STATE OF MICHIGAN

COURT OF APPEALS

CAROL L. DILLON,

Plaintiff–Appellant,

v

FLORENCE BARNHILL,

Defendant–Appellee.

UNPUBLISHED
June 25, 1996

No. 175344
LC No. 92-216059-NO

Before: Michael J. Kelly, P.J., and Young and N.O. Holowka,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an adverse verdict after a jury trial and the trial court's denial of her motion for a new trial. We affirm.

Defendant is a police officer. Plaintiff was detained for an outstanding warrant on a traffic violation. She was taken to a police station, where plaintiff searched her. Plaintiff alleged that defendant illegally strip-searched her; defendant denied the allegation. The jury rendered a "no cause" verdict.

During opening statements, defense counsel mentioned the nature of the traffic violations which resulted in plaintiff's arrest. Plaintiff argues that this information was mentioned in contravention of an order in limine. A day after opening statements, plaintiff objected. The court agreed that the argument was improper and invited plaintiff to submit a cautionary instruction. Plaintiff failed to do so. The issue was thus abandoned at trial and is not properly preserved for appellate review. See *People v Brocato*, 17 Mich App 277, 305; 169 NW2d 483 (1969) (counsel may not sit back and harbor error to use as an appellate parachute).

Plaintiff also argued that she was entitled to a new trial because she believed the arresting trooper committed perjury. The trooper testified that he was required to arrest plaintiff on the outstanding warrant and take her to a police station under a unique procedure in Detroit, and was not

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* Circuit Judge, sitting on the Court of Appeals by Assignment

allowed to release her at the scene. This, plaintiff argues, was false because other police officers in other cases testified that they had discretion to decide whether to take a detainee to the police station. We disagree that plaintiff was entitled to a new trial on this ground. We find no evidence of an intentional falsehood rising to the level of perjury. Even if we were to assume the arresting officer perjured himself, his opinion about whether or not he was required to arrest plaintiff is immaterial to the plaintiff's action for an alleged strip search which, if it had occurred as plaintiff claimed, would have been illegal no matter how plaintiff was arrested. This evidence would not have rendered a different result probable on retrial. *People v Fedderson*, 327 Mich 213, 221; 41 NW2d 527 (1950).

Affirmed.

/s/ Michael J. Kelly
/s/ Robert P. Young, Jr.
/s/ Nick O. Holowka