

POLITICS

Charged a Fee for Getting Arrested, Whether Guilty or Not

Sidebar

By ADAM LIPTAK DEC. 26, 2016

WASHINGTON — Corey Statham had \$46 in his pockets when he was arrested in Ramsey County, Minn., and charged with disorderly conduct. He was released two days later, and the charges were dismissed.

But the county kept \$25 of Mr. Statham's money as a "booking fee." It returned the remaining \$21 on a debit card subject to an array of fees. In the end, it cost Mr. Statham \$7.25 to withdraw what was left of his money.

The Supreme Court will soon consider whether to hear Mr. Statham's challenge to Ramsey County's fund-raising efforts, which are part of a national trend to extract fees and fines from people who find themselves enmeshed in the criminal justice system.

Kentucky bills people held in its jails for the costs of incarcerating them, even if all charges are later dismissed. In Colorado, five towns raise more than 30 percent of their revenue from traffic tickets and fines. In Ferguson, Mo., "city officials have consistently set maximizing revenue as the priority for Ferguson's law enforcement activity," a Justice Department report found last year.

An unusual coalition of civil rights organizations, criminal defense lawyers and conservative and libertarian groups have challenged these sorts of policies, saying they confiscate private property without constitutional protections and lock poor people into a cycle of fines, debts and jail.

The Supreme Court has already agreed to hear a separate challenge to a Colorado law that makes it hard for criminal defendants whose convictions were overturned to obtain refunds of fines and restitution, often amounting to thousands of dollars. That case, *Nelson v. Colorado*, will be argued on Jan. 9.

The Colorado law requires people who want their money back to file a separate lawsuit and prove their innocence by clear and convincing evidence.

The sums at issue are smaller in Ramsey County, which includes St. Paul. But they are taken from people who have merely been arrested. Some of them will never be charged with a crime. Others, like Mr. Statham, will have the charges against them dismissed. Still others will be tried but acquitted.

It is all the same to the county, which does not return the \$25 booking fee even if the arrest does not lead to a conviction. Instead, it requires people like Mr. Statham to submit evidence to prove they are entitled to get their money back.

When the case was argued last year before the United States Court of Appeals for the Eighth Circuit in St. Paul, a lawyer for the county acknowledged that its process was in tension with the presumption of innocence.

“There is some legwork involved,” the lawyer, Jason M. Hiveley said, but noted that it is possible for blameless people to get their \$25 back. “They can do it as soon as they have the evidence that they haven’t been found guilty.”

The legwork proved too much for Mr. Statham. He never got his \$25 back.

He did get a debit card for the remaining \$21. But there was no practical way to extract his cash without paying some kind of fee. Among them: \$1.50 a week for “maintenance” of the unwanted card, starting after 36 hours; \$2.75 for using an A.T.M. to withdraw money; \$3 for transferring the balance to a bank account; and \$1.50 for checking the balance.

In its appeals court brief, the county said the debit cards were provided “for the convenience of the inmates,” who might find it hard to cash a check.

Mr. Statham is represented by Michael A. Carvin, a prominent conservative lawyer who has argued Supreme Court cases challenging the Affordable Care Act and fees charged by public unions.

Mr. Carvin said the county’s motives were not rooted in solicitude for the people it had arrested. “Revenue-starved local governments are increasingly turning toward fees like Ramsey County’s in order to bridge their budgetary gaps,” he wrote in a Supreme Court brief. “But the unilateral decision of a single police officer cannot possibly justify summarily confiscating money.”

“Providing a profit motive to make arrests,” he said, “gives officers an incentive to make improper arrests.”

Ramsey County did not bother to submit a response in the Supreme Court. “We have not filed a brief in opposition to the petition, nor do we plan to,” Mr. Hiveley said in a Dec. 8 email. The county, he said, would take its chances before the justices without presenting its side of the story.

Six days later, the Supreme Court ordered the county to file a brief in the case, *Mickelson v. County of Ramsey*. It is due Jan. 13.

Through his lawyers, Mr. Statham declined a request for an interview. He lost in the lower courts, which said his right to due process had not been violated by the \$25 booking charge or the debit card fees, which were both, the trial judge said, “relatively modest.”

It is true that \$25 is not a lot of money — unless you are poor. It represents almost half a day’s work at the federal minimum wage, a federal judge wrote in a dissent in another case on booking fees, and it is nearly the average amount the government allots to help feed an adult for a week under the federal food-stamp program.

In its appeals court brief, the county took a different view of the economic imperatives. “Municipal services,” the brief said, “come at a cost.”

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