

Wrongfully jailed: Records detail more than 500 mistaken-identity arrests in Denver in seven years

Posted: 01/08/2012 01:00:00 AM MST
Updated: 01/08/2012 09:11:36 PM MST

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The Denver Post



Check name or identity: Brad Braxton, left, was arrested on July 19, 2007, on a warrant for David Eddie, right. In Braxton's lawsuit, he says deputies at the jail made statements such as, "He doesn't look like a white guy to me." Braxton spent nine days in jail. (Denver Post file photo)

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More than 500 people were wrongly imprisoned in Denver's jails over seven years, with some spending weeks incarcerated or pleading guilty to crimes they did not commit before authorities realized they nabbed the wrong person, a federal court filing shows.

Civil-rights lawyers suing the city and county of Denver assert the documented mistaken-identity arrests "are the tip of the iceberg" and are an undercount of the true magnitude of the problem.

In one case a black man spent nine days in jail after he was arrested on a warrant for a white man wanted on a sex-crimes arrest warrant.

In another, authorities arrested an 18- year-old when they were searching for a man 30 years older.

A white man was hauled in even when the suspect actually was an American Indian who was nearly a foot taller and 100 pounds heavier. He wasn't released until almost a month had passed and not until the victim of the crime alerted authorities at a court hearing that they had the wrong suspect.

Another man was jailed twice on a warrant for second-degree burglary and sexual assault even though his tattoos didn't match the real suspect's, described in the arrest warrant.

"I missed five full days of work and lost five days of wages due to my first mistaken- identity arrest," Carlos Alberto Hernandez, now 34, stated in a declaration filed with the court.

"I also lived in fear that I was going to be terminated from my employer due to the missed work and the accusations about the sexual assault charges. I had problems and numerous arguments with my girlfriend because of the accusation that I was guilty of sexual assault and a sex offender."

City officials say the documented mistakes make up a fraction of the more than 33,000 inmates incarcerated at the Van Cise-Simonet Detention Facility last year. They say they strive to avoid detaining the wrong suspects but concede that mistakes do happen.

"The best we can do is set up processes so these get addressed immediately, and that's what we've done," said Denver police Lt. Matt Murray.

The mistaken-identity arrests are detailed in a 216-page motion filed at the U.S. District Court in Denver by the American Civil Liberties Union of Colorado.

Motion blasts lax tracking system

The wrongful arrests in Denver occurred for a variety of reasons. Often those wrongly held had the same names as criminals, but authorities failed to check their dates of birth. Some were wrongly arrested because their identities had been stolen. In other cases, the last name matched but not the first or middle.

It often took days and sometimes weeks before authorities realized they had the wrong person



Right name, wrong guy: Scott Alan Jackson, left, has a name similar to Scott Allen Jackson's, right, but the two have little else in common. Scott Alan Jackson was arrested June 29, 2004, on a warrant for Scott A. Jackson. A judge dismissed the case. (Denver Post file photo) behind bars.

"Denver's approach to this pervasive problem is to put its head in the sand," the ACLU said in the motion asking the judge to rule on behalf of four individuals suing the city for wrongful arrests. Three others represented by the ACLU already have reached settlements with the city.

The ACLU, in the motion, cites a 2010 report by the city auditor's office that blasted the city for having an inadequate system for tracking arrest identity issues.

"We cannot improve what we do not measure," that city audit reported.

Despite the city's lack of a comprehensive system to track mistaken-identity arrests, the ACLU identified 503 such cases from 2002 into 2009 by combing through orders issued by judges, internal affairs records, arrest warrant logs and jail records. The ACLU maintains that many more cases exist but the city's lack of a robust tracking system makes it impossible to get an accurate count.

The ACLU did not document cases after 2009 because that time frame did not match that of the people it is representing.

Denver's lawyers, in court filings, assert that the problem has not reached the level of deliberate indifference needed to show constitutional violations occurred.

"The deliberate indifference standard requires that the municipality have actual or constructive notice that its action or failure to act is substantially certain to result in a constitutional violation, and further, that it consciously or deliberately chose to disregard the risk of harm," Denver stated in a motion seeking summary judgment.

The city further maintained that law enforcement agencies throughout the nation grapple with the issue of mistaken-identity arrests and have failed to come up with a solution.

"There is no simple all-encompassing warrant identification silver bullet in evidence to which the city was deliberately indifferent," the city's lawyers said in court filings.

The city also contends it has made improvements in recent years. Those include a 2007 training bulletin warning police officers that "merely locating a name in a computer database that is the same or similar to a suspect's name does not, by itself, provide probable cause" for an arrest. Supervisors also are now notified when an officer makes a mistaken-identity arrest.

A task force also continues to study the mistaken-identity arrest issue, Murray said.

Can such cases be avoided?

In 2008, the [Denver Sheriff Department](#) initiated a policy of alerting the police identification bureau when a prisoner claims he or she isn't the actual suspect. From 2009 through the first 11 months of last year, 190 inmates used that new system to complain to deputies that they were being held on warrants for other individuals, an accounting provided by city authorities to The Denver Post shows.

Of those complaints, authorities determined 46 were being held when there was not a valid warrant for their detention. Authorities dropped warrants as not valid on another 73 people but determined they were being properly detained on other valid warrants. The remaining complaints did not hold up, officials said.

Other cases likely exist, according to the ACLU, because the records do not include mistakes found by judges or instances when inmates failed to make a proper complaint.

The ACLU believes many of the wrongful arrests it documented could have been avoided if Denver police officers or sheriff's deputies had taken simple steps and precautions.

The ACLU lawyers say officials often failed to check whether the race or gender of those they were arresting matched arrest warrants. In other cases, they failed to check for identifying markers, such as tattoos, or did not check fingerprints against those already on file of the actual suspects.

Hernandez said officers ignored him when he told them he was not the suspect named in the warrant, Ray Alfonso Hernandez Martinez. The first arrest occurred Aug. 15, 2008, when he was correctly arrested on one outstanding warrant for himself but mistakenly identified as the suspect wanted on another Arapahoe County warrant.

After he posted bond on his legitimate case, he was transferred to the Arapahoe County jail. Deputies there released him when they reviewed a mug shot of the actual suspect and realized they had the wrong person. His tattoos did not match the suspect's.

He was arrested again in October of that same year after he was pulled over for not having proper tags on his license plate, and authorities took him on the Arapahoe County warrant again. Authorities released him a day later after they concluded a mistake had been made. He said he has since had to hire an attorney to help untangle his records from those of the true suspect.

The ACLU filing details 291 orders issued by Denver county judges identifying mistaken-identity arrests — cases the ACLU researched further. Of those cases, more than 200 could have been avoided because police already had on file a fingerprint or mug shot of the correct suspects.

"It seems that it ought to be easy to have a procedure so that at least when someone is brought in on a warrant that the ID bureau could check to make sure the one brought in is the one that is wanted," said Mark Silverstein, legal director of the ACLU of Colorado.

The notes from the judges include the following:

"Wrong defendant brought into court. Jamie Milner is a female. The defendant Jamie Sandoval is male."

"Again wrong person — Yes Ms. Brown, but prints don't match."

"Wrong person entered guilty plea. . . . Pleas vacated."

"Wrong person entered plea fine paid under duress of arrest. Court orders a refund of \$89 that was paid."

"Def brought in was wrong defendant . . . Go figure!"

The ACLU had the city perform an electronic search on a set of keywords in judicial orders that might record a mistaken-identity arrest. A judge might not have used one of those keywords or might not have actually noted the mistaken-identity arrest, which means there are likely more mistaken-identity arrests, according to the ACLU.

The problem is magnified in Denver District Court because some of those wrongly arrested in the city have languished for days in jail while they wait for the court system to free up a judge for an initial appearance.

One Denver sheriff's official, in sworn testimony attached as an exhibit, said he had seen many of those arrested go a week without an initial court appearance "many, many, many times."

