15.03A False Arrest – Arrest Without Warrant; Fact of Arrest Contested

In this case, the plaintiff (name) claims that the defendant (name) improperly arrested the plaintiff.

In order for the plaintiff to establish this claim, you must decide that it is more likely true than not true that the defendant arrested the plaintiff. The defendant arrested the plaintiff if you decide it is more likely true than not true that the following things happened:

[Insert evidence of facts which, if true, would establish an arrest.]

If you decide this is true, [you must return a verdict for the plaintiff] [you must decide whether the law allowed the defendant to make the arrest]. Otherwise you must [determine whether plaintiff was confined in some other way] [return a verdict for the defendant].

# Use Note

The tort of false imprisonment generally protects a person’s right to be free from an unlawful “confinement.” (See Instruction Number 15.02A.) An arrest is one way in which to effectuate the “confinement.” Thus, where an arrest occurs, “confinement” is presumed. Where it is questioned whether an arrest actually occurred and where it is later determined that an arrest in fact did not occur, the plaintiff may still seek to prove that an unlawful “confinement” occurred by some other means. Accordingly, caution must be exercised drafting instructions which conform to plaintiff’s theories of liability.

This instruction should be used in cases where the plaintiff asserts false imprisonment by means of an arrest without a warrant and the fact of the arrest is contested. It applies to arrests by citizens as well as by peace officers.

Where the fact of an arrest is not contested, use Instruction 15.03B.

Where the defendant claims the arrest was lawful, use Instruction 15.04 after this instruction.

Where a plaintiff seeks to prove a false arrest and, if it is later determined that an “arrest” did not actually occur, seeks to prove that a confinement occurred in some other way, use both Instruction Numbers 15.01 and 15.03A.

Where a detention short of an arrest occurs and where the defendant peace officer claims that such detention was lawful, use Instruction 15.06 after Instructions 15.01, 15.02A, 15.02C and this instruction.

# Comment

False arrest and false imprisonment are not separate torts. A false arrest always amounts to a false imprisonment. City of Nome v. Ailak, 570 P.2d 162 (Alaska 1977). The elements of a false arrest claim are: (1) a restraint upon plaintiff’s freedom (2) without proper legal authority. Hazen v. Municipality of Anchorage, 718 P.2d 456, 461 (Alaska 1986).

An “arrest” is defined by two Alaska statutes. AS 12.25.160 provides: “Arrest is the taking of a person into custody in order that he may be held to answer for the commission of a crime.” AS 12.25.050 provides: “An arrest is made by the actual restraint of a person or by his submission to the custody of the person making the arrest.” It is not clear whether the issue of what constitutes an arrest in a civil context of a false imprisonment case is for the court or jury. The court in City of Nome v. Ailak, 570 P.2d at 169, recognizes some role for the jury. However, it is not clear whether the jury should be instructed generally as to a definition of arrest or whether the jury should only resolve factual disputes. In many cases, there exists a tension between allowing the jury to determine whether an arrest occurred and allowing the court to exercise control over this determination. If a timely jury demand is made, a party has a right to have factual disputes resolved by the jury. On the other hand, where there is a question of whether an arrest occurred, the court may need to exercise more control over the question because a defendant’s claim of privilege will differ depending on whether an arrest occurred (Instruction 15.04) or whether a detention short of arrest occurred (Instructions 15.06 and 15.08). See Terry v. Ohio, 392 U.S. 1 (1968).

The instruction, like the pattern jury instructions in California (BAJI 7.60) and New York (PJI 3:5), is drafted to provide the jury with an opportunity to resolve factual disputes necessary for the court to determine whether an arrest was in fact made. As in the case of determining reasonable cause, special interrogatories directed at facts necessary to create an arrest may be advisable. See Comment to Instruction 15.05.

The Alaska Court has not indicated specifically who has the burden of proof that an arrest was lawful. The general rule in other jurisdictions is that an allegation by the plaintiff of an arrest without a warrant followed by damage is sufficient and that the defendant has the burden of showing the arrest was lawfully authorized. See Kaufman v. Brown, 93 Cal. App. 508, 209 P.2d 156 (1949); Brown v. Meier & Frank Co., 160 Ore. 608, 86 P.2d 79 (1939). This is clearly the case now in warrantless arrest cases when suppression is sought. See Saltzburg, Standards of Proof and Preliminary Questions of Fact, 27 Stan. L. Rev. 271 (1975). Language in City of Nome, supra at 170, might suggest that the burden rests on the plaintiff to show an absence of probable cause. The court approved an instruction it interpreted to require “the jury to find both an involuntary entry and an absence of probable cause” to find for plaintiff. The jury instructions reviewed in the case apparently did not specify who had the burden of proof. 570 P. 2d at 169 n.14. The Court’s concern was merely to demonstrate that lack of probable cause and consent were two separate issues. In the absence of a clear holding, this instruction assumes the plaintiff has only the burden of showing an arrest without a warrant was made.

No provision directed at “consent” is included in this instruction. Proof of an arrest would seem to negate any voluntary submission of the plaintiff to the custody of the defendant. Any issue of consent would be included as part of the insertion directed at the issue of whether thee was an arrest. See generally Restatement (Second) of Torts § 41 (1965).