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The Need for Prompt Probable Cause Hearings

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❖ Introduction

The federal courts, and most particularly the U.S. Supreme Court, have long required that suspects arrested without warrants be given prompt probable cause hearings. This article takes a brief look at two important U.S. Supreme Court decisions on the subject. It then examines some of the lower court decisions that have applied the principles in the Supreme Court cases, and examines some of the issues surrounding when failure to provide such a prompt hearing can result in potential civil liability. It also discusses some of the instances in which courts have found delays understandable, necessary, or excusable. At the end of the article, there is a brief listing of resources and references.

❖ Supreme Court Rulings

In [*Gerstein v. Pugh*](#), #73-477, 420 U.S.103 (1975), the U.S. Supreme Court stated that the Fourth Amendment requires a judicial determination of probable cause prior to an “extended restraint of liberty” after an arrest. It held that procedures then employed in Florida, under which a person arrested without a warrant and charged by information could be jailed pending trial for 30 days without any opportunity at all for a determination of probable cause, were unconstitutional. That decision found that those arrested without warrants were entitled to “prompt” probable cause hearings.

Subsequently, in [*County of Riverside v. McLaughlin*](#), #89-1817, 500 U.S. 44 (1991), the U.S. Supreme Court ruled that those arrested without warrants are entitled to probable

cause hearings “no later” than 48 hours after arrest, setting an outer limit in ordinary circumstances to the time to bring the arrestee before a judicial officers who could either find probable cause to continue to hold him or determine that there was no such probable cause to believe that they had committed a crime, and therefore order them released.

The Court reasoned that, in order to satisfy Gerstein’s promptness requirement, a jurisdiction that chooses to combine probable cause determinations with other pretrial proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest. Providing a probable cause determination within that time frame would, as a general matter, immunize such a jurisdiction from systemic challenges.

It cautioned, however, that although a hearing within 48 hours could still violate Gerstein if the arrested individual can prove that his or her probable cause determination was delayed unreasonably, i.e., for no good reason, courts evaluating the reasonableness of a delay “must allow a substantial degree of flexibility, taking into account the practical realities of pretrial procedures. Where an arrested individual does not receive a probable cause determination within 48 hours, the burden of proof shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance.”

❖ Unreasonable and excusable delays

Unreasonable failure to provide warrantless arrestees without a prompt probable cause hearing within the mandated 48 hours can potentially result in civil liability for an individual or an agency.

In Lopez v. City of Chicago, #05-1877, 464 F.3d 711 (7th Cir. 2006), for example, the court ruled that the detention of a suspect for five days after his warrantless arrest without taking him before a judge for a probable cause hearing entitled him to judgment as a matter of law on his federal civil rights claims arising out of that fact, so that trial judge acted erroneously on refusing to submit the claim to the jury and instead granting the defendants’ motion for judgment as a matter of law. The plaintiff was also entitled to further proceedings on his claim concerning the conditions of his warrantless detention, based on conflicting evidence.

Similarly in Swanigan v. Trotter, #07-C-4749, 645 F. Supp. 2d 656 (N.D. Ill. 2009), while there was probable cause to arrest a man in a bank parking lot for two vehicle

offenses, the officers arguably violated the arrestee's Fourth Amendment rights by allegedly keeping him in custody for longer than 48 hours (52 hours) without a judicial determination of probable cause to engage in investigation of other possible crimes, such as his possible involvement in a bank robbery.

Intentional delay by an individual may make continued detention unreasonable. In [*Smith v. Eggbrecht*](#), #04-5302, 414 F. Supp. 2d 882 (W.D. Ark. 2005), because there were genuine factual issues as to whether an officer acted intentionally in delaying the processing of paperwork required before an arrestee could be given his probable cause hearing, he was not entitled to summary judgment in the arrestee's federal civil rights lawsuit. The city, however, could not be liable for the officer's alleged actions, since there was no evidence of a municipal policy or custom of such delays or of a pattern of tolerance by the city of such delays.

In [*Turner v. City of Taylor*](#), #03-2636, 412 F.3d 629 (6th Cir. 2005), a Michigan man was arrested at his home for alleged domestic violence and assault and battery on his live-in girlfriend. He subsequently claimed that he was kept in custody by police for four days without being taken before a judge for a probable cause determination, and allegedly not allowed to make any phone calls during that time. He also claimed that officers beat him without justification when he was transferred to a new cell, and that he was sprayed with mace and again physically attacked at the 80th hour of his detention, when he complained about not being arraigned, triggering an asthma attack.

While he was allegedly told at one point that he could be released on a \$100 dollar bond, he was allegedly not allowed to make a call in order to get the money, and officers allegedly would not allow another detainee, who offered to pay his bond, to do so. He further claimed that after his release, he was told by officers that he had "two minutes" to gather his personal effects and leave the house where he lived with his girlfriend, or that he would again face arrest.

The trial court granted summary judgment for the defendants in a federal civil rights lawsuit filed by the arrestee. Reversing, the appeals court found that there was evidence from which a jury could find that three defendant supervisory officers knew that the arrestee was being unlawfully detained for an extended period of time without being arraigned, but failed to intervene.

There was no question, the court found, that if the plaintiff's version of events was true, that he was denied his constitutional right to a prompt judicial determination of probable cause following his arrest--being detained for approximately 100 hours without being presented to a magistrate and then after four days simply being released without being charged.

In another case, the court held that a sheriff was not entitled to qualified immunity on detainee's claim that he was arrested by deputies without a warrant and then detained unlawfully for eight days without a judicial determination of whether there was probable cause for the arrest. [*Lingenfelter v. Board of County Commissioners of Reno County, Kansas*](#), #04-1244, 359 F. Supp. 2d 1163 (D. Kan. 2005).

Some courts have recognized, however, that there are circumstances in which the 48-hour deadline can't be met, or can be excused.

In [*Jones v. Lowndes County*](#), #10-60941, 678 F.3d 344 (5th Cir. 2012), for instance, detainees in the custody of the county sheriff on Saturday night were not brought before a judge within the normal 48-hour deadline for a probable cause determination because the county judges do not work on weekends, and the chief judge took off early that Monday. The arresting sheriff was not available on Monday morning and no other judge was available Monday afternoon.

An appeals court ruled that no individual defendant was responsible for the delay, that the arresting officer could not have known that he had to make alternate arrangements, since the unavailability of any judge Monday afternoon was unanticipated. Additionally, no unconstitutional policy caused the delay, so the county could not be liable.

In [*Brown v. Sudduth*](#), #09-60037, 675 F.3d 472 (5th Cir. 2012), a prisoner now serving a life sentence after a murder conviction sued a sheriff and other defendants for failing to meet the 48-hour deadline after his arrest for a probable cause hearing. The federal appeals court ruled that the delay was excusable and caused by the need to determine where the murder occurred so that officers could decide which court the arrestee should be brought before for jurisdictional purposes.

As soon as that was determined, the defendants promptly attempted to arrange a hearing before the appropriate magistrate. The subsequent overnight delay was because of the

magistrate's unavailability. On these facts, the jurors properly found that the delays were justified.

In one extremely interesting case, [*Jones v. City of Santa Monica*](#), #03-55211 382 F.3d 1052 (9th Cir. 2004), a federal appeals court ruled that a city's procedures for obtaining a post-arrest probable cause determination in warrantless arrests did not violate constitutional requirements, despite not requiring a personal appearance of the arrestee before the magistrate and the use of a pre-printed form for the officer to fill out and submit along with the arrest report and related records.

In the case, an arrestee asserted that the city's procedure violated the [Fourth](#) and [Fourteenth Amendments](#) because it did not provide her with an opportunity for personal appearance before a magistrate at the time the probable cause determination is made, and because the application for probable cause submitted to the magistrate is made on a "pre-printed form."

The plaintiff was arrested without a warrant for grand theft and the fraudulent use of a credit card, after a co-worker had reported that her wallet had been stolen and fraudulent charges made on her credit card. A grocery store clerk allegedly identified the arrestee from a photograph as the person who had charged over \$300 worth of groceries on the victim's credit card. Police who went to her apartment and conducted a consensual search found several bags of groceries without receipts, and the arrest was made.

After she was booked, the police department initiated the process of securing a post-arrest probable cause determination, which typically was done by an arresting officer filling out a pre-printed application for probable cause, signing it, and then sending the application, along with the relevant police reports and records, to the court for a post-arrest probable cause determination, with the magistrate having 48 hours to grant or deny the application. The form is a sworn statement, under penalty of perjury.

In this case, the watch commander, rather than the arresting officer, filled out the application. The magistrate determined that the materials sent substantiated a finding of probable cause, and he made that determination 38 hours and 40 minutes after the arrest. The arrestee was released the following day, however, after further investigation revealed insufficient grounds to charge her.

The appeals court found that the procedure used, on its face, did not violate the Fourth Amendment.

When a person is arrested without the benefit of a warrant supported by probable cause, the Fourth Amendment requires a judicial determination of probable cause to occur “promptly” after their arrest. This judicial determination, however, may be informal and non-adversarial, and the Supreme Court has left to the States wide latitude to fashion probable cause determinations that “accord with a State’s pre-trial procedure viewed as a whole.” Under the Fourth Amendment, a state’s post-arrest probable cause determination is sufficient so long as it “provide[s] a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty . . . either before or promptly after arrest.”

The appeals court found that the procedure used provided such a “prompt, fair, and reliable determination,” based on the 48-hour time limit on the magistrate’s decision. The court also ruled that the Constitution did not require a personal appearance of a suspect at the post-arrest probable cause determination. While the U.S. Supreme Court has, in prior cases, stated that States may choose to incorporate a post-arrest cause determination into the suspect’s first appearance before a judicial officer or into the procedure for setting bail, thereby involving a personal appearance, the appeals court stated that such “incorporation was a suggestion, not a constitutional requirement.”

The issue of whether there is probable cause for detaining an arrested person pending further proceedings, the court ruled, can be determined reliably without an adversary hearing.

The standard is the same as that for arrest. That standard -- probable cause to believe the suspect has committed a crime -- traditionally has been decided by a magistrate in a non-adversary proceeding on hearsay and written testimony, and the Court has approved these informal methods of proof. A post-arrest probable cause determination performs the same function for those arrested without warrants as a pre-arrest probable cause determination does for suspects arrested with warrants. Just as probable cause for an arrest warrant may be determined without an appearance by the suspect, so may probable cause for detention after a warrantless arrest.

The court also found no problem with the use of a pre-printed form, as long as there is a sworn statement setting forth the facts supporting probable cause. Because the city's pre-printed application provides for a sworn certification and refers to and incorporates "official reports and records" prepared by officers, the city's practice of using such a form, accompanied with these reports and records would satisfy the issuance of an arrest warrant, and therefore is also sufficient for a post-arrest probable cause determination. The appeals court found itself unable to determine whether the application for probable cause filed in her case was constitutionally infirm, because it allegedly lacked sufficient attached documentation and was signed by an officer without first-hand knowledge of the arrest, because she failed to provide a trial transcript for the court to review.

States are free to adopt more stringent requirements than the Constitution requires, but that does not convert a violation of the state's rules into a federal civil rights claim See [*Watson v. City of New York*](#), #95-7573, 92 F.3d 31 (2nd Cir. 1996), in which the court held that a New York state statute, interpreted as making delay in arraignment for over 24 hours "presumptively unnecessary," did not give arrestee the right to recover damages under state law for an arraignment delay of 36 hours; federal appeals court also finds that violation of this statute could not be the basis for a federal civil rights claim

Delaying the appearance before a judge of an arrestee taken into custody under a warrant can also lead to civil liability.

In [*Hayes v. Faulkner County*](#), #03-3787 388 F.3d 6692 (8th Cir. 2004), an Arkansas motorist was ticketed for not having auto tags and vehicle insurance. When he failed to appear at his court hearing, bench warrants for his arrest were issued. When he was stopped for a traffic violation, he was arrested on the warrants, given a court date, and jailed. He failed to post bond, and remained in jail for 38 days prior to his court appearance.

He sued the county and its sheriff and jail administrator for violation of his civil rights. The trial court ruled that his 38-day pre-appearance detention violated his right to due process, and entered a judgment against the county and jail administrator.

While in jail, the detainee had complained and filed grievances arguing that "I should [have] seen a judge within 72 hours. [...] I want to know when you plan to obey [sic] the law and allow me to go to court." The jail administrator stated that he would have followed the same course of conduct if the detainee had been jailed for 99 days.

A pre-trial detainee, a federal appeals court state, has a right to a prompt appearance in court after an arrest by warrant. The court said that the due process clause forbids an extended detention without a first appearance following an arrest by warrant. The county's policy stated that arrestees should be taken before a court within 72 hours after arrest, and operated by submitting a list of names of detainees to the court and then waiting for the court to schedule a hearing. "That policy attempts to delegate the responsibility of taking arrestees promptly before a court," the appeals panel noted, and ignores the lack of authority for long-term confinement, and was therefore "deliberately indifferent to detainees' due process rights."

The appeals court found that the jail administrator helped establish and enforce the "deliberately indifferent" policy, and therefore could be individually liable, and he was not entitled to qualified immunity.

The appeals court found that the failure of the county and jail administrator to take the plaintiff before a judge for 38 days "shocks the conscience," particularly in light of a state rule of criminal procedure requiring that an "arrested person who is not released by citation or other lawful manner shall be taken before a judicial officer without unnecessary delay."

The appeals court upheld as proper an award of \$49,000 in compensatory damages against the county and \$1,000 against the jail administrator, along with an award of \$46,929.50 in attorneys' fees and costs.

❖ Resources

The following are some useful resources related to the subject of this article.

- [Arraignment](#). Wikipedia Article.
- [County of Riverside v. McLaughlin](#). Wikipedia Article.
- [Defenses: Eleventh Amendment Immunity](#). AELE Case Summaries.
- [Defenses: Qualified Immunity](#). AELE Case Summaries.
- [False Arrest/Imprisonment](#): Unlawful Detention. AELE Case Summaries.
- [False Imprisonment](#). Wikipedia article.

❖ Prior Relevant Monthly Law Journal Articles

- [Civil Liability for Wrongful Detention of Detainees and Prisoners](#), Part 1, 2012 (4) AELE Mo. L. J. 301.
- [Civil Liability for Wrongful Detention of Detainees and Prisoners](#), Part 2, 2012 (5)

❖ References

- “[Comment: County of Riverside v. McLaughlin: The “Promptness” of a Probable Cause Determination](#),” by Elisabeth J. Morahan, 27 New Eng. L. Rev. 411 (Winter 1992) (excerpt, full text purchasable at link).

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