

FEDERAL COURT

VERDICT: Defense, arrest of lawyer "assisting" friend in fight with ousted bar patron and arrest, probable cause, excessive force, back injuries.

A Billings jury found that the City of Billings and Billings PD are not liable to Randy Laedeke for damages caused by violation of his rights under the US and Montana constitutions in connection with his arrest.

Laedeke, 48, a Billings lawyer, had been visiting bars with friends the evening of 6/9/99 and into the early hours. He was drinking beer. While returning they were stopped at 28th St. and 1st Ave. N. next to the Crystal Lounge. They noticed that the bartender, a friend, was struggling to remove an intoxicated and combative Greg Pepin. 2 of Laedeke's companions went to their friend's aid. Pepin punched Lyle Cochran. Laedeke and another companion attempted to stop the fight. Shortly after the fight, Officer Neil Lawrence, while on patrol at 1:45 a.m., noticed Pepin and the Crystal owner talking on the corner and stopped to investigate. He was advised by dispatch that a call had been received about a fight at the Crystal. A short time later officers Casey Hafner and Jeff Chartier responded. Pepin and the Crystal owner were reluctant to provide information, and finding no serious injury, Lawrence let Pepin leave. Cochran, angry and embarrassed about the fight, followed Pepin. Laedeke followed Cochran to keep him from getting into another fight with Pepin. The officers found Cochran and Pepin fighting, with Cochran as the aggressor. They got Cochran on the ground and handcuffed him. According to Laedeke, and denied by the officers, Lawrence struck Cochran in the back of the head after he was handcuffed. Lawrence stated that he applied a "hair hold" to maintain control. Laedeke claimed that he called to the officers to stop beating on Cochran. According to the officers, as they were on the ground with Cochran, Laedeke approached to within a few feet of Hafner, who felt vulnerable on the ground and ordered Laedeke back. Laedeke maintained that he never got within 80' of the officers. Chartier arrived and repeatedly commanded Laedeke to get back. The officers testified that they are trained to keep onlookers back 21' and that Laedeke refused to move to a safe distance. According to Laedeke, he had raised his hands and stepped back, telling the officers that he was "watching" and that he was Cochran's attorney. According to the officers, Laedeke repeatedly refused to get back, and Chartier advised him that he was under arrest and to place his hands against the wall. Laedeke did not comply and Chartier pushed him up against the wall and ordered him to place his hands behind his back, and he refused repeated commands to do so. The officers determined that it would be necessary to take him to the ground. Laedeke resisted. Lawrence applied a knee spike, a distraction technique. Laedeke claimed that he passively resisted, complaining that he had recently undergone TOS surgery and could not raise his hands, and that the officers' physical efforts to force compliance was causing serious pain. He was pepper sprayed, but it did not have its intended effect because he blocked it. Chartier then applied a baton strike to his buttock which was deflected by a wallet or checkbook, and warned that if he did not comply he would apply a second baton strike. Laedeke got down on his belly and placed his hands behind his back. He was handcuffed and no further force of that type was used. He was escorted to Chartier's vehicle, and after initial refusal to get in, was taken to jail where he bonded out.

Witnesses testified on behalf of Laedeke that he was not intoxicated. Other witnesses testified that he exhibited signs consistent with intoxication. There was also evidence that he may have been taking a prescription narcotic for pain from a prior surgery while drinking beer. Laedeke was charged with obstructing an officer and resisting arrest. The obstruction charge was dismissed on procedural grounds (the charge had been omitted from the second amendment) and he was convicted of resisting arrest. He sued the City and PD alleging violation of his civil rights under § 1983. He contended that the City had a policy or custom of insisting upon a release of liability in return for dismissal of the resisting arrest charge and that the PD utilized a policy of suppressing excessive force complaints. He alleged that the incident aggravated preexisting back injuries and caused a back fracture. He asserted that his 4th Amendment right to be free from an unreasonable search & seizure was violated because his arrest was without probable cause and with excessive force, he was arrested in violation of his 1st Amendment free speech rights, and concomitant rights under the Montana Constitution were violated.

The City and PD denied liability, asserting that they were not responsible for Laedeke's claimed damages. They contended that they did not have a policy or custom which caused the claimed injuries and damages, and that the arrest was based on probable cause, was effectuated with the proper amount of force in light of his resistance, and did not violate his free speech rights. They also claimed that his injuries were caused by his resistance.

Plaintiff's expert: Van Blaricom, Bellevue, Wash. (police practices).

Defendants' expert: Mark Tymrak, Bozeman (police practices).

Demand, \$150,000; offer, \$5,000 less \$1,400 discovery sanctions assessed against Laedeke when he was pro se. Jury request, \$547,000; jury suggestion, 0.

Jury deliberated approximately 1 hour 5th day; Magistrate Anderson.

Laedeke v. Billings and Billings PD, CV 02-85-BLG, 12/16/05.

Robert Stephens (Southside Law Center), Billings, for Laedeke; Jared Dahle (Nelson & Dahle), Billings, for Defendants (MMIA).