AELE Monthly Law Journal

ISSN 1935-0007

Cite as: 2019 (5) AELE Mo. L. J. 101

Civil Liability Law Section – May 2019

Civil Liability and Arrests With Warrants

Part 1 (March)

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

Part 2 (Last Month)

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

Part 3 (This Month)

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

Part 4 (Next Month)

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

This is part 3 of a 4-part article. To read part 1, click here. For part 2, click here.

❖ Arrests Made in a Residence

Even when time and circumstances have afforded police the opportunity to obtain an arrest warrant, an arrest may still generally be made without one when probable cause can otherwise be established. An exception to this general rule are arrests made inside a person's residence, in which case an arrest warrant should be obtained. In *Payton v. New York*, #78-5420, 445 U.S. 573 (1980), the U.S. Supreme Court held that "the Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." ***In other words, an in-home arrest warrant is required for a non-consensual non-emergency entry to make an arrest. Exigent circumstances justifying warrantless entry can include hot pursuit or entry to give assistance to an injured, ill, or endangered person.***

Even when there are questions concerning the arrest warrant for an arrest made in a home, liability will not be imposed if there are other factors, such as consent for entry, which would justify an arrest in the home even in the absence of a warrant. In *Greer v. Anne Arundel County, Md.*, #98-2184, 46 F.Supp. 2d 416 (D. Md. 1999), the court ruled that the officers acted reasonably in entering a home to make an arrest based on a ten-year-old bench warrant for welfare fraud, even though they also arrested the suspect for alleged involvement in an assault in a tavern. Additional evidence also showed consent for entry, which would have justified a warrantless arrest.

In *Watts v. County of Sacram*ento, #00-15099, 256 F.3d 886 (9th Cir. 2001), a court ruled that the officers' entry into a home with an arrest warrant for a man believed to be staying there, based on an unverified anonymous tip, would be unlawful if they did not have a reasonable belief that he lived there, as opposed to being a guest in the home. Disputed facts required further proceedings.

❖ Post-Warrant Information

Some lawsuits have attempted to impose liability on arrests carried out under a warrant based on the receipt of information received after the warrant was obtained.

In *Safar v. Tingle*, #16-1420, 859 F.3d 241 2017 U.S. App. Lexis 10114 (4th Cir. 2017), for instance, the two plaintiffs were arrested for an accusation of fraud that was mistakenly reported and almost immediately retracted. One of them was also briefly incarcerated. They sued a police officer and prosecutor who, at different stages of the criminal case, allegedly learned that no crime had taken place and yet failed to take any steps to withdraw an arrest warrant.

Because there was no established duty to act under these circumstances, the officer was entitled to qualified immunity. Further, under Virginia state law, only the prosecutor, rather than the officer, could move to dismiss an issued arrest warrant. The prosecutor was entitled to absolute immunity, since the decision whether or not to withdraw an arrest warrant was intimately associated with the judicial phase of the criminal process. State law claims, however, were dismissed in federal court without prejudice to the ability of the plaintiffs to reassert them in state court.

Faced with an assertion of mistaken identity while making an arrest under a warrant, officers may be liable for failing to carry out easily available techniques to verify the assertion. In *Alvarado v. Bratton*, #07-55907, 299 Fed. Appx. 740, 2008 U.S. App. Lexis 23055 (Unpub. 9th Cir.), in asserting that he was arrested pursuant to a warrant based on mistaken identity, and that the defendants failed to perform easily performed identity checks, which would have made it clear that he was not the suspect sought, the plaintiff presented a viable federal civil rights claim.

He argued that he repeatedly told officers that he was not the person sought in the warrant, but that they still refused to use available identification technology, and that they "routinely" held the wrong people because of similar names. If true, this could constitute a violation of due process. (Ultimately, in subsequent proceedings, *Alvarado v. Bratton*, #09-56970, 437 Fed. Appx. 584, 2011 U.S. App. Lexis 11751 (Unpub. 9th Cir.), no liability was found).

Similarly, in *Thompson v. Sweet*, #00-cv-929, 194 F. Supp. 2d 97 (N.D.N.Y. 2002), a man arrested under a warrant on charges of falsely swearing, in a firearms purchase form, that he had not been convicted of a felony, could pursue his false arrest claim based on a genuine issue of material fact as to whether he showed the arresting officers a certificate of conviction which showed them that he had previously been convicted of a misdemeanor rather than a felony. There was also a genuine issue as to whether the investigating officer, who wrote the affidavit which

was the basis for the warrant, knew that the prior conviction was only for a misdemeanor.

Actual receipt of information indicating that an arrestee is not the person sought in a warrant may create a duty to act. In *Kennell v. Gates*, #99-1931, 215 F.3d 825 (8th Cir. 2000), a booking officer was found liable for $10,000 to a female motorist held in custody for six days under an arrest warrant that was actually for her sister. The jury could reasonably conclude that the officer had received and ignored a computer message that the arrestee's fingerprints did not match those on file for the person sought, despite the officer's denial that she got the message.

On the other hand, see *Hernandez v. City of Chicago*, #04-2246, 455 F.3d 772 (7th Cir. 2006), *cert. denied*, #06-11917, 552 U.S. 974 (2007). In that case, the court ruled that neither a police officer nor the sheriff's office were liable for the mistaken arrest and detention of a man under a warrant for a man with a similar name and identical physical characteristics and birthday. The sheriff's policy of ignoring protests about misidentification after an arrestee appears before a judge and is remanded to the sheriff's custody could not be a basis of federal civil rights liability. A $750,000 jury damage award was set aside.

A similar result was reached in *Panfil v. City of Chicago*, #01-3150, 45 Fed. Appx. 528, 2002 U.S. App. Lexis 17966 (7th Cir. 2002). In that case, an arrestee could not recover damages for his arrest on Christmas Eve under a warrant intended for his identical twin brother or for his wrongful detention for four days after he protested his innocence and that he was not the person sought. The warrant was facially valid, he met the description of the person sought, and a program of immediately doing fingerprint comparison of arrestees was not required by the Constitution.

The difficulty of easily making a requested determination may be a factor weighing against imposing liability for failing to investigate a protestation by an arrestee that they are not the person sought under the arrest warrant. In *Garcia v. County of Bucks, Pa.*, #CIV. A. 00-2446, 155 F. Supp. 2d 259 (E.D. Pa. 2001), the court ruled that officers who had arrested the plaintiff with a facially valid warrant had no obligation to investigate or accept an arrestee's claim that the warrant described another person with the same name. The sheriff's office did not know the arrestee's date of birth, social security number, or other identifying information on

the date of the arrest. A deputy later took steps to secure the arrestee's release when it became apparent that he was not the person sought in the warrant.

Officers will not be held liable for failing to take actions that they lack the authority to do. See *Miller v. Bd. of County Commissioners of County of Rogers*, #97-C-990, 46 F.Supp. 2d 1210 (N.D. Okl. 1999), in which the court ruled that officers were not liable for failure to release an arrestee after they allegedly learned that he was not the suspect in an attack. The arrestee was taken into custody under a valid warrant and the officers did not have authority to release him without a judicial order.

❖ Governmental Liability

Governmental liability for improper arrests carried out pursuant to a warrant must be based on the existence of an official policy or custom that caused the constitutional deprivation.

In *Webb v. City of Maplewood*, #17-2381, 889 F.3d 483 (8th Cir. 2018), cert. denied, #18-342, 139 S. Ct. 389, 202 L. Ed. 2d 289, 2018 U.S. Lexis 6216**,** a federal appeals court upheld a trial court ruling that a city was not immune from a federal civil rights suit in a proposed class action claiming that the city's policy or custom of automatically issuing arrest warrants was unconstitutional. In this case, the city automatically issued an arrest warrant whenever someone ticketed for violating its traffic and vehicle laws fails to pay a fine or appear in court.

The court held that municipalities, unlike states, did not enjoy a constitutionally protected immunity from suit under the Eleventh Amendment. The court rejected the city's argument that it enacted or maintained the contested practices as an arm of the state, as well as the city's contention that it was also immune from suit since all of the individuals the complaint identified as participating in the contested practices were personally immune from suit. ***The court had long held that a municipality may be held liable for its unconstitutional policy or custom even when no official has been found personally liable for his conduct under the policy or custom.***

Vicarious liability for the actions of a municipal employee is an insufficient basis for federal civil rights liability. In *Ball v. City of Indianapolis*, #13-1901, 760 F.3d 636 (7th Cir. 2014), detectives who were monitoring calls from a call center as part

of an investigation of drug trafficking believed that a woman they knew was the voice making calls directing customers to drug distribution houses and obtained an arrest warrant for her based on this and an allegation that she had been seen at the houses. All charges against her were later dismissed after it was concluded by prosecutors that the wrong person had been arrested.

Municipal liability claims were properly rejected as the plaintiff stated no basis for them other than the mere employment of the detective who obtained the warrant. Claims against the state and its employees in their official capacity were barred as they were not "persons" for purposes of a federal civil rights lawsuit and were entitled to Eleventh Amendment sovereign immunity. After the plaintiff abandoned her federal claims against the detective, remaining state law claims including false arrest and imprisonment were properly remanded to state court.

In *Floyd v. City of Kenner*, #08-30637, 349 Fed. App. 890, 2009 U.S. App. Lexis 23913 (5th Cir.), a police officer in Louisiana claimed that he was in charge of a center distributing supplies during Hurricane Katrina. He further argued that political animus a police chief had towards him was the reason that an illegal search of his residence was carried out and he was falsely arrested for purported theft of supplies.

The officer sufficiently alleged that a detective, in applying for search and arrest warrants, both made false statements and omitted material information from the affidavits. Further discovery was ordered to determine if a police officer who entered the plaintiff's property and reported seeing allegedly stolen supplies was entitled to qualified immunity, because of conflicting versions as to his purposes for entering.

Nothing more than "speculation," however, supported the claim that the police department's chief of investigations approved the filing of false affidavits, and there was also insufficient detail to support a claim that the police chief was personally involved in directing the filing of the affidavits. Claims against the city were properly dismissed in the absence of a showing that anyone acted pursuant to a municipal policy or custom.

In *Daniel v. Compass*, #05-31157, 212 Fed. Appx. 262, 2006 U.S. App. Lexis 30605 (5th Cir. 2006), a police officer arrested under a warrant on charges of rape, attempted murder, and second degree kidnapping failed to show that the city had any

official custom or policy which led to his allegedly false arrest, so there could be no municipal liability. Further, the discrepancies in the warrant application that the plaintiff complained of were not essential to the finding of probable cause and issuance of the warrant, so the sergeant who obtained the warrant was also entitled to summary judgment.

The fact that the arrest was improper cannot be the basis for municipal liability, absent an official policy or custom that caused the deprivation of rights. In *Seri v. Town of Newton*, #3:03cv1301, 573 F. Supp. 2d 661 (D. Conn. 2008), affirmed *Seri v. Bochicchio*, #09-1266, 374 Fed. Appx. 114, 2010 U.S. App. Lexis 6481 (2nd Cir.), a man was allegedly falsely arrested and convicted for public indecency in exposing himself at a library. The application for the arrest warrant allegedly failed to include the victim's physical description of the offender or that given by witnesses, and did not state that fingerprint analysis was incomplete and that the plaintiff had not been identified by the witnesses or victim. His conviction was overturned after fingerprints from books that the perpetrator had handled turned out to belong to another man.

But the arrestee failed to show that the town should be held liable, as there was no defect in the police department's policies that caused his arrest. The mere fact that the plaintiff was falsely arrested was insufficient to show that the city failed to adequately train or supervise officers.

Similarly, see *DeAngelis v. City of El Paso*, #06-51396, 265 Fed. Appx. 390, 2008 U.S. App. Lexis 3477 (5th Cir.). In that case, a federal appeals court found that a police chief did not cause an assistant chief's constitutional rights to be violated by having an arrest warrant issued for him after he was told that the assistant chief had threatened to shoot him. Additionally, a federal appeals court rules, there was no evidence that the city's policies or customs caused the alleged violations of the arrestee's rights. The fact that charges were ultimately not pursued against the arrestee did not alter the result.

Fairley v. Luman, #99-56483, 281 F.3d 913 (9th Cir. 2002) is a case in which the court found that an alleged city policy may have caused the problem with an arrest made under a warrant. A man arrested and held for 12 days on arrest warrants intended for his twin brother sufficiently alleged that city warrant procedures

constituted a "policy" for purposes of a federal civil rights due process claim against the municipality.

Evidence in the case included testimony by the police chief that he was the chief policymaker for the city and was aware that the arrest of the wrong person under a warrant was "not uncommon" and was "particularly acute" for twins, yet he had not established any internal procedures to attempt to remedy this problem.

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
Tel. 1-800-763-2802

- 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.
