MISTAKEN IDENTITY WARRANT ARRESTS

©2009 by Steve Rothlein, PATC Legal & Liability Risk Management Institute

Written For and Distributed by Public Agency Training Council. For duplication & redistribution of this article, please contact the Public Agency Training Council by phone at 1.800.365.0119.


The identification of persons named in arrest warrants at times presents unique challenges to law enforcement agencies and officers. Two competing concerns exist. On one hand the Fourth Amendment of the United States Constitution prohibits unreasonable seizures of persons and guarantees that no person may be arrested unless there is probable cause to believe he or she has committed a crime. It is a critical function of law enforcement agencies to ensure that they have created policies and procedures that minimize the possibility that the wrong person will be mistakenly arrested as the person named in a warrant. On the other hand law enforcement agencies and officers have an important responsibility to apprehend persons named in a warrant.

In most arrests the proper identification of a person named in a warrant is easily accomplished. In some arrests however the proper identification of a person named in a warrant is more difficult because of a number of factors. For example criminals have become adept at disguising their true identity by utilizing false identification, identity theft, and adopting numerous alias names. Individuals often have similar names and physical features. Identifying information for a person specified in a warrant may be inadequate or may conflict with identifying information in law enforcement databases. Nonetheless, new information technologies have provided sophisticated mechanisms to assist law enforcement personnel in ensuring they are arresting the actual wanted individual including computerized digital fingerprint technology, on line drivers' license databases, and commercially available identification services.

Law enforcement agencies must adopt thorough and comprehensive policies to address the ever present risk of detentions based on mistaken identity arrests. The problem of mistaken identity arrests cannot be
solved by ad hoc policies that address only parts of the problem. Such an approach fails effectively and reasonably to minimize the risk of such arrests because it fails to recognize that mistaken identity arrests can occur at different points along the arrest detention process. **To be effective law enforcement agencies must address the problem from a systemic perspective.**

Law enforcement agencies have a duty to ensure that those persons they subject to arrest are persons for whom there is probable cause to arrest. This is required under federal and state constitutions. Quite apart from laws imposing this duty, law enforcement agencies are in the business of arresting criminals and suspected criminals, not innocent persons.

An arrest of an innocent person in connection with a crime has serious consequences. The innocent person is deprived of their liberties, the guilty person remains at large and all law enforcement agencies that become aware that the warrant has been executed and is no longer active are led to believe erroneously that the suspect named in a warrant has been apprehended. Accordingly, all law enforcement agencies have a basic duty to ensure that they have in place policies, practices, and procedures to minimize the risk that an innocent person will be arrested under a warrant for a different person. Conversely, agencies must ensure that policies are in place to guarantee that the suspect named in the warrant and no one else is arrested.

The policies should require arresting officers to acquire more information about an arrestee before affecting an arrest and this is particularly true where the first and last names are common or when other information such as date of birth or physical characteristics is not identical. The policies should require arresting officers to investigate significant or multiple discrepancies in identification information contained in a warrant and in official government identification cards such as a driver license or passport. Additionally, the policies should require that the doubts about a person’s identity that is raised by a law enforcement officer or NCIC agent be communicated to a supervisor and to judicial officers.

Many police agencies use an automated fingerprint identification system or AFIS which is a computerized system that can capture, store, search, and compare fingerprints and palm-prints. The use of AFIS should be required when any person is arrested on a warrant or an incarcerated person is further detained on new warrants since it can significantly reduce the incidence of mistaken identity arrest.

Such policies would not unduly burden arresting officers and could significantly diminish the likelihood of arresting an innocent person. It is standard police practice when executing an arrest warrant against a person to obtain the person’s identity to determine whether there is probable cause to believe this is the person identified in the warrant and if so arrest the person informing the person that the officer is executing a warrant for that person’s arrest. In many cases upon the arresting officer’s determination of probable cause the arrest occurs as a matter of course and there is no reason to question whether the arrestee is in fact the person named in the warrant. In some cases however there may exist reasons for doubt.

Except when a person is unable or for some reason unwilling to protest their arrest, a person who becomes aware that he is being arrested for the alleged crime of another likely will protest his arrest and claim that a mistake was made or otherwise indicate that he is not the person named in the warrant. Mistaken identity protests serve as a red flag to the arresting officer or corrections officer. At a minimum
they should cause the officers to evaluate their probable cause determination for errors or insufficient information that would undermine probable cause for believing that the arrestee protester is the person named in the warrant.

As I have suggested above the determination of probable cause on many occasions cannot simply consist of matching a first and last name and a date of birth with the corresponding information in a warrant. To illustrate, the spelling of names may affect probable cause; dates of birth that differ by a few days or a month may militate against a determination of probable cause. Other information available to the arresting officer may counsel against a determination of probable cause notwithstanding a match of first name, last name, and date of birth.

Mistaken identity protests should trigger a series of actions designed to minimize the infringement of the arrestee’s liberty interests and to definitively identify the arrestee. The law enforcement agency’s duty is to promulgate policies that establish what that series of actions should be at the scene of the arrest. Such actions should include an immediate further investigation and questioning of the arrestee, the arrestees relatives or friends, and gathering of additional documents and database research. What additional investigation is reasonable of course may vary depending on the circumstances The factors to consider in determining the breadth of the investigation include the severity of the alleged offense and the perceived reliability of the potential arrestees current address information.

Of necessity, whether a specific action should be undertaken must be left to the reasonable judgment of the well trained officer but the policy should encourage officers to engage in reasonable investigative actions when confronted by a plausible claim of mistaken identity. When a person already is in custody a reasonable investigation of an arrestee’s claim of mistaken identity can be more thorough after transportation of the arrestee to a detention facility. The actions should include notifying jail detention officers of the claim of mistaken identity, which should be noted on the arrest paperwork provided to the jail authorities. Segregating the arrestee away from the general prisoner population and expediting the identification process is essential so that a definitive identification is completed within a short period of time regardless of the day of the week or time of day.

The policies should impose consequences where appropriate when the standards set out in the policies cannot be met. For example if a definitive identification cannot be completed within a specific time considered to be reasonable the policies should require that the arrestee be released or if the offense on which she is held is serious the detention of the arrestee and the investigation into her identification should be referred to supervisory officers but even then the policies should stress the need to expedite the identification process. At a minimum the policies should require the following:

- Arresting officers must compare all identifiers on an arrest warrant with the arrestee including height, weight, scars, tattoos, hair, eyes, and all other descriptors.

- A checklist should be developed to ensure all steps for positive identification have been accomplished and approved by a supervisor.
• When an arrestee protests that they are being mistakenly arrested on a warrant for somebody else, a supervisor must be notified and an investigation should be immediately initiated.

• The investigation should include fingerprint and photographic comparison when possible, previous address research, and contact with the case investigator if possible to confirm the identity of the wanted.

• Relatives and friends should be questioned when feasible.

• Phone numbers should be checked and other documents examined and additional database research should be conducted.

• If the arrestee cannot be confirmed as the wanted individual within a reasonable period of time then a ranking supervisor should evaluate the situation including the nature of the charges and consider if releasing the individual is appropriate.

• When an individual is booked into a correctional facility who protests they are not the individual named in the warrant the booking officer must be notified in writing by the arresting officer. The arrestee should be segregated when possible from the general inmate population until confirmation of their true identity has been established.

• If the identity of the arrestee has not been confirmed prior to court appearance the prosecutor and judge must be notified of the mistaken arrest claim by the arrestee.

• If it becomes confirmed that a mistaken arrest has occurred, the Internal Affairs Bureau should be contacted by the arresting officer’s supervisor and IAB should initiate an investigation.

• As part of the investigation the IAB investigator should be responsible to take steps to untangle any records which erroneously connect the arrestee to another individual and should also assist the arrestee in obtaining paperwork which would provide official notice to other law enforcement agencies that the arrestee is not the same individual as indicated in the warrant.

The absence of such policies is not defensible for a number of reasons While mistaken identity arrests and mistaken identity protests probably are not an everyday event when a police agency competently trains its officers, it has clearly occurred on numerous occasions involving law enforcement officers.

Such policies are not difficult to create and would significantly minimize the risk of a mistaken identity arrest while recognizing that it is difficult if not impossible to eliminate that risk. Recognizing that mistaken identity arrests are possible notwithstanding reasonable precautions such policies ensure that the deprivation of the arrestee’s liberty is minimized. At the same time such policies advance law enforcement
interests in multiple ways. For example the policies do not reward the arrestee's false claim of a mistaken identity arrest since the policies expedite the process of definitive identification and bolster public confidence that the police agency is competent and is respectful of civil liberties while vigorously and accurately pursuing criminal suspects.

There exist several court decisions which have provided some guidance to law enforcement agencies both in the pre-arrest arena and post-arrest continued detention of persons claiming mistaken identity.

In Hill v. California, the United States Supreme Court ruled that in the context of mistaken-identity arrest, when a police officer effects an arrest based on a facially valid warrant, the arrest must be “a reasonable response to the situation facing [the officer] at the time.”

The United States Supreme Court ruled in Baker v. McCollan that when a person is arrested due to mistaken identity, ‘depending on what procedures the State affords defendants following arrest and prior to actual trial, …detention pursuant to a valid warrant but in the face of repeated protests of innocence’ may ‘after the lapse of a certain amount of time deprive the accused of liberty …without due process of law.’

As I have suggested above the arrest and detention of an innocent person advances no legitimate purposes and is harmful to police-community relations as well as law enforcement interests and goals. As noted the arrest and detention of an innocent person infringes on an innocent persons freedom and needless confrontation and physical harm to the arrestee and the arresting officer. It misleads the arresting officer and police agencies into believing that the suspect in a crime has been properly identified and apprehended when in cases of serious crime the suspect is still on the streets and remains a potential danger to the community.

CITATIONS:

\(^1\)Hill v. California, 401 U.S. 797 (1971)

\(^{ii}\) Baker v. McCollan, 443 U.S. 137 (1979); Also see Erdman v. Cochise County, 926 F.2nd 877 (9TH Cir. 1991)