

\$80,000 Minnesota Illegal Search & Seizure Verdict Upheld; Attorney Fees Slashed 50%

MARK WILSON AUGUST 11, 2016

[Share on Twitter](#) [Share on Facebook](#) [Share on G+](#) [Share with email](#)

A Minnesota federal court upheld an \$80,000 jury verdict on illegal search and seizure claims. The court reduced Plaintiffs' requested attorney's fees by 50 percent, for a total fee award of \$128,499.85.

Just before 1 a.m., on January 8, 2010, Champlin, Minnesota police responded to a veterinary hospital burglary. Police used a canine to track the suspect who fled the crime scene.

The canine lost the scent but eventually led Sergeant Bill Schmidt and Officers Roxanne Affeldt and Robert Topp, to the home of Ronald Rosen and June Trnka. Affeldt knocked on the front door but received no response.

Schmidt and Affeldt then went to the rear of the home, entered an enclosed porch, and knocked on the interior house door. Receiving no response, the officers then searched through belongings on the porch and took Rosen's shoes. They did not leave a receipt or any other indication that they had been there or seized property. "The same conduct by one not a police officer would be considered theft," the court observed.

Police then obtained a search warrant for Rosen's home, on the basis of their investigation and his shoes. That warrant was not executed until fourteen

days later, on January 22, 2010.

Champlin police detained Rosen for more than an hour while his home was searched. Detective Brian Wentworth questioned Rosen and repeatedly threatened to arrest him or a member of his family. The search ultimately did not reveal any evidence connected with the burglary.

About two weeks later, Wentworth concluded after reviewing the reports and evidence that it was "obvious" that Rosen's shoes did not match footprints at the scene and Rosen was not involved in the burglary. Wentworth returned his shoes and apologized.

Rosen and Trnka brought suit in state court but Defendants removed to federal court. The district court dismissed Plaintiffs' state law claims and Defendants Wentworth and Topp from the action.

The court held that it would instruct the jury that the warrantless entry into Plaintiffs' porch and search of their belongings violated the Fourth Amendment, as a matter of law. The court also concluded that while the search warrant was lawfully issued, the jury could determine whether the January 22, 2010 search and detainment was a product of the illegal search, and to what degree, if any, the search should affect the damage award.

At the close of Plaintiffs' case-in-chief, Defendants moved for judgment as a matter of law, or alternatively, for a mistrial, challenging the court's jury instruction. The motion was denied.

Following a three-day trial, the jury returned a verdict for Plaintiffs, awarding compensatory damages totaling \$10,000. It also awarded punitive damages of \$55,000 against Schmidt and \$15,000 against Affeldt.

Following the verdict, Defendants renewed their motion for a directed verdict or new trial. Plaintiffs moved for an award of \$255,929.00 in attorney's fees and \$1,070.69 in costs, for a total award of \$256,999.69.

The court denied Defendants' motion, finding that the knock and talk exception to the Fourth Amendment "does not apply to the facts in this case."

The court also rejected Defendants' argument that "the jury should not have heard evidence regarding the search warrant application and the January 22, 2010 search of Plaintiffs' home because these events were legal and irrelevant to the original search." The court held that "a reasonable jury could have still concluded that the search warrant application and the January 22, 2010 search were the direct and probable consequences of the January 8, 2010 entry and search."

The court also rejected Defendants' challenge to the punitive damage instruction. "Schmidt made a series of crude personal attacks on Rosen's character, and suggested he intended to pursue Rosen out of anger or personal animosity. Plaintiffs also introduced evidence suggesting Defendants pursued their investigation of Rosen in deliberate ignorance of the facts," the court found. "This evidence could allow a reasonable factfinder to conclude Defendants recklessly disregarded Plaintiffs' constitutional rights. As a result, the question of punitive damages was properly put to the jury."

The court finally rejected Defendants' argument that a mistrial was warranted because during closing statements, Plaintiffs' counsel "stated without elaboration that Defendants 'don't pay,'" implying that they would not suffer personal financial impact as a result of a verdict against them. Noting that defense counsel argued that "Defendants should not be required

to 'finance' Plaintiffs' new American dream,'" the court found "these two statements are of comparably prejudicial effect" and "the jury received an appropriate curative instruction." The denial of a mistrial did not result in a "miscarriage of justice."

The court then found that a reduction of Plaintiffs' attorney fee request was appropriate because "counsel have 'over-lawyered' or overbilled their work." Ultimately, the court found "based on a careful review of the billing statements," that "a reduction of 50% reflects a fair billing for the work performed in this case." That award "still significantly exceeds the amount of their clients' recover from a generous jury." See: *Rosen v. Wentworth*, 13 F.Supp3d 944 (D. Minn 2014).

As a digital subscriber to Prison Legal News, you can access full text and downloads for this and other premium content.

<https://outline.com/fx5nLm>

COPY



Annotations



Report a problem

Outline is a free service for reading and annotating news articles. We remove the clutter so you can analyze and comment on the content. In today's climate of widespread misinformation, Outline empowers readers to verify the facts.

[HOME](#) · [TERMS](#) · [PRIVACY](#) · [DMCA](#) · [CONTACT](#)