

Husband Sues Policeman for Arrest Under Restraining Order

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A husband is successfully suing a Lawrence policeman in federal court in Boston for arresting him for violating a restraining order that had been obtained by his ex-wife even though there was no probable cause to arrest him.

A request by the policeman to dismiss the case was rejected by Judge Edward F. Harrington last week.

The suit is important to Massachusetts fathers and husbands because it holds that a policeman must carefully investigate to determine whether there is "probable cause" to arrest a man who is accused by his wife of violating a restraining order.

The policeman, John S. Dushame, had asked the judge to dismiss the case because he said that the plaintiff, James A. Nollet, Woburn, had failed to state a cause of action under the facts he alleged. But the judge refused to dismiss the suit last week. There was no oral or written opinion.

The plaintiff tells *Massachusetts News* that Judge Harrington suggested to the policeman last April before the officer filed his motion to have the case dismissed that he try to settle the case for \$5,000 to \$10,000 in damages. The plaintiff believes that the price of settlement has gone up now that the policeman has failed in his effort to have the suit dismissed.

Because the attorney for the defendant made some procedural errors which were helpful to the plaintiff and there was no oral or written finding by the judge, it is difficult to know exactly how far this decision will go in helping men who have been unjustly arrested, but no one doubts that it is an important case.

Was Policeman 'Fair' to Husband?

The policeman argued to the judge that he had investigated the case thoroughly and had good reason to arrest the plaintiff because he had obtained a copy of the restraining order, researched the law, consulted with both his supervisor, Sgt. Robert Nochnuck, and the clerk magistrate of the Lawrence District Court, Keith E. McDonough, before issuing a warrant for the arrest of the plaintiff.

However, the plaintiff argued that under a 1991 opinion, *Lewis v. Kendrick*, from the U.S. Court of Appeals in Boston, the policeman should have realized that the accusation by the ex-wife was totally unsupported and unverifiable and therefore did not constitute "probable cause." He argued that the policeman could not arrest as soon as he heard an accusation from a woman without determining that there was probable cause to arrest.

He also argued to the judge that the policeman made no attempt to talk to him and hear his side of the case before issuing the warrant for his arrest.

In the case from the Court of Appeals, the court said that "an asserted victim of a crime is a reliable informant even though his or her reliability has not theretofore been proven or tested," but, if possible to do so, the officer must verify the facts and cannot take the word of just the alleged victim.

The charge for which Nollet was arrested was that his present wife had written a letter in Polish to his ex-wife, who was Polish. The ex-wife told the policeman that the letter was in violation of a restraining order against her husband which ordered that he not contact her. She said the letter was threatening in tone and that the present wife had demanded that she be contacted for the purpose of resolving legal matters between the ex-wife and the husband and that the husband was in "100% agreement" with the demand for contact.

The policeman was unable to verify those facts because he could not read Polish and he did not contact the accused.

All of the charges for which the plaintiff was arrested were later dismissed by a Massachusetts judge.

As a result of the warrant issued by the defendant, Nollet was arrested inside the Woburn District Court when he appeared for another matter concerning his wife. He was handcuffed and taken to the basement holding area of the court and several hours later was shackled and transported via Sheriff's van to the Essex County Jail in Middleton. He spent the night in jail and was shackled again and taken by van to the

Lawrence District Court where he was released on his own recognizance at 3 p.m. the next day.

(When the original charges were made against Nollet by his wife in 1993, he was held for 3 days on the 18th floor of the Middlesex County Courthouse, Cambridge, before being released on \$10,000 bail.)

The plaintiff is seeking damages for “false arrest” and “false imprisonment.” He told the court in his original Complaint that, “[T]his is urgent because [plaintiff] believes Defendant’s illegal warrant and arrest was not an isolated incident, but rather is something that happens frequently and routinely in the Commonwealth of Massachusetts, in that men are always arrested, even without Probable Cause, as soon as police officers understand that it is an accusation of Domestic Violence or violation of a Restraining Order that has been made. It is Plaintiff’s belief that police officers everywhere must be sent a message that constitutionally sub-standard arrest cannot and will not be tolerated, even if such arrests are performed to attempt to alleviate the serious problem of Domestic Violence.”

Nollet served as his own lawyer in the case and worked entirely on his own. He says that he plans to help other men do the same. He says, “John Flaherty and the Liberty Bell Union have, for a long time, offered basic courses on how to be one’s own attorney. I expect to participate in these courses as a specialist in false arrest cases, instructing anyone who has been falsely arrested as to how they can file their own lawsuits against police officers.”

Anyone who wishes a copy of his pleadings in the case may contact him at jnollet@worldnet.att.net. He may also put his pleadings on a website. If so, he will announce the location of the site at a future time.

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