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## Appellate court reinstates false arrest lawsuit against San Francisco police



KTVU and Wires

**SAN FRANCISCO** — A federal appeals court has reinstated a lawsuit filed against the San Francisco Police Department and a sergeant by a woman who was held at gunpoint by several officers, forced to her knees and handcuffed after her car was mistakenly identified as stolen in 2009.

A three-judge panel of the 9th U.S. Circuit Court of Appeals unanimously overturned a federal trial judge's dismissal of the lawsuit by Denise Green and ruled that she is entitled to a trial on her case.

"When viewing the facts in the light most favorable to Green, it is clear that a rational jury could find for Green on all three claims," the court said.

Green's claims were that her March 30, 2009, detention violated her constitutional rights because it allegedly was not based

on reasonable suspicion, amounted to a false arrest, and used excessive force.

The ruling allows a trial in the court of U.S. District Judge Richard Seeborg in San Francisco, but a jury would determine whether Green's rights were in fact violated.

Green, a San Francisco Municipal Railway bus driver, was stopped as she was driving her burgundy Lexus on Mission Street in the late evening after an automatic license plate reader in a police camera car misread her plate as having the number of a stolen gray GMC truck.

The stolen truck's plate had one different digit.

The camera car officers, Alberto Esparza and Robert Pedersen, radioed to dispatch and Sgt. Ja Han Kim picked up the call, summoned additional backup and stopped Green, according to the court.

While at least four and, according to Green, as many as six officers pointed guns at her, Kim forced her to her knees and handcuffed her. Because she had knee problems, she had difficulty standing up and had to be helped up by Kim, the court said.

A check by Kim of Green's correct license number then showed that the plate belonged to the Lexus registered to Green and that the car had never been reported as stolen. She was freed of the handcuffs and was allowed to leave after the officers completed paperwork.

Michael Haddad, a lawyer for Green, said, "It's an important ruling. It reaffirms that the general public has the right not to have police point guns in their faces unless the police are truly facing a credible threat. Police can't simply do it for their convenience.

"We're looking forward to finally reaching a trial so that we can present this case to a jury," Haddad said.

Gabriel Zitrin, a spokesman for City Attorney Dennis Herrera, said, "We're disappointed in the ruling. We'll take this to trial if we have to." Zitrin said no decision has been made on whether to appeal the ruling.

Green's lawsuit against the city, the Police Department and Kim alleges she was handcuffed for at least 10 minutes, while the police contend the stop was much shorter, according to the court.

The panel said it was undisputed that there were at least four officers on the scene and that Green complied with all directions.

Judge William Sessions, a federal trial judge from Vermont temporarily assigned to the appeals court, wrote in the ruling that it is known that the automated plate-reading device sometimes misreads numbers.

San Francisco officers are therefore trained to verify hits by visually confirming the number on the plate and checking with a database to make sure the identified plate has actually been reported as stolen, the court said.

Green's lawsuit alleges that Kim never verified the number on her plate, even though he could see it while following her car and stopping behind it at a red light as he awaited the backup officers.

In radio calls to dispatch, Esparza initially described the suspect car as a dark Lexus and later announced that the vehicle associated with the misread number was a gray GMC truck. He never stated whether or not he had visually confirmed Green's license plate number, the court said.

In dismissing the lawsuit, Seeborg concluded Kim made a "good-faith, reasonable mistake" in assuming that Esparza had confirmed the license plate number on Green's car.

But Sessions wrote in the appeals court ruling, "A rational jury could conclude that it was unreasonable for Sgt. Kim to fail to double check the plate number in the absence of express confirmation from Officer Esparza."

The lawsuit makes claims of violation of the constitutional Fourth Amendment right to be free of unreasonable search and seizure, intentional infliction of emotional distress, assault and negligence.

The city maintains that the stop was an investigatory detention and not an arrest, that Kim had reasonable suspicion to stop Green's car, and that the amount of force used was reasonable.

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