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OPINION	:	No. 80-119
	:	
of	:	<u>September 3, 1980</u>
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SUBJECT: FALSE IMPRISONMENT—A sheriff may be subject to liability for false imprisonment if he does not exercise reasonable diligence to effect the release of a defendant whose discharge from custody has been ordered by a court.

The Honorable James M. Cramer, District Attorney, San Bernardino County has requested an opinion on the following question:

Under what circumstances may a sheriff be subject to liability for false imprisonment in delaying the release of a defendant whose discharge from custody has been ordered by a court?

CONCLUSION

A sheriff may be subject to liability for false imprisonment if he does not exercise reasonable diligence to effect the release of a defendant whose discharge from custody has been ordered by a court.

ANALYSIS

The question presented for analysis arises out of the logistical problems connected with the transportation from jail to court of large numbers of defendants charged with crimes and detained in jail pending trial in a metropolitan area where the jail facilities and courts are located some distance from one another.

We are advised that in San Bernardino County, the current practice is for the various courts to hold arraignment calendars at 1:00 p.m. The sheriff transports the pretrial detainees by bus from a central jail facility to the outlying courts and transports them back to the central jail on a 3:30 and 6:00 p.m. busing schedule. Some of the defendants may be ordered discharged from custody by the court.¹ Processing the release of such defendants at the jail is suspended between 4:00 and 7:00 p.m. while the jail staff provides dinner to the jail prisoners. Consequently, a defendant ordered discharged from custody at 1:30 may not be able to leave the jail premises until 8:00 p.m. under the current procedure. The reasons for the return of discharged defendants to the central jail are (1) to allow them to exchange their jail clothing for their own clothes, (2) to allow them to obtain their other personal belongings stored by the sheriff pending their release, and (3) to allow the sheriff to accurately record the relevant information concerning the discharge from custody. (See Penal Code §§ 4003, 4015;² Gov. Code § 26640; *Minsky v. City of Los Angeles* (1974) 11 Cal. 3d 113, 119, 121.)

Similar logistical problems have been encountered in Los Angeles County and have been noted by the courts. (See *People v. Thomas* (1959) 52 Cal. 2d 521, 525–526; *Rutherford v. Pitchess* (C.D. Cal. 1978) 457 F.Supp. 104, 113; *Dillard v. Pitchess* (C.D. 1975) 399 F.Supp. 1225, 1236–1237.) We are advised that in Los Angeles County, defendants are given the option of wearing their own clothes to court and if they choose not to return to the central jail by bus, they are immediately released by the sheriff when so specifically ordered by the court. In all other cases, Los Angeles County follows the same procedure as outlined with regard to San Bernardino County.

The issue to be resolved is whether a sheriff may properly delay until 8:00 p.m. the release of a defendant who is ordered discharged from custody by the court at 1:30 p.m.

¹ Penal Code section 995 provides that “The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion” if certain specified conditions are present, and Penal Code section 997 provides that if the motion to set aside “is granted, the court must order that the defendant, if in custody, be discharged therefrom.” Similar statutes dealing with the discharge from custody of a defendant at other stages of the proceedings include Penal Code sections 871, 1114, 1116, 1117, 1165 and 1384.

² All unidentified section references hereinafter are to the Penal Code.

under the above described administrative procedure. We conclude that a sheriff's duty is to exercise "reasonable diligence" in effectuating the release of a defendant and that the test of reasonableness is to be applied on a case by case basis. Normally, however, a delay of six or seven hours for administrative convenience in providing dinners to other jail prisoners and for accurate recordkeeping would not meet such test.

The sheriff is the keeper of the county jail. (See § 4000; Gov. Code § 26605.) Among the prisoners he may have in custody at any one time are those awaiting trial and whose custody is required to insure their attendance in court. The United States Supreme Court has recently reviewed custodial conditions and practices regarding defendants awaiting trial. In *Bell v. Wolfish* (1979) 441 U.S. 20, 540, the constitutional considerations in determining whether a particular restriction is invalid as "punishment" or valid as incident to "legitimate governmental interests" was summarized as follows:

"The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained. These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach detainees. Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention. It is enough simply to recognize that in addition to ensuring the detainee's presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions on pretrial detention and dispel any inference that such restrictions are intended as punishment."

In the question presented, we have a defendant who has been ordered discharged from custody. While the Bell decision is thus not directly applicable, it suggests that certain conditions may exist to prevent an immediate release of such a defendant.

It is, however, well settled that a sheriff may be liable for an unreasonable delay in the release of a defendant from custody. (See *Sullivan v. County of Los Angeles* (1974) 12 Cal. 3d 710, 716–718; *Tribulski v. County of Los Angeles* (1978) 83 Cal. App. 3d 828, 830–831; *Shakespeare v. City of Pasadena* (1964) 230 Cal. App. 2d 375, 383–384.) While

civil liability for committing the tort of false imprisonment has generally been at issue in the cases (see Gov. Code § 820.4; *Sullivan v. County of Los Angeles*, *supra*, 230 Cal. App. 2d 375, 384), we note that the elements of the crime of false imprisonment are identical to those of the tort. (§ 236; *Stallings v. Foster* (1953) 119 Cal. App. 2d 614, 619.)

In determining whether a defendant has been subject to false imprisonment, the courts have looked to whether the release has been “delayed beyond lawful limits” (*Tribulski v. County of Los Angeles*, *supra*, 83 Cal. App. 3d 828, 830) and whether there has been exercised “reasonable diligence to discharge the duty” of effectuating the release. (*Sullivan v. County of Los Angeles*, *supra*, 12 Cal. 3d 710, 716.)

The *Sullivan* case provides insight as to the showing necessary by a sheriff to avoid liability for delay in the release of a prisoner. There, the issue was whether the sheriff knew or should have known that the charges pending against the defendant had been dismissed. The court stated:

“The slight burden which this duty [to ascertain whether the pending charges had been dismissed] imposes upon the sheriff must be viewed in light of plaintiff’s overriding interest in avoiding unjustified incarceration. As the Whirl court stated: ‘The law does not hold the value of a man’s freedom in such low regard.’ (407 F.2d at p. 792.) It is slight solace for the deprivation of one’s liberty to be told that the jailer carelessly failed to follow his instructions to unlock the jailhouse door.” (12 Cal. 3d 710, 719:)

In balancing a sheriff’s possible interest in delaying a defendant’s release against the defendant’s interest in his freedom, the Supreme Court has thus indicated that the sheriff has a substantial burden placed upon him to justify any delay and that the burden increases as the custody is prolonged.

In applying the test of “reasonable diligence” in the discharge of a duty to release a defendant lawfully entitled to his release, we believe that a court would consider all alternatives available to a sheriff to effect the earliest possible release consistent with the resources at the sheriff’s disposal and his duties to other prisoners and the public.

Specifically, the clothing problems associated with the release of a defendant would probably be held in comparatively low regard by a court when balanced against the defendant’s interest in his freedom. A short delay at the courthouse in order to permit the exchange of the county jail clothing for the defendant’s own clothing may well be reasonable, while a delay of hours to transport the defendant back to the central jail for the exchange may be held unreasonable by a court.’ We doubt that a court would countenance release of a defendant in jail clothing but may require instead that he be brought to court in

his own clothing or that his clothing be brought with, him to court so as to allow the exchange without a prolonged delay.

The return of the defendant's personal property taken on his arrest and booking (Gov. Code § 26640) would appear not to require a delay in his discharge from custody. The defendant can always return to the central jail at his own convenience to claim his property.

Delaying a defendant's release because of a shortage of personnel in the sheriff's office, for service of meals to prisoners and staff, and for other similar administrative reasons would seldom be considered reasonable by a court in view of cases holding "that administrative burden does not constitute a compelling state interest which would justify the infringement of a fundamental right [Citations]." (*Central Valley Chapter of the 7th Step Foundation, Inc. v. Younger* (1979) 95 Cal. App. 3d 212, 238.)

Recording the relevant information concerning the defendant's release would not appear to justify a delay in the discharge of the defendant. The preparation of such records and reports of the release should not normally require the physical presence of the defendant.

While the law requires the sheriff to release a discharged defendant without unreasonable delay, the voluntary consent of the defendant to a delay would, in our view, prevent liability for any actions to which consent has been given. Consequently, offering a defendant who may be discharged at court the choice of wearing his own clothing to court and effecting release there in the event of discharge or of wearing jail clothing and consenting to a delay in the release until returned to the central jail, would be a practical method of balancing the sheriff's burdens against the rights of the defendant. We believe that a court would find such a procedure reasonable, since it offers flexibility for both the sheriff and the defendant, while safeguarding the defendant's interest in his freedom.

Finally, it has been suggested that section 4024 may indicate the Legislature's view of what constitutes a reasonable time for a sheriff to release a defendant ordered discharged from custody. The statute provides: "The sheriff may discharge any prisoner from the county jail at such time on the last day such prisoner may be confined as the sheriff shall consider to be in the best interests of the prisoner."

The reference to the "last day" in the statute indicates that the Legislature was concerned with providing the sheriff with authority to determine the time of day for the release of a defendant whose sentence or other period of confinement is set by law to expire on a given date. We do not believe that section 4024 was intended to authorize a sheriff to hold a defendant in custody after a court has ordered his discharge when the order is

generally effective forthwith.
