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Civil Liability and Arrests With Warrants

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❖ Bench Warrants

Bench warrants are issued by a judge, often on their own initiative, and frequently are based on an individual's failure to appear for a variety of judicial proceedings or to otherwise comply with a judicial order or for contempt of court. They typically direct police officers to take the individual in question into custody and bring them before the court.

When such a warrant appears to be valid on its face, police officers will not be held liable for carrying out its directions. Illustrating this, in *Hanks v. County of Delaware*, #05-CV-6400, 518 F. Supp. 2d 642 (E.D. Pa. 2007), the court found that two police officers were not liable for arresting a suspect on the basis of an outstanding bench warrant they were informed about by a third officer when the invalidity of the warrant was not discovered until the officers and arrestee were at the police station. The warrant was not facially invalid, and there was no evidence that the officers reasonably should have known that it was invalid at the time of the arrest.

Deputy sheriffs were entitled to qualified immunity for their arrest of a man under a bench warrant issued by a judge in connection with child support proceedings, despite the erroneous nature of the warrant, since it was facially valid and they had no reason to believe otherwise. *Cogswell v. County of Suffolk Deputy Sheriff's Dept.*, #02CV 4281, 375 F. Supp. 2d 182 (E.D.N.Y. 2005).

Similarly, in *Carter v. Baltimore County, Maryland,* #03-1562, 95 Fed. Appx. 471, 2004 U.S. App. Lexis 5924 (Unpub. 4th Cir. 2004)**,** a police officer was found to have properly arrested a man under an outstanding facially valid bench warrant bearing his name, and had no reason to know that the man's brother had falsely given his name when previously arrested for shoplifting.

State procedural rules, including court rules administratively adopted, may spell out when and how such bench warrants may be issued. Further, the rules for civil liability for improper actions allegedly carried out pursuant to a bench warrant may be different under state law than what has been discussed throughout this article as to liability under federal civil rights law.

In *Rodriguez v. County of Los Angeles*, #B241049, 217 Cal. App. 4th 806,, 2013 Cal. App. Lexis 525, for instance, a man who was mistakenly held in custody for 11 days under a bench warrant issued for another person sued the defendant counties for

vicarious liability for the actions of the sheriff's deputies who allegedly falsely imprisoned him. An intermediate California appeals court found that the trial court improperly ruled for the defendant counties, relying on federal civil rights case law under which vicarious liability claims were not allowed. Under California state law, the counties could be sued based on vicarious liability for their employee's conduct, and it was not necessary to show that those employees acted pursuant to an official policy or custom.

In *Simon v. City of New York*, #17-1281, 893 F.3d 83 (2nd Cir. 2018), a woman was twice taken to a precinct and held for a total of 18 hours over two days under a warrant in connection with a suspected stolen car. She sued for false arrest and imprisonment, claiming that the warrant, on its face, directed the officers to bring her to court at a fixed date and time for a hearing to determine whether she should be detained as a material witness. She was never presented to the court. The trial court held that the defendants were entitled to qualified immunity and granted summary judgment in their favor.

A federal appeals court vacated and remanded. With the facts taken in the light most favorable to the plaintiff, the defendants violated her clearly established Fourth Amendment rights and were not entitled to qualified immunity.

An earlier decision in the case found that the officers who arrested and detained the woman for investigative interrogation under a material witness warrant were not entitled to absolute prosecutorial immunity. Even if the officers were following a prosecutor's instructions, execution of the warrant was a police function rather than a prosecutorial function under the New York state material witness statute, and the explicit terms of the warrant itself. Further, the officers actively avoided a court-ordered material witness hearing and their failure to present the arrestee before a court left her with no means of then contesting her detention. *Simon v. City of New York*, #11-5386, 727 F.3d 167 (2nd Cir. 2013).

❖ Quashed Warrants

Valid arrest warrants, once issued by a court may be withdrawn, quashed by a further court order, once new evidence is obtained, witnesses recant, or circumstances change. Sometimes, officers may make an arrest pursuant to such a

quashed warrant for a variety of reasons, including clerical errors in computer systems, resulting in failure to receive notice that the person is no longer being sought.

In *Ochser v. Funk*, # CV-11-0028, 228 Ariz. 365, 266 P.3d 1061 **(2011)**, before officers executed an arrest warrant against a man for unpaid child support, they confirmed the warrant's validity. The warrant, however, had actually been quashed in a "minute entry" by the court thirteen months earlier, but no record of that order had yet reached the sheriff's office, so the warrant's validity was confirmed. The officers proceeded with the arrest, despite the arrestee's protests that the warrant had been quashed.

He was not released until the next day. While the arrest was found to be an unreasonable seizure prohibited by the Fourth Amendment, the court concluded that the deputies were entitled to qualified immunity because then-existing law did not clearly establish the unconstitutionality of their actions. Reasonable officers could disagree on whether they were required to investigate further when confronted by the arrestee's claim that he had a certified copy of the minute entry quashing the warrant.

Similarly, in *Torrez v. Knowlton*, #2 CA-CV 2002-0087, 205 Ariz. 550, 73 P.3d 1285 (Ariz. App. Div. 2 2003), an Arizona deputy sheriff arrested a motorist during a traffic stop under a warrant that the issuing court had quashed seven months before. The warrant was initially issued after the motorist had failed, through no fault of his own, to appear for a hearing in a paternity case. Under the court's standard procedure, the court clerk sent a duplicate of the issued warrant to the sheriff's office, where it was entered into the computer system and the physical copy was placed in a file.

When the court quashed the warrant a month later, the court clerk failed to follow a standard procedure of notifying the sheriff's office of this fact. Had this been done, the warrant would have been stamped "quashed" and sent back to the court, as well as removed from the computer system.

When the deputy stopped the motorist, a call to the sheriff's office showed an active warrant, and the duplicate was manually located to confirm the warrant. The deputy arrested the motorist and took him to jail. The motorist asserted claims for false arrest and violation of federal civil rights against the sheriff and the deputy.

The state trial court granted summary judgment on both claims. The motorist appealed the judgment on the state law false arrest claim. The appeals court agreed that the warrant, having been quashed, was invalid.

But rather than appearing to be defective in any way, the court noted, it appeared "fair on its face." There was nothing to make the deputy suspect that there was anything wrong with the warrant.

> The law provides no privilege to an officer who arrests a person on an invalid warrant that is not fair on its face.

Such a warrant, the court stated, would exhibit some problems with what the officer is expected to know -- "at least the superficial characteristics of a valid warrant," so that an officer will be liable if the warrant, by its terms, is "too general," fails to "properly name" the party wanted, or is "returnable at the wrong time or does not charge a crime."

In this case, however, there was nothing to suggest that the warrant did not appear to be regular in form when the officer made the arrest, or that a reasonable examination of the original warrant would have "disclosed its invalidity." Not only had the sheriff's computer database shown that the warrant remained active, but a sheriff's employee had also found the duplicate in the file.

The appeals court found that, under these circumstances, the deputy was privileged to arrest the plaintiff on the "facially valid" warrant and that privilege subsequently protects the sheriff and the deputy from liability on the false arrest claim.

❖ Immigration Warrants

Deputies, after questioning a woman at her workplace, effectively seized her when one of them gestured for her to stay seated because they had found out that there was an outstanding civil immigration warrant for her. This violated the Fourth Amendment, as they needed the express authorization or direction of federal immigration authorities to make such a seizure, but both they and the sheriff were entitled to qualified immunity, since it was not clearly established law that state and local law enforcement officers may not detain or arrest a person on the basis of a civil immigration warrant. Such qualified immunity did not apply to municipal defendants, however. *Santos v. Frederick County Board*, #12-1980, 725 F.3d 451

(4th Cir. 2013), *cert. denied*, *Frederick County Board of Commissioners v. Santos*, #13-706, 573 U.S. 1015 (2014). .

For more information about what ICE warrants (also called administrative immigration warrants or civil immigration warrants) do, and links to resources for further information and analysis, see ICE Warrants Basics (June 6, 2017).

❖ DNA Arrest Warrants

An interesting development in recent years has been the issuing of warrants that direct the arrest of persons whose name and other identifying features may not yet be known, but whose unique genetic makeup—their DNA—is available as evidence in connection with the investigation of a crime.

In *People v. Robinson*, #S158528, 47 Cal. 4th 1104, 224 P.3d 55 (Cal. 2010), *cert. denied*, *Robinson v. California*, #09-9863, 562 U.S. 842 (2010), in a case involving a prosecution for a number of sexual offenses, the California Supreme Court approved the use of a "John Doe, unknown male" arrest warrant, describing the wanted person by his unique 13-loci deoxyribonucleic acid (DNA) profile. The warrant was issued in this manner, as the statute of limitations for attempting to prosecute the offenses would have otherwise been exceeded.

The court stated: "we conclude that the prosecution in this case was properly commenced within the six-year period of limitations by the filing of the John Doe arrest warrant that described the person suspected of committing the offenses perpetrated against Deborah L. solely by his unique DNA profile and its random match probability."

For a discussion of this, see Frank B. Ulmer, Using DNA Profiles to Obtain "John Doe" Arrest Warrants and Indictments, 58 Wash. &Lee L. Rev. 1585 (2001) and Corey E. Delaney. (2005) "Seeking John Doe: The Provision and Propriety of DNA-Based Warrants in the Wake of Wisconsin v. Dabney," Hofstra Law Review: Vol. 33: Iss. 3, Article 7 (2005).

❖ Frivolous Claims

Under federal civil rights case law, when a plaintiff is shown to have asserted a frivolous claim of a violation of their rights, under 42 U.S.C. Sec. 1988, attorneys'

fees and costs can be awarded to the prevailing defendants. Such awards are designed to be a deterrent to the assertion of frivolous claims that waste the time and resources of both the judicial system and of defendants who have not even arguably done anything wrong.

In *Angiolillo v. Collier County*, #10-10895, 394 Fed. Appx. 609, 2010 U.S. App. Lexis 17762 (Unpub. 11th Cir.), for instance, a man arrested for violating an injunction against "dating violence," which prohibited him from contacting a woman in person or on the phone, or using another person to contact her, claimed that he was arrested and prosecuted without probable cause. Evidence showed, however, that the woman, who was a realtor, received four calls from someone named "Lisa," purporting to be interested in real estate, but that when she returned the calls, she heard the plaintiff's voice saying "Got Her!," along with cheering and laughter, and other evidence of possible violations. Arguable probable cause existed for the obtaining of a capias warrant for the arrest. Because the plaintiff's case was found to be frivolous, the defendants were properly awarded attorneys' fees.

For further cases in which attorneys' fees and costs were awarded to defendants in federal civil rights litigation, click here. Also see Attorneys' Fees in Federal Civil Rights Lawsuits: An Introduction - Part One**,** 2011 (4) AELE Mo. L. J. 101 and Attorneys' Fees in Federal Civil Rights Lawsuits: An Introduction - Part Two, 2011 (5) AELE Mo. L. J. 101.

❖ Resources

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

- Arrest Warrant. Wikipedia article.
- Arrest Warrants: What's in Them, How Police Get Them, by Sam J. Berman (Nolo Press);
- Arrest Warrants. Policy, Baltimore, Maryland Police Department (July 1, 2016).
- Arrests with and without warrants. Policy, Delmar Police Department, Delaware (May 1, 2015).

- Civil Liability for False Affidavits. Federal Law Enforcement Training Center (FLETC).
- False Arrest/Imprisonment: Warrant. AELE Civil Case Summaries.
- ICE Warrants Basics (June 6, 2017).
- Policy on Arrest Warrants and Criminal Process. Town of Framingham Police Department, Massachusetts (June 2, 2009).

❖ **Relevant Monthly Law Journal Articles**

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- Civil Liability for Detention for Mental Health Evaluation or Commitment, 2017 (1) AELE Mo. L. J. 101.
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- Attorneys' Fees in Federal Civil Rights Lawsuits: An Introduction - Part Two, 2011 (5) AELE Mo. L. J. 101.

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2. Arrest Warrants, Point of View, Alameda County, California District Attorney's Office (Fall 2017).

3. Comparative Analysis of Arrest Warrant Issuance and Enforcement, Institute for Court Management, Flagstaff, Arizona (May 2014)
4. Corey E. Delaney. (2005) "Seeking John Doe: The Provision and Propriety of DNA-Based Warrants in the Wake of Wisconsin v. Dabney," Hofstra Law Review: Vol. 33: Iss. 3, Article 7 (2005).
5. Frank B. Ulmer, Using DNA Profiles to Obtain "John Doe" Arrest Warrants and Indictments, 58 Wash. & Lee L. Rev. 1585 (2001).

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