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When Protectors Do Not Actually Protect: An Examination of the Liability of Law Enforcement Personnel When Domestic and Family Violence Occur

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Abstract

It was not until the end of the 20th century that the issue of domestic violence entered public consciousness, and the state and federal governments began stepping in, riding in on the coattails of the feminist and civil rights movements, to protect women and children against such harms, enacting laws that criminalized such acts and/or creating specialized family violence courts to deal with such issues. However, do these actions really offer victims of domestic and family violence more protection? By mapping the changes in the liability found of states and their law enforcement agencies for their failure(s) to protect victims of domestic violence over time, and comparing it to the laws and causes of actions raised against them, this research has found that victims still do not have an interest in protection per se, and that a duty to protect victims has not been solidified nor consistently enforced. Private citizens do not have a guaranteed constitutional right under the Due Process Clause of the Fourteenth Amendment to being protected by law enforcement against domestic and family violence. The creation of a duty between a victim and a law enforcement agent must be explicit and illicit detrimental reliance from a victim for the agent to be liable. Furthermore, it has become clear that discrimination between victims and non-victims of domestic violence, as compared to simple assault, continues to exist, which compromise the protections that these statutes and protocols were set up to ensure in the first place.

Keywords: Domestic Violence, Police Protection, Negligence

1. Introduction

Until the 20th century, domestic violence had not been recognized as a field (to be studied), or even a legal problem[1]. Domestic violence was "simply invisible"[2]. However, in 1994, Congress enacted the first federal statute that addressed gender-motivated violence in the United States- more specifically, violence against women[3]. This statute was known as the Gender Motivated Violence Against Women Act (more commonly known as VAWA)[4], and it was a part of the comprehensive Violent Crime Control and Law Enforcement Act of 1994[5]. States then followed by creating statutes[6], which further criminalized domestic and family violence, and set boundaries within which orders of protection (also known as restraining orders)[7] and police arrest policies[8] may come into effect.

In creating these statutes, states have taken it upon themselves to find and create legal definitions for domestic and family violence. Such statutes are similar to other statutes defining other criminal conduct such as assault and battery, and may sometimes reference them. The difference between domestic violence laws and criminal laws is that domestic violence laws concern criminal activity taking place within the domestic sphere- that is, it concerns spouses, family members, and others who might share such relationships with them[9][10]. However, even though all fifty states and the District of Columbia have now enacted various forms of domestic violence statutes[11], the millions of instances of

violence crime, both reported and unreported, that have occurred within the United States[12] show that this continues to be an important social issue that must be analyzed and ameliorated. An issue lies in how far law enforcement and the government should or could intervene in such matters[13].

This paper seeks to discover and follow the development of protections offered by the government and law enforcement agencies to victims of domestic and family violence[14]. Much of the current literature surrounding the issue of domestic violence focuses largely on *Town of Castle Rock v. Gonzales*, a landmark case that robbed victims of the ability to hold law enforcement accountable to active orders of protections[15][16][17][18]. This paper will add to this literature by going beyond this case to look at the issue of a more general right to police protection in cases of domestic violence. It will do this by mapping the precedential changes in the liability of states and their law enforcement agencies for the failure(s) to protect victims of domestic violence, through a primary analysis of court decisions that determined whether or not such a duty to protect exists in the first place, and whether victims had a right to recourse in such matters.

2. 42 U.S.C.A. § 1983 and Due Process

Many of the cases that shaped the legal duty of law enforcement and municipalities to victims of domestic violence arose under a 42 U.S.C.A. § 1983[19] claim, in combination with a claim of a violation of the victim's equal protection and/or due process rights. This was because the plaintiffs believed their constitutional rights had been violated by the action (or inaction) of law enforcement personnel when such actions had led to the occurrence of violence in the domestic sphere. The courts have continuously held, however, that the direct actions of one person in the family to another do not fall under the jurisdiction of this statute[20]. In *DeShaney v. Winnebago County Department of Social Services*, the county department of social services and several of its social workers received complaints that a father was abusing his child. The department took various steps to protect the child but did not act to remove him from his father's custody. The child's father finally beat him so severely that he suffered permanent brain damage, fell into a life-threatening coma, and was rendered profoundly retarded. The child, through his mother, sued the department under 42 U.S.C. § 1983, alleging that respondents had deprived him of his liberty interest in bodily integrity, in violation of his rights under the substantive component of the Fourteenth Amendment's Due Process Clause, by failing to intervene to protect him against his father's violence[21]. However, instead of awarding damages, the Court held that the purpose of 42 U.S.C. § 1983 was to protect people from the State, not to ensure that the State protected them from one another[22]. Therefore, the county department did not violate the child's substantive due process rights, even though they failed to provide adequate protection such that his father could no longer hurt him before it was too late[23].

Additionally, the courts have held that while legislation may mandate that certain procedures be followed in instances of ongoing domestic violence, it does not mean that citizens automatically gain an interest in these procedures and so these procedures must be executed on their behalf[24]. In *Semple v. City of Moundsville*, after a longstanding domestic dispute between Deborah Semple and Michael Suarez, Suarez shot and killed Deborah Semple, James K. Garrison and Scott A. Semple on August 6, 1994, in the presence of Amanda Suarez and Angela Suarez, the daughters of Deborah Semple and Michael Suarez. Suarez then shot and killed himself. In this case, Deborah Semple had called the police for help. However, the court found that West Virginia statutes, W. Va.Code §§ 48–2A–9(b)[25] and (c)[26], and W. Va.Code § 48–2A–10c(a)[27], did not create an entitlement such that the police's failure to comply with these statutes and protect the victims amounted to a violation of Deborah, Amanda, Angela, Scott and James' procedural due process rights under the Fourteenth Amendment and as such, 42 U.S.C. § 1983**[28]**. These two cases raise important questions about the existence of statutes and agency procedures as sufficient means of compelling police to act and thus enforce these regulations.

Castle Rock v. Gonzales[29] is perhaps the most important case on the issue of 1983's applicability to domestic violence. Here, the Supreme Court affirmed the ruling in *DeShaney* that 42 U.S.C.A. § 1983 would not apply to actor-actor violence[30], and held, 7-2, that a plaintiff does not have a property interest in any aspect of police enforcement of restraining orders, either in their procedures or execution[31]. In this case, the wife-plaintiff filed her complaint under 42 U.S.C. § 1983 after her husband violated the order of protection filed against him. He had taken their three children away from their home without notifying his wife. He kept them away all night, eventually killing them before going into the local police station and opening fire with a semiautomatic handgun[32]. The wife filed on the grounds that the town and its police officers failed to act appropriately by ignoring her repeated calls and not acting on the temporary restraining order (specifically, the warning on the back of the restraining order stating that the husband "may" be arrested if an officer has probable cause to believe that he knowingly violated the order)[33] and arresting the husband[34]. The issue at hand was whether the restraining order created a "property" interest that is protected by the Due Process Clause of the 14th Amendment.

In his opinion, Judge Scalia referred to both Colorado statute § 18–6–803.6[35] and the Due Process Clause of the 14th Amendment[36]. Judge Scalia agreed with the dissent in that much of the impetus for mandatory-arrest statutes and polices come from public safety concerns when the aggressor is on the scene, and that Colorado's restraining-order statute appears to be similar to Washington's in that when the whereabouts of respondent's husband were unknown—the officers' statutory duty is to "seek a warrant" rather than "arrest"[37]. However, he still concluded that the wife did not, under the Due Process Clause, have a property interest in the police enforcement of the restraining order against her husband[38]. Judges Scouter and Breyer concurred, holding that property did not include procedures, and so Gonzales, the wife, did not have a property interest in the execution of statutory procedures. They thus ruled that she had no recourse against the town and its police despite their inaction[39]. This ruling was extremely damaging, as it essentially negated the power initially accorded to orders of protection, and with it, victims' faith in that the law can and would protect them[40].

It is important to note the dissenting opinion in this case, for it forms the basis upon which other theories are pursued. These theories will be discussed later in this paper. The dissenting opinion, held and written by Judges Stevens and Ginsburg, stated that the order by the trial court judge created the functional equivalent of a private contract between wife and private security firm[41]. The order thus created a relationship between the police department and the wife, and so this order is "property" in the same way that the private contract is, and is thus enforceable[42]. They also held that, assuming the wife had indeed provided the police with a copy of the restraining order, the ignorance of her request to have it enforced by the police "provides her with a remedy against the [town], even if Colorado law does not"[43].

DeShaney v. Winnebago[44] and *Town of Castle Rock v. Gonzales*[45] have now made it near impossible to bring cases under the theories of 42 U.S.C.A. § 1983 in combination with a claim under the Due Process Clause of the Fourteenth Amendment. This leaves plaintiffs with the option of pursuing a 42 U.S.C.A. § 1983 claim in combination with an appeal to an Equal Protection Clause violation, but, as shown below, the plaintiff may not always prevail, even when one believes s/he should.

3. 42 U.S.C.A. § 1983 and Equal Protection

Claims under an equal protection theory arise out of the allegation that a person's rights to equal protection[46] were violated, which gives them the necessary standing for such claims. However, for a long time, defendants (usally the police department of the town or the town in which the victim was a resident) were able to have such claims dismissed after filing motions for summary judgment. It was not until *Hynson v. City of Chester* that the elements of proof required to prevent such motions from prevailing were more securely laid out[47].

Unequal protection can and has been expressed in two different ways: (1) that victims of domestic violence get less protection or their protection is withheld as compared to victims of non-domestic violence, and/or that (2) women get less protection or have had protection withheld when they requested it. In *Burella ex. rel. Burella v. City of Philadelphia*, the plaintiff was the wife of an abusive police officer, who shot the plaintiff before committing suicide[48]. The plaintiff had reported her husband's abusive behavior to the police department's employee-assistance program many times, to no avail. She had also made numerous 911 calls, which resulted in her husband being detained but always released[49]. By this time, it had already been ruled that evidence of discriminatory conduct need not be cumulative[50]. In other words, it is not necessary to show a pattern of conduct that is discriminatory- rather, a single incident would be evidence enough[51]. In this case, the victim alleged that the there was confusion amongst officers in the police department and they "did not know whether to make an arrest for a violation of an order or to just advise the complainant of his or her rights", and that there was a custom in the department of not enforcing orders of protection in existence at the time she was shot[52]. The court held that a reasonable jury could find that this constituted an unlawful custom in effect[53].

In *Smith v. City of Elyria*, the court held that police officers discriminated against a female homeowner by not aiding her in removing her ex-husband from her property. This led to her being murdered by her ex-husband, and their daughter having her ear cut off[54]. The police officers refused to be cognizant of the fact that the two were divorced, and continued to assumed that the ex-husband had a right to stay in the house even though it had been made clear by the wife that she did not want him there at all[55]. The police officers even advised him to go back if she tried to remove him by throwing his clothing outdoors, by simply "throw[ing] them back in"[56]. The courts decided that "these facts demonstrate discriminatory intent because they reveal a sexually discriminatory assumption that Alfred Guerrant (the ex-husband) had a right to exercise dominion and control over his ex-wife and her home"[57]. Given that the United States had by then moved away from considering women as property, this ruling is an extremely worrying step back in the status of women in the home, and by extension, in society.

Unequal protection of the law has also been alleged where a victim of domestic violence was unequally protected because the police officers did not have training that they could have had and used to protect her. However, the courts have held that a lack of training in protection does not constitute unequal protection, even if it may be considered unfair to the person who had to suffer because of it[58]. Cathy O'Brien was a victim of domestic violence for approximately two years, during which time she made repeated complaints to the Maui County Police Department ("MCPD"). She brought an action under 42 U.S.C. § 1983, claiming that Maui County, MCPD, and county officials violated her constitutional rights by failing adequately to train police officers on domestic violence and failing to protect her from abuse[59]. However, the court held that a lack of training does not constitute a violation under § 1983 because it did not stem from a custom or policy that led to a conscious, deliberate choice to follow a course of inaction and that this inaction led to the harms and violations of constitutional rights she allegedly suffered[60]. Furthermore, because the police had previously acted to affirmatively protect O'Brien when they arrested Rock three times between 1995 and 1997, they had actively intervened in these incidents of physical violence and arrested Rock, which meant that they had, when needed, ensured O'Brien's safety[61]. As such, the conduct of the police does not fall within the "danger creation exception", as it did the very opposite of that[62]. In this case, the court made it clear that to pursue a case under the Equal Protection Clause, one must show proof of "discriminatory intent or motive"[63], and that "other than proffering evidence of irregular domestic violence training and arguably improper police responses to several domestic violence victims, O'Brien has failed to provide evidence of the requisite "insidious intent" to prove an equal protection violation"[64]. This puts victims of domestic violence in an extremely precarious position, because they are reliant on law enforcement to accord them the protections their orders of protection are supposed to guarantee.

Unlike a due process claim, victims continue to have the option of pursuing recourse under an equal protection claim. However, as can be seen in the above cases, courts may not always have the same notions of what "equal" might mean, and this area of discretion accorded to the courts may prove problematic for prevailing on this claim.

3. Negligence

Victims of domestic violence commonly seek to recover damages from police who have failed to protect them by arguing that the defendants were negligent in performing a legal duty owed to them. This tort claim can be pursued regardless of whether the victim also chooses to pursue a 42 U.S.C.A. § 1983 claim. This legal duty is considered to be a matter of law, and so its existence is to be determined by a court (more specifically, the judge)[65]. There are three types of negligence that have been alleged against law enforcement officials: statutory negligence, otherwise known as negligence per se, common law negligence, and gross negligence.

Negligence per se comes about when the violation of a statute renders one negligent under the law. To prove negligence per se, the plaintiff must prove the following elements: 1) the defendant(s) violated the statute rendering this negligence; 2) the statute was created in order to protect a specific class of persons; 3) the plaintiff bringing the lawsuit is a member of that specifically protected class; 4) the injury suffered by the plaintiff is the sort of injury the statute was meant to prevent against; and 5) the statute was intended to regulate members of the defendant(s)' class[66]. For a plaintiff to prevail under the theory of negligence per se, there must be a statute that is violated, and this theory has both succeeded and failed to extend to other official documents, such as the language in an order of protection, and police manuals and guidelines.

In *Sorichetti*, an action was commenced against the City of New York (City) by Dina Sorichetti, an infant, and her mother, Josephine Sorichetti, to recover damages resulting from permanent, disabling, injuries inflicted on Dina by her father, Frank Sorichetti. The plaintiffs' theory of recovery was that the City, through the New York City Police Department, negligently failed to take Frank Sorichetti into custody or otherwise prevent his assault upon his daughter after being informed that he may have violated a Family Court order of protection and that he had threatened to do harm to the infant[67]. Did the City have a duty to do that? This questioned was answered by the court at the end of the trial when the jury was instructed of Family Court Act § 168(1)[68]. The jury was told that the City owed a special duty of protection to Josephine and Dina when the mother presented the order of protection to the police along with an allegation that it had been violated. To satisfy this duty of care, the jury was instructed that the police had to act in a reasonable manner in investigating the claimed violation[69]. In the end, the court held that the City had knowledge of Frank Sorichetti's past history and conduct, and, in light of this knowledge, breached a duty to protect Dina[70].

In another case, a plaintiff sued a state trooper for not arresting her boyfriend such that her boyfriend continued to sexually assault and batter the plaintiff, causing her physical injuries, depression, anxiety, and post-rape trauma[71]. Instead of seeing the Manual given to the trooper as evidence of a legal duty, the court held that "police guidelines and procedures… do not have the same authority as statutes and ordinances"[72]. The court decided that a police officer's decision to arrest is inherently discretionary[73] despite the guidelines that may have been present his/her manual, and

because the manual had not been adopted as a rule pursuant to the Vermont Administrative Procedure Act[74], the court could not conclude that the manual created a duty to the plaintiff to arrest her boyfriend[75], and so the trooper could not be found to have breached a duty and been negligent[76].

Common law negligence, however, does not require the existence of a particular statute. Legal duties that fall under this theory need not be created formally- that is, through a formal, department-implemented procedure or document[77]. Instead, common law negligence arises when there is a failure to exercise a reasonable degree of care that an otherwise ordinarily prudent person would exercise under the same circumstances. There are four elements to a common law negligence claim, which must all be met for the claim to prevail: 1) The defendant(s) owed a duty to the plaintiff; 2) that duty was breached by the defendant(s); 3) this breach of duty was the direct and proximate cause of the injury to the plaintiff; and 4) the plaintiff suffered damages[78].

In *Raucci*, the court held that a duty of the police to the plaintiff was created when "Deputy Chief DeCarlo told Ms. Raucci that the police "could do more" than what she had requested of them and suggested the taping of the harassing telephone calls [and] the Rotterdam Police trained her to record these calls"[79]. The court found that this duty was breached when the police did nothing with these recordings, even though the tapes "provided sufficient evidence for a charge of aggravated harassment, and… evidenced the lethal character of Mr. Raucci's threats"[80].

It is not always as simple as proving those four legal elements beyond the quantum of proof required. The "public duty doctrine"[81] protects public entities, governments, and law enforcement agents from liability for an individual's injuries when these injuries were caused by a government official's breach of a duty that is owed to a general public rather than that specific individual[82]. In other words, "a duty owed to all is a duty owed to none"[83]. Customarily, plaintiffs can only succeed in a common law negligence case if they can defeat this public-duty doctrine by establishing that the victim and the police had a "special relationship"[84]. The court in *Nelson* has explained that such a special relationship can be established in any one of the following ways: 1) through a statute that was enacted to protect a specific class of persons of, which the plaintiff is a member, from a particular type of harm; 2) when a government agent takes specific action to protect a person (the plaintiff) or property; 3) by governmental actions that reasonably induce detrimental reliance from the plaintiff; and 4) when the government/law enforcement agency has actual custody of the plaintiff, or a third person who has caused/causes/would cause harm to the plaintiff[85].

The same court that decided the *Nelson* case continued along the same decision in *Massee*, when it held that a jury "may have a finding of negligence upon evidence of violation of a statute, even if violation of the statute is not necessarily negligence per se"[86]. This thus establishes that a person can simultaneously file claims using both theories, and that the facts from a negligence per se theory can also be used to support a common law negligence theory, even if the facts do not meet the legal elements of negligence per se. In *Massee*, the court held that the Sheriff who was the main respondent to the domestic disputes between the plaintiff and her husband was negligent per se because he violated Montana statute MCA § 46-6-602[87] when he failed to properly notify the defendant of her rights and options available to her[88]. The court also concluded under the jury instructions provided for common law negligence that the Sheriff "failed to use reasonable care" and "failed to act "as an ordinarily prudent sheriff or deputy would act under the circumstances"[89], as evidenced by his violations of MCA § 46-6-311[90], when he failed to arrest the husband by choosing not to do so when he should have[91], and MCA § 46-6-603[92], when he failed to properly seize and secure the husband's weapons such that he no longer posed a threat to the plaintiff[93].

Gross negligence is a type of negligence that has become linked to a mental state of "wantonness". It refers to an utter recklessness and disregard for human life, with the absence of even slight diligence[94]. This is a high bar to cross, for it is separate from and more than mere negligence; it requires a "wholesale absence of care or indifference"[95] which "would require significantly more extreme facts"[96]. For example, in *Kane*, the trooper did respond to the plaintiff's 911 call and investigated the matter by interviewing her. The Supreme Court of Vermont believed that this did not constitute gross negligence, and this court affirmed the trial court's decision to grant the motion to dismiss[97]. Similarly, in another case, the Supreme Court of Vermont ruled that by going to and investigating a house, state troopers were not grossly negligent, even though the house they went to was the wrong one (i.e. they made an error in judgment)[98]. They could not be found grossly negligent, because by going to and searching around a house they thought was the correct one, they had exercised a "slight degree of care"[99]. The facts, the court decided, "do not establish anything more than ordinary negligence"[100].

4. Conclusion

On balance, it would seem that victims of domestic violence still do have opportunities to seek recourse from those who fail to protect them. They may choose to file under a federal statute, or make a tort claim of negligence. However, one must remember that these cases arise after the fact- that is, after the harm has already been caused, and the damage

has already been done. Even though there are statutes that make it mandatory for law enforcement personnel to act to protect the victim in active dispute situations where the threat of harm is imminent, there is still a degree of discretion accorded to the responding officers in an active domestic violence situation, and to officers who have been notified of or were previously involved in separate incidents. This discretionary ability is also accorded to juries and courts that get to decide if a victim should be compensated. Unless this discretion can be mitigated to prevent further cases of a failure to protect, it is hard to say that one does, with certainty, have a right to be protected and a right to be compensated. Additionally, there are no requirements for law enforcement personnel or other agencies to continue to monitor the situation or actively provide aid and support thereafter, which means that victims would find great difficulty in seeking compensation when a lack of such activity leads to their victimization. When law enforcement personnel make mistakes, take sides, or fail to take initiative beyond what is made mandatory in the law, it is often the victim who suffers, not just physically, but mentally and emotionally as they are forced to "air out his or her dirty laundry" in court and relive their shame in front of a public audience[101]. The loss of life and permanent injury (both emotional and physical) are things that can never be fully and sufficiently compensated, even if the officer(s) responsible are stripped of their badges. This is a situation that must change.

5. References

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6 American Bar Association, Statutory Summary Charts, State Statutes: Misdemeanor Crimes of Domestic Violence.
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9 U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics:
http://www.bjs.gov/content/pub/pdf/fvs.pdf at 4.

10 As such, even though the literature and other administrative agencies may discern between domestic violence and family violence by relating domestic violence more closely to intimate partner violence, this essay will use the term "domestic violence" to collectively refer to both domestic and family violence.

11 George L. Blum, J.D., Legal Protection Against Domestic Violence in Same-Sex Relationships, 19 A.L.R.7th Art. 1 at 1.

12 U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics:
http://www.bjs.gov/content/pub/pdf/fvs.pdf at 1.

13 Schneider, *supra*, Elizabeth M. Schneider, *Battered Women & Feminist Lawmaking* (2000).

14 It will not attempt to cover post-episode procedural issues such as the admissibility of 911 calls, recanted/changed/changing testimony, or the admissibility of statements made by child witnesses, nor will it attempt to cover other issues that arise together with or as a result of domestic violence, such as divorce proceedings, mediation, or child custody.

15 Stephanie Smiertka, The Federal Fortress Surrounding Police Liability
For Failure to Enforce Protection Orders, 21 Buff. J. Gender, L. & Soc. Pol'y 87 (2012-2013)

16 Deborah Mas Cabrera, Domestic Violence and Equal Protection of the Laws: A Look at
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17 Lynn A. Combs, Between a Rock and a Hard Place: The Legacy of Castle Rock v. Gonzales, 58 Hastings L.J. 387 (Dec 2006)

18 Michelle Sanders, To Serve and Protect? Supporting Police Inaction Over Domestic

Violence Victim Protection in Castle Rock v. Gonzales, 545 U.S. 748 (2005), 31 S. Ill. U. L.J. 421 (Winter 2007)

19 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C.A. § 1983.

20 *DeShaney v. Winnebago County Dep't of Social Serv.*, 489 U.S. 189 at 196.

21 *Id.* at 189.

22 *Id.* at 190.

23 *Ibid.*

24 *Semple v. City of Moundsville*, 963 F.Supp 1416 (1997).

25 Any law-enforcement officer responding to an alleged incident of family violence shall inform the parties thereto of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of family violence shall advise the person subject to abuse of the availability of the family protection shelter to which such person may be admitted.

26 Any law-enforcement officer responding to an alleged incident of abuse shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim or victims, upon the request of such victim or victims, to a shelter or the appropriate court where there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.

27 When a law-enforcement officer observes any respondent abuse the petitioner and/or minor children or the respondent's physical presence at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or subdivision (12), subsection (a), section thirteen [§ 48–2–13(a)(12)], article two of this chapter granting the relief pursuant to the provisions of this article, he or she shall immediately arrest the respondent.

28 *Semple*, 963 F.Supp at 1429-1430.

29 *Castle Rock*, 545 U.S. 748 (2005).

30 *DeShaney*, 489 U.S. at 195, as cited in *Castle Rock*, 545 U.S. at 755.

31 *Id.* at 2802–2810.

32 *Id.* at 752-754

33 *Ibid.*

34 *Id.* at 754.

35 (1) When a peace officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in section 18-6-800.3(1), has been committed, the officer shall, without undue delay, arrest the person suspected of its commission pursuant to the provisions in subsection (2) of this section, if applicable, and charge the person with the appropriate crime or offense. Nothing in this subsection (1) shall be construed to require a peace officer to arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence. Additionally, nothing in this subsection (1) shall be construed to require a peace officer to arrest either party involved in an alleged act of domestic violence when a peace officer determines there is no probable cause to believe that a crime or offense of domestic violence has been committed. The arrested person shall be removed from the scene of the arrest and shall be taken to the peace officer's station for booking, whereupon the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made.

36 Amdt. 14, § 1.

37 Colo.Rev.Stat. § 18–6–803.5(3)(b), as cited in *Castle Rock*, 545 U.S. at 762.

38 *Castle Rock*, 545 U.S. at 763, 764.

39 *Id.* at 771, 772.

40 Combs, 58 Hastings L.J. 387 at 388.

41 *Id.* at 773.

42 *Ibid.*

43 *Id.* at 774.

44 *DeShaney v. Winnebago County Dep't of Social Serv.*, 489 U.S. 189, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989).

45 *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 125 S.Ct. 2796, 162 L.Ed.2d 658, 73 USLW 4611 (2005).

46 "…nor deny to any person within its jurisdiction the equal protection of the laws." U.S.C.A. Const. Amend. XIV § 1L

47 In order to survive summary judgment, a plaintiff must proffer sufficient evidence that would allow a reasonable jury to infer [1] that it is the policy or custom of the police to provide less protection to victims of domestic violence than to other victims of violence, [2] that the discrimination against women was a motivating factor, and [3] that the plaintiff was injured by the policy or custom.
Hynson v. City of Chester Legal Department, 864 F.2d 1026 (1988) at 1031, *Watson v. City of Kansas City,* 857 F.2d 690, 694 (10th Cir.1988); see also *Brown v. Grabowski*, 922 F.2d 1097 (1990).

48 *Burella ex rel. Burella v. City of Philadelphia*, 2003 WL 23469295 (E.D. Pa. 2003) at 1.

49 *Id.* at 1-3.

50 *Soto v. Carrasquillo*, 878 F.Supp 324 (1995).

51 "A single incident in [the] plaintiff's own cause may also be sufficient if there is proof that supervisors or decision-makers have approved or authorized the discriminatory conduct." *Id.* at 329, as cited from *Pinder v. Commissioners of Cambridge,* 821 F.Supp. 385.

52 *Burella*, 2003 WL at 11.

53 Id.

54 *Smith v. City of Elyria*, 857 F. Supp. 1203 (N.D. Ohio 1994).

55 *Id.* at 1206.

56 *Ibid.*

57 *Id.* at 1212.

58 *O'Brien v. Maui County*, 37 Fed.Appx 269 (2002).

59 *Id.* at 270, 271.

60 *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (citing *City of Canton*, 489 U.S. at 388, 109 S.Ct. 1197). As cited in *O'Brien*, 37 Fed.Appx at 272.

61 *O'Brien*, 37 Fed.Appx at 272.

62 *Ibid.*

63 *Id.* at 273, *Navarro v. Block*, 72 F.3d 712, 716 (9th Cir. 1995).

64 *O'Brien*, 37 Fed.Appx at 273.

65 *Massee v. Thompson*, 321 Mont. 210, 90 P.3d 394, 2004 MT 121 at 220, see also *LaTray v. City of Havre,* 2000 MT 119, ¶ 18, 299 Mont. 449, ¶ 18, 999 P.2d 1010, ¶ 18

66 Black's Law Dictionary, 7th Edition, as cited in *Massee v. Thompson*, 321 Mont. 210, 90 P.3d 394, 2004 MT 121 at 220. *Estate of Schwabe v. Custer's Inn,* 2000 MT 325, ¶ 23, 303 Mont. 15, ¶ 23, 15 P.3d 903, ¶ 23.

67 *Sorichetti v. City of New York*, 65 N.Y.2d 461482 N.E.2d 70492 N.Y.S.2d 591 at 463.

68 "…The presentation of a copy of an order of protection or temporary order of protection or a warrant or a certificate of warrant to any peace officer, acting pursuant to his special duties, or police officer shall constitute authority for him to arrest a person charged with violating the terms of such order of protection or temporary order of protection and bring such person before the court and, otherwise, so far as lies within his power, to aid in securing the protection such order was intended to afford."

69 Sorichetti, 65 N.Y.2d at 467.

70 *Id.* at 467, 468.

71 *Kane v. Lamothe*, 182 Vt. 214, 936 A.2d 1303, 2007 VT 91 (2007) at 243, 244.

72 *Id.* at 248.

73 *Id.* at 247.

74 3 V.S.A. § 836-844

75 *Kane*, 182 Vt. at 248.

76 *Ibid.*

77 *Raucci v. Town of Rotterdam*, 902 F.2d 1050 (2nd Cir. 1990).

78 *Massee,* 321 Mont. at 220.

79 *Raucci*, 902 F.2d at 1056.

80 *Ibid.*

81 (1976) *Torts.* The rule that a governmental entity (such as a state or municipality) cannot be held liable for an individual plaintiff's injury resulting from a governmental officer's or employee's breach of a duty owed to the general public rather than to the individual plaintiff. — Also termed *public-duty rule.*
Black's Law Dictionary (10th ed. 2014)

82 Black's Law Dictionary, 7th Edition, as cited in *Massee*, 321 Mont. at 226.

83 *Nelson v. Driscoll*, 295 Mont. 363, ¶ 21, as cited in *Massee*, 321 Mont. at 226.

84 Brian L. Porto, J.D., Cause of Action Against Police for Failure to Protect Victim of Domestic Violence, 33 Causes of Action 2d 131 at 145.

85 *Nelson*, 295 Mont. at ¶ 22.

86 *Massee*, 321 Mont. at 230.

87 Whenever a peace officer arrests a person for partner or family member assault, as defined in 45-5-206, or responds to a call in which partner or family member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available.

88 *Id*. at 227.

89 *Id.* at 231.

90 (2)(a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

91 *Massee*, 321 Mont. at 226, 227.

92 (1) A peace officer who responds to a call relating to partner or family member assault shall seize the weapon used or threatened to be used in the alleged assault.

93 *Massee*, 321 Mont. at 228.

94 *Milwaukee & St. P.R. Co. v. Arms*, 91 U.S. 489, 23 L.Ed. 374, 1875 WL 17911 (1875) at 491.

95 *Kane*, 182 Vt. at 249.

96 *Kennery v. State*, 191 Vt. 44, 38 A.3d 35, 2011 VT 121 (2011) at 50.

97 *Kane*, 182 Vt. at 248-249.

98 *Kennery*, 191 Vt. at 49.

99 *Id.* at 49-50.

100 *Id.* at 50.

101 Sanders at 439-440.