



ISSN 1935-0007

*Cite as:* 2019 (4) AELE Mo. L. J. 101  
Civil Liability Law Section – April 2019

**Civil Liability and Arrests  
With Warrants**

*Part 1 (Last Month)*

- Introduction
- Probable Cause
- False, Inaccurate, or Omitted Information in Affidavit

*Part 2 (This Month)*

- Wrong Person Arrested
- Relying on Victims or Witnesses
- Knowledge of Warrant
- Personal Participation
- Unreasonably Seeking a Warrant

*Part 3 (May)*

- Arrests Made in a Residence
- Post-Warrant Information
- Governmental Liability

*Part 4 (June)*

- Bench Warrants
- Quashed Warrants
- Immigration Warrants
- DNA Arrest Warrants
- Frivolous Claims
- Resources and References

*This is part 2 of a 4-part article. To read part one, click [here](#).*

❖ **Wrong Person Arrested**

*One frequent claim in lawsuits over arrests made with warrants does not concern the validity of the warrants themselves, but rather the assertion that otherwise valid warrants have been used to arrest the wrong person. In [Garcia v. Cnty. of](#)*

[Riverside](#), #13-56857, 811 F.3d 1220 (9th Cir. 2016), [amended](#), 817 F.3d 635 (9th Cir. 2016), *cert. denied*, [Baca v. Garcia](#), 137 S. Ct.344 (2016), for example, a man claimed that he was wrongfully incarcerated based on a felony arrest warrant for a man with the same first and last name, the same birth date, and a different middle name. While his initial arrest for DUI was valid, the warrant under which he was subsequently held described a man nine inches shorter and 40 pounds lighter, and even a cursory comparison should have led officers to question whether the person described in the warrant was the plaintiff. The defendants were not entitled to qualified immunity from liability under these circumstances. “These statutes do not shield Defendants from liability under state law because their application is premised on reasonable beliefs, and the crux of Plaintiff’s claim is that it was unreasonable for officers to believe that he was the person who was described in the warrant without greater investigation.”

Similarly, in [Rivera v. County of Los Angeles](#), #11-57037, 714 F.3d 384 (9th Cir. 2014), *cert. denied*, [Hodge v. United States](#), 571 U.S. 914 (2013), a man had the same first and last name as another man sought under two arrest warrants. He was first arrested by mistake under a 1985 arrest warrant and released, and then mistakenly arrested under a 1989 arrest warrant and detained for approximately a month. The officers’ belief that the plaintiff was the true subject of the warrants was not unreasonable under the Fourth Amendment, and his detention did not violate due process.

The 1989 warrant had both a name and a detailed description of the suspect sought. The plaintiff failed to show that the county had a policy or custom of failing to include more detailed descriptions on arrest warrants to avoid the risk of repeated misidentifications. As to state law claims, the defendant employees involved could invoke statutory immunity under California law. Summary judgment for all defendants was granted.

***In one case, an individual was subjected to multiple mistaken arrests under a valid arrest warrant.*** In that case, [Gonzalez v. Las Vegas Metro Police](#), #61120, 2013 Nev. Unpub. Lexis 1815, 2013 WL 7158415, city police who had a valid arrest warrant for a man with the same name as the plaintiff wanted for drug dealing could not be held liable under Nevada state law for mistakenly arresting him on 11 different occasions over a two year period, despite the fact that he was two years younger than the wanted suspect, had a tattoo on his left arm not mentioned in the

warrant and had a different hair color. The incidents only stopped when the true suspect was arrested.

The Nevada Supreme Court, while expressing sympathy for the plaintiff, said officers with a valid warrant should not have to choose between releasing a person closely meeting the warrant's description or detaining him and facing possible liability.

***Liability will not be imposed for understandable mistakes, even if they result in negative consequences for the individual mistakenly taken into custody.*** In [\*Caceres v. The Port Authority of New York & Jersey\*](#), #09-3064, 631 F.3d 620 (2nd Cir. 2011), a man went to retrieve his car, which had been impounded when he parked near his work site without a required permit. He was then arrested because his New York state ID number matched that of a suspect sought on a "John Doe" warrant. Held for two days, he was released when it was discovered that the warrant was for someone else who was erroneously issued the same state ID number.

Under the circumstances, the arresting officer could reasonably have believed that the warrant was valid and was for the plaintiff, so he was entitled to qualified immunity.

Similarly, in [\*Atkins v. City of Chicago\*](#), #09-2998, 631 F.3d 823 (7th Cir.2011), the trial court properly dismissed a false arrest lawsuit by a man mistakenly arrested and detained for 37 days before it was determined that he was not the parole violator sought in the arrest warrant. The suspect actually sought had the same name, day and month of birth, and the same first three digits of his Social Security number as the arrestee. The arrestee's continued detention after his arrest was reasonable, particularly as he gave inconsistent statements regarding whether he was or was not the individual named in the warrant.

U.S. Marshals in [\*Milligan v. United States\*](#), #10-5615, 670 F.3d 686 (6th Cir. 2012), teamed up with local police to conduct a roundup of fugitives in 24 states that resulted in 10,733 arrests. One of the arrestees turned out not to be the arrestee sought, but someone else with the same name, due to a clerical error by a city's police department. That arrestee's lawsuit against the U.S. government was barred under the discretionary function exception to the Federal Tort Claims Act (FTCA), 28 U.S.C.S. § 2680(a). Officers making the arrest did not have the arrest warrant in their possession at the time the arrest was made, and were not required to have it

under the city's existing arrest policy. The plaintiffs also failed to produce any evidence that the officers intended to falsely arrest the arrestee, so a law enforcement exception to the intentional tort exception of the FTCA did not apply.

***The fact that the person arrested under a warrant supported by probable cause turns out not to be the person who actually committed the crime will not, by itself, lead to liability—the issue is the presence of probable cause for the arrest of the person under the facts known at the time.*** In [Brown v. King](#), #2008-CA-00165, 2009 Ohio App. Lexis 4210 (Ohio App. 5th Dist.), a detective investigating the theft of gas station gift cards from a school learned that an individual with the plaintiff's same name had stolen the cards, and, viewing a videotape of someone using the gift cards, believed that the person shown was the plaintiff. He was unable to contact the plaintiff or his employer and obtained an arrest warrant for him. After the arrest, it was learned that the plaintiff was not the real offender. The detective was entitled to qualified immunity in a false arrest lawsuit, since his application for the warrant was based on probable cause, given the facts known at the time.

***The fact that a prosecutor and judge had approved the issuance of an arrest warrant did not insulate a deputy from liability for signing the affidavit, which was the basis of the warrant.*** Under the warrant, the plaintiff was arrested on charges of engaging in a fraudulent land sale, but he claimed that, at the time he signed the affidavit, the deputy had evidence that clearly showed that the crime was not committed by him, but allegedly by another man with the same first and last name. [Fletcher v. Burkhalter](#), #09-7003, 605 F.3d 1091 (10th Cir. 2010).

***Failure to follow standard mandated departmental procedures to verify an arrested person's identity can result in liability.*** In [Walker v. City of Toledo](#), #09-1004, 923 N.E.2d 688 (Ohio App. 2009), police officers, seeking a person named "Jacquelyn O. Walker" sought under a capias warrant issued in a civil case, arrested a person with a similar name, "Jacquelyn R. Walker," and took her to a jail where she was held for an extended period of time. They allegedly failed to follow departmental procedures requiring officers to carefully verify the identity of persons taken into custody on capias warrants, in order to avoid such problems.

In a false arrest lawsuit, an intermediate Ohio appeals court rejected defenses of sovereign immunity for the defendant city and qualified immunity for the defendant arresting officers. It found that the alleged ignoring of departmental procedures

could be “reckless or wanton misconduct,” constituting an exception to the otherwise applicable state immunity statutes. Claims against the county sheriff’s department, however, were dismissed, as it followed normal jail booking procedures.

#### ❖ Relying on Victims or Witnesses

*Officers may ordinarily rely on the statements of crime victims or witnesses when swearing out affidavits for arrest warrants, in the absence of any reason to doubt their veracity.* In [Shadley v. Grimes](#), #10-60250, 405 Fed. Appx. 813, 2010 U.S. App. Lexis 25870 (Unpub. 5th Cir.), cert. dismissed, 562 U.S. 1281(2011), for instance, a man arrested for armed robbery under an arrest warrant claimed that the officer failed to conduct an adequate investigation before seeking the warrant. He claimed that the robbery victim was not a credible witness, as he waited three days before reporting the alleged robbery, and said that the robbery took place at the home of himself and his girlfriend, even though they were actually homeless. But the officer indicated that he did not know that the victim was homeless, and had no reason to doubt his story. *As any failure to further investigate before seeking an arrest warrant amounted to, at most, negligence, and insufficient for federal civil rights liability, so the plaintiff’s claims were rejected.*

Similarly, in [White v. Brown](#), #10-2502, 408 Fed. Appx. 595, 2010 U.S. App. Lexis 22933 (Unpub. 3rd Cir.), based on an identification of a suspect from a photo array by a store security guard who had witnessed an armed robbery, a detective sought and obtained a warrant to arrest the suspect. Witnesses said that the robber had braided hair, as did the suspect in the photo included in the array. While searching the arrestee’s residence, officers found photos dated just several weeks prior to the robbery in which the suspect had short, unbraided hair. Despite this discrepancy, there was probable cause to seek the warrant and make the arrest based on the witness’s identification.

In [Williams v. Taylor-Lee](#), #10-11016, 397 Fed. Appx. 608, 2010 U.S. App. Lexis 19981 (Unpub. 11th Cir.), an officer had arguable probable cause to obtain a warrant to arrest a woman for making terroristic threats based on the alleged victim’s statement that she had said that her son would not shoot him if he would release a car

that was the subject of a dispute, which could be interpreted as a threat of violence.

### ❖ Knowledge of Warrant

In one interesting case, a federal appeals court found that the existence of a warrant for a man's arrest justified his arrest, even though the arresting officers, at the time, lacked knowledge of the warrant. In that case, [\*Cook v. O'Neill\*](#), #14-1641, 803 F.3d 296 (7th Cir. 2015), a man was arrested in his girlfriend's apartment nine days after he committed a home robbery. He was convicted of various criminal charges and sentenced to 40 years in prison, but sued sheriff's deputies, claiming that their arrest of him violated the Fourth Amendment.

The fact that there was an outstanding arrest warrant for the plaintiff was all that the detectives needed to be justified in making the arrest, even though they didn't know about the existence of the warrant, a federal appeals court held. Factual issues about whether the girlfriend consented to the detectives' entry into the apartment or merely did not object were irrelevant when they did not enter until they saw the plaintiff and therefore knew that they had found their robbery suspect.

### ❖ Personal Participation

*An officer will not be held liable for an arguably false arrest under a warrant, absence their personal participation in the alleged wrongdoing that resulted in defects in the warrant or the arrest.* In [\*Melton v. Phillips\*](#), #15-10604, 875 F.3d 256 (5th Cir. en banc. 3017), the plaintiff filed suit under 42 U.S.C. 1983 against the defendant officer after he was arrested under a warrant for an assault committed by another man with the same first and last names. The defendant filled out an incident report about the assault but did not assist in applying for the arrest warrant. A federal appeals court overturned the trial court's denial of summary judgment in favor of the defendant and held that the defendant was entitled to summary judgment even when construing all the facts in the light most favorable to plaintiff.

The court reasoned that the connection between defendant's conduct and plaintiff's arrest was too attenuated to hold the deputy liable under the rule that the court reaffirmed or under any law that was clearly established at the time the defendant filled out the incident report. An officer who has provided information for the

purpose of its being included in a warrant application has assisted in preparing the warrant application, and may be liable, but an officer who has not provided information for the purpose of its being included in a warrant application may be liable only if he signed or presented the application.

### ❖ Unreasonably Seeking a Warrant

*Officers may be held liable for arrests made under a warrant when they participated in seeking the warrant and it was unreasonable, under the facts then known to them to ask for the warrant to begin with.* In [Graham v. Gagnon](#), #15-1521, 831 F.3d 176 (4th Cir. 2016), a woman who told officers that she would need to speak to her son who was in the other room in response to their statement that they had a warrant for his arrest did not obstruct justice and it was objectively unreasonable for them to seek a warrant for her arrest. In fact, she told her son not to flee and that he had to go with the officers. The record contained no indication of any action by the officers that the woman could be said to have “obstructed.” The officers were not immune from suit because they obtained an arrest warrant when their decision to request a warrant in these circumstances was outside the range of professional competence expected of the officers.

Also see [Aleman v. Village of Hanover Park](#), # 10-3523, 662 F.3d 897 (7th Cir. 2011), *cert. denied*, [Micci v. Aleman](#), 567 U.S. 935 (2012), in which a caretaker at a daycare center tried to gently shake a baby when he showed no signs of life, and then administered CPR. The baby died. The caretaker was arrested once without a warrant, questioned, and then arrested a second time under a warrant, and charged with murder, but never tried on that charge.

The second arrest of the caretaker violated the Fourth Amendment, as there was then evidence that the mother had allegedly shaken the baby days before and threatened to kill it, likely causing the several days of lethargy and fever the baby experienced before stopping breathing. The mild shaking of the baby by the daycare worker was a justified precursor to doing CPR. There were also allegations that the principal arresting officer was romantically interested in the mother, which could form part of the basis for a malicious prosecution claim. After the first arrest, when the arrestee phoned a lawyer, all questioning should have stopped, but did not, which could form the basis for an unlawful interrogation claim.

An interesting case regarding the issue of possible motive for seeking a warrant is [\*Ashcroft v. al-Kidd\*](#), #10-98, 563 U.S. 731 (2011). 131 S.Ct. 2074. In that case, the U.S. Supreme Court held that former Attorney General Ashcroft was entitled to qualified immunity in a lawsuit by a man detained after the events of 9/11/2001 under a federal material witness statute. The plaintiff claimed that the government had a policy of using this statute to detain innocent persons suspected of terrorism without charges. The Court held that the objectively reasonable arrest and detention of a material witness pursuant to a validly obtained warrant cannot be challenged as unconstitutional on the basis of allegations that the arresting authority had an improper motive. Ashcroft did not violate clearly established law and thus is entitled to qualified immunity because, at the time of the arrest, not a single judicial opinion had held that pretext could render an objectively reasonable arrest pursuant to a material-witness warrant unconstitutional.

---

**AELE Monthly Law Journal**

Bernard J. Farber

Civil Liability Law Editor

P.O. Box 75401

Chicago, IL 60675-5401 USA

E-mail: [bernfarber@aele.org](mailto:bernfarber@aele.org)

Tel. 1-800-763-2802

© 2019, by the AELE Law Enforcement Legal Center

**Readers may download, store, print, copy or share this article,  
but it may not be republished for commercial purposes. Other  
web sites are welcome to link to this article.**

---



- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
  - The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as “legal advice.” Lawyers often disagree as to the meaning of a case or its application to a set of facts.
-