

*1995 Ohio App. LEXIS 835, \**

**Paul** L. Nelson, Plaintiff-Appellant, v. City of Whitehall, Ohio Whitehall Police Department et al., Defendants-Appellees.

No. 94APE09-1305 (ACCELERATED CALENDAR)

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN COUNTY

1995 Ohio App. LEXIS 835

March 9, 1995, Rendered On

**NOTICE: [\*1]** THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

**PRIOR HISTORY:** APPEAL from the Franklin County Court of Common Pleas.

**DISPOSITION:** Judgment affirmed.

#### CASE SUMMARY

**PROCEDURAL POSTURE:** Plaintiff arrestee sought review of an order of the Franklin County Court of Common Pleas (Ohio), which sustained a motion for summary judgment filed by defendants, a city and a police detective, in the arrestee's action that alleged a violation of his rights that allowed recovery under [42 U.S.C.S. § 1983](#), and gross negligence on the part of the detective.

**OVERVIEW:** The lawsuit alleged that defendants failed to withdraw an arrest warrant on certain charges after the arrestee had pleaded guilty to a lesser-included offense. The arrestee alleged that as a result of defendants actions, he was arrested on the warrant, spent a night in jail, had his car impounded, and otherwise suffered damages. An affidavit by the detective claimed that he had not been made aware of the guilty plea, and thus, he was unaware that the warrant needed to be withdrawn. On appeal, the court held that the arrestee had the burden to produce evidence on any issue for which he had the burden of production at trial, and that the record did not establish that the detective violated a duty of care in failing to seek withdrawal of the warrant after felony charges were filed or violated the arrestee's rights by failing to cause withdrawal of the warrant.

**OUTCOME:** The court affirmed the judgment of the trial court.

**CORE TERMS:** summary judgment, lawsuit, felony, arrest warrant, appended, withdrawal, initiated, withdrawn, arrested

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[Civil Procedure](#) > [Summary Judgment](#) > [Burdens of Production & Proof](#) > [Nonmovants](#) 

**HN1**  A motion for summary judgment forces the nonmoving party to produce

evidence on any issue for which that party bears the burden of production at trial. [More Like This Headnote](#)

**COUNSEL:** Bernard Z. Yavitch and **Paul G. Croushore**, for appellant.

Smith & Colner, and Steven Lee Smith, for appellees.

**JUDGES:** TYACK, J. YOUNG and CLOSE, JJ., concur.

**OPINIONBY:** TYACK

**OPINION:**

DECISION

TYACK, J.

On June 1, 1993, **Paul L. Nelson** filed a lawsuit against the city of Whitehall and Detective Mark A. Thomas. The complaint which initiated the lawsuit alleged a violation of Mr. Nelson's rights which allowed recovery under Section 1983, Title 42, U.S. Code, and gross negligence on behalf of Detective Thomas. The complaint further alleged that Detective Thomas caused a criminal charge to be filed against Mr. Nelson and further caused an arrest warrant to be issued on February 7, 1991. Over seven months later, Detective Thomas testified before a grand jury which caused Mr. Nelson to be indicted for a felony based upon the same conduct. A summons was issued as to the felony charge. Ultimately, Mr. Nelson pled guilty to a lesser-included offense, was found guilty and sentenced accordingly.

No effort [**\*2**] was made by anyone to have the original arrest warrant withdrawn, so ultimately Mr. Nelson was arrested on the same charges. The complaint which initiated the court suit indicates that Mr. Nelson spent a night in jail, had his car impounded and otherwise suffered damages as a result of the arrest. The charges were then dismissed.

After the lawsuit was commenced and an answer had been filed, a motion for summary judgment was filed on behalf of the named defendants. Appended to the motion was an affidavit from Detective Thomas which indicated that he had not been informed of the guilty plea, so was unaware that the warrant needed to be withdrawn. Also appended to the motion was a portion of a deposition of Mr. Nelson.

Counsel for Mr. Nelson filed a memorandum contra, to which was attached an affidavit of counsel setting forth facts regarding the course of the litigation on the felony charges and Detective Thomas's awareness of it.

The trial court sustained the motion for summary judgment. Counsel for Mr. Nelson has appealed, assigning a single error for our consideration:

"THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT AND FINDING THAT THE ACTS OF DETECTIVE THOMAS IN NOT [**\*3**] WITHDRAWING A WARRANT DESPITE RESOLUTION OF THE UNDERLYING CRIMINAL CASE DID NOT AMOUNT TO

A FEDERAL CONSTITUTIONAL VIOLATION WHERE THE DEFENDANTS MERELY ASSERTED IMMUNITY AND NOT OTHER ISSUES."

Paragraph three of the syllabus to [Wing v. Anchor Media Ltd. of Texas \(1991\), 59 Ohio St.3d 108, 570 N.E.2d 1095](#) reads:

HN1 "A motion for summary judgment forces the nonmoving party to produce evidence on any issue for which that party bears the burden of production at trial. ( [Celotex v. Catrett \[1986\], 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548,](#) approved and followed.)"

As a result, Mr. Nelson had the burden of going forward with proof of the issues necessary to establish liability. Construing the information before the trial court most favorably to Mr. Nelson, we could find that he was arrested, but the record does not demonstrate that Detective Thomas violated a duty of care in failing to seek withdrawal of the warrant after the felony charges were filed or violated Mr. Nelson's rights by failing to cause withdrawal of the warrant.

The assignment of error is overruled. The judgment of the trial court is affirmed.

*Judgment affirmed.*

YOUNG and [\*4] CLOSE, JJ., concur.