. Brown, 5 Har. (Del.) 505; Staples v. State, 14 Tex. App. 136, overruling Kirbie v. State, 5 Tex. App. 60; Giroux v. State, 40 Tex. 97; Smythe v. State, 51 Tex. Cr. R. 408, 103 S. W. 899; Gilbert v. State, 78 Tex. Cr. R. 441, 181 S. W. 200.

<sup>32</sup>Begley v. Commonwealth, 22 Ken. L. 1546, 60 S. W. 847.

<sup>33</sup>Mitchell v. State, 12 Ark. 50, 54 Amer. Dec. 253.

<sup>34</sup>12 Ark. 50, 54 Amer. Dec. 253.

<sup>35</sup>In Commonwealth v. Sadowsky, 80 Pa. Super. Ct. 496, an indictment for assault and battery, the Superior Court of Pennsylvania held that one called upon to assist an officer in making an arrest would not be held criminally liable unless it appeared that he used more force than was reasonably necessary. That the same rule would be applied to an indictment for false imprisonment in Pennsylvania seems certain. To the effect that no action for false imprisonment would lie under the same set of facts, see the numerous cases cited in Commonwealth v. Sadowsky.

the issue with multifarious collateral matters.<sup>36</sup> Recognizing the occasional hardship imposed by the conventional doctrine, its friends justify it on the ground that adjectively it accomplishes better results. This view is a relic of the poor opinion of the average juror's mental ability formerly prevalent among members of the legal profession. No longer are we justified in the assumption that the jury will become confused by the introduction of anything other than simple facts. The jury today, composed as it is of men highly trained in their respective callings, is fully capable of weighing complicated evidence.

Again, it might be argued that the doctrine of the *Trunk* case is adjectively impractical because it places an undue burden on the commonwealth by making it necessary to prove what went on in a man's mind. The doctrine anticipates and answers this objection. "Motive, good faith and purpose . . . are legitimate matters of *defense*,"<sup>37</sup> were the words of the court. Thus the burden is placed upon the defense to prove the presence of a good motive and the absence of a bad. The commonwealth, after proving the requisite facts, is blessed with a presumption in its favor, and is placed in the advantageous position of a defendant in regard to the question of motive. The doctrine really does not increase the commonwealth's burden at all.

But if the *Trunk* case makes motive a mere matter of *defense*, how does this vary the rule that motive is not an *element* of any crime? Since the commonwealth is not required to prove a specific motive, can it be said that motive is an element of the crime of false imprisonment? Does not the case make motive a mere matter of justification on the same basis as self-defense? I think not. It is a familiar rule that the *mens rea* of most crimes is to be presumed from the doing of certain acts;<sup>38</sup> yet it has never been argued that those crimes have no mental element. It seems that this latter is a better explanation of the status of motive in the crime of false imprisonment.

In conclusion it is interesting to observe that the court in the *Trunk* case recognized at least one of the natural consequences of holding motive to be an element of crime. It is a clear principle that mistake of law is no excuse for its violation.<sup>39</sup> Yet, in spite of this positive rule of law, the court observed, in regard to the "warrant" under which the prosecutor was released from the county prison and which was clearly illegal for the purpose, being contrary to the form provided by the Habeas Corpus Act of 1785,<sup>40</sup> that:

"If the defendants acted under a custom which had prevailed in the

<sup>36</sup>See the arguments quoted in Hitchler, *Motive as an Essential Element of Crime*, 35 D. L. R. 105.

<sup>37</sup>*Commonwealth v. Trunk*; 311 Pa. 555 at 568.

<sup>38</sup>*Clark and Marshall, Crimes* (3rd. Ed.), sec. 42, pg. 64.

<sup>39</sup>*Weston v. Commonwealth*, 111 Pa. 251, 2 Atl. 191.

<sup>40</sup>12 Purdon's Statutes, sec. 1887.

county and with which they were familiar, this in itself might negative the idea of any criminal purpose in their actions."

This departure from orthodox law was inevitable in view of the doctrine laid down as to motive since it is just such evidence as this that establishes defendant's motive. Just how far the court will go in applying the doctrine it is difficult to estimate. The cases in regard to the element of malice in malicious prosecution supply a close analogy to the problem involved.<sup>41</sup>

A. H. Aston.

### ENTRAPMENT BY PUBLIC OFFICERS AS A DEFENSE AGAINST CRIMINAL PROSECUTION

Entrapment has been defined as "The conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer."<sup>1</sup>

In considering the availability of entrapment as a defense against criminal prosecution the basic principle to be kept in mind is that the doctrine rests upon the clear distinction between inducing a person to do an unlawful act and setting a trap to catch him in the execution of criminal designs of his own conception.<sup>2</sup>

The courts have long made allowance for the frailty of man when exposed to temptation by making available the defense of entrapment, but there have been wide variations in the extent and application of the doctrine in various jurisdictions. Before the recent United States Supreme Court case of *Sorrells v. U. S.*<sup>3</sup> the various Federal courts seemed to have had two distinct conceptions of the defense.

One of these was best expressed in the case of *U. S. v. Healy*,<sup>4</sup> in which the court held: "It will be observed that the case at bar is not one of those where the actor *knows his act violates the law*. Of the latter is he who, on solicitation, sells or passes money known to him to be counterfeit, or he who thus mails prohibited matter, or he who thus sells intoxicants without a license or in dry territory. *These latter acts are criminal, let the status of the solicitor be what it may; and hence that he is a decoy does not neutralize the criminal quality of the act.*" This case involved the violation of a federal statute

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<sup>41</sup>See cases cited in note 25 ante.

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<sup>1</sup>From the concurring opinion of Justice Roberts in *Sorrells v. U. S.*, 53 Supreme Court Reporter 210.

<sup>2</sup>16 C. J. 88; 8 R. C. L. 128; 12 Cyc. 160.

<sup>3</sup>53 Supreme Court Reporter 210.

<sup>4</sup>202 Fed. 349.