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## Woman's Win in Court Provides Lessons on False Arrest Claims

November 30, 2011 by [Keith Ecker](#)

A federal jury awarded a former Illinois resident more than \$500,000 on Nov. 18 in a case that stemmed from allegations of [false arrest](#) and harassment by Westmont, Ill. police. In February 2007, Dawn Zitzka accused six police officers of abusing their power by bringing four false charges against her in 2005. The charges were made after Zitzka had publicly denounced the Westmont Police Department in 2004 for what she felt was an inadequate investigation of a sexual assault.

- Illinois woman successfully sues police for wrongful arrest.
- Plaintiff previously criticized police for the handling of a sexual assault investigation.
- Low standards for probable cause make false arrest claims are hard to prove.



### Crime and Punishment

False arrest falls under U.S. Code 1983.

In June 2005, Zitzka was arrested on four different charges by the Westmont officers. The court found her not guilty on the charges of [defacement](#) and [disorderly conduct](#). Meanwhile, charges were dropped without a trial on the

accusations of [telephone harassment](#) and [trespass](#).

When prosecutors dropped the charges against Zitzka two years later, the wrongly accused woman filed a lawsuit against the [Village of Westmont](#) and the six police officers. The trial lasted eight days and included more than 20 witnesses. In the end, the jury found that only one police officer, James Schlicher, was liable and ordered him to pay \$530,000 plus [attorneys fees](#).

“This has been a long and emotional ordeal for Mrs. Zitzka and her family, and we are very pleased with the jury’s verdict,” said [Kim K. Thompson](#), one of the lawyers who represented Zitzka and a partner at [McJessy, Ching & Thompson](#). “We are proud to have been able to help the Zitzka family in what we

consider to be an important First Amendment case. Hopefully this case will remind government officials of the rights guaranteed to all of our citizens at the founding of this great country.”

Westmont Chief of Police Thomas Mulhearn issued a prepared statement after the jury’s decision.

“We are gratified that the jury found allegations against five Westmont police officers to be without merit,” said Mulhearn. “However, we are very disappointed that the jury entered an award against one officer, but we respect their decision.”

## A Difficult Defense

To assert the claim of false arrest, Zitzka and her attorneys relied on [section 1983 of the U.S. Code](#).

“This section of the U.S. Code, which applies to the states through the 14th Amendment, gives citizens the opportunity to sue the police for such things as false arrest and excessive use of force,” says attorney [Jonathan Little](#) of [Saeed & Little](#). “It awards attorneys fees if you prevail, though if you lose you could be on the hook for attorneys fees as well.”



Jonathan C. Little

Little, who has worked on a number of false arrest cases himself, says that proving a claim of false arrest is no easy task thanks to the low threshold of proof needed to establish [probable cause](#).

“You either need no determination of probable cause or a determination that there was no probable cause,” Little says. “Probable cause has an extremely low standard, so practically speaking, it is not difficult for police to establish probable cause to arrest you.”

However, if there are clear indications that the police have acted wrongfully, such as in the case of Zitzka, a judge may determine that there is insufficient evidence to support probable cause. Still, Little recommends refraining from jumping the gun on making allegations of false arrest.

“You want to be very careful when you raise the issue of false arrest,” Little says. “In general, you will want to wait until some evidence gathering has been done. However, if you are in custody or are threatened with being deported, you may want to challenge probable cause in advance.”

To strengthen your unlawful arrest claim, Little recommends that the accused immediately exercise their right to remain silent.

“Say nothing,” says Little. “If you are talking to the police, all you can do is make things worse.”

Next, you should hire a criminal defense attorney to represent you in your criminal case. Ask your attorney about the [statute of limitations](#) for bringing a civil claim against the police in your jurisdiction. Some states have very strict time limits. If your criminal defense attorney is not knowledgeable about civil law, search for a [civil rights lawyer](#) who does section 1983 work, or contact the [American Civil Liberties Union](#), which has the resources to file the proper notifications with the state.

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