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'You can't do this to people'

WOMAN'S 11-YEAR FIGHT AGAINST HER ARREST EVENTUALLY CHANGES CITY LAW

Since her arrest for officer obstruction in 1998, Robin McDermott has fought the city of Springfield in federal court and been acquitted of two criminal charges related to the incident. Last month, a judge ruled the city may no longer enforce the ordinance under which McDermott was arrested.

STORY BY DIRK VANDERHART
PHOTO BY JEROME T. NAKAGAWA • NEWS-LEADER

The rage took hold of Robin McDermott 11 years ago. Springfield police officers had just lifted her, handcuffed, from the chill of her front lawn, and there it was. Not a violent rage, it was quiet, considered — the indignant anger of the wrongfully accused, bent on righting that wrong.

It's lorded over McDermott ever since, prompting long nights over law books, alienating her from friends.

It's pushed her past two criminal cases and into a nine-year lawsuit, coaxed her through countless court hearings, dozens of self-scribed pleadings, two federal appeals.

And what does McDermott have to show for it, these 11 years later?

The wan satisfaction of holding at bay waves of attorneys representing the city of Springfield, perhaps.

A pair of acquittals, sure.

The promise of $25,000, yet to arrive.

And then the most recent development: A federal judge's order banning city officials from enforcing the officer-obstruction law under which McDermott was arrested all those years ago.

A victory, for now, in a battle that began one winter night in 1998.

"I just knew when I came off of that ground that night," McDermott said in a recent interview. "I had a resolve when I came up off that ground that this was not going to go the way that they thought it was."

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'HER WHOLE JOB IS JUST TO RAISE HELL WITH US'

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THE NIGHT, THE ARREST

There isn't a single, clear-cut account of the night McDermott — then a 45-year-old mother of two and Drury University student — was arrested and jailed for shouting at the police.

The officers involved have their versions. McDermott has hers.

Complicating the matter, two Greene County judges have cleared McDermott of any criminal activity that night, while a federal jury has ruled the woman was rightfully arrested.

But to understand why a decades-old — and oft-used — city ordinance was ruled off limits last month, the only place to begin is just before 1:30 a.m. on Jan. 23, 1998.

McDermott was asleep in her squat white rental home at 1601 N. Waverly Ave. when her brother awoke her.

"He told me that the cops were out in front of my house, and that my oldest son, Morgan, was being arrested," McDermott said. "He had seen them put him through a field sobriety test."

Her son, Morgan Smith, was in custody by the time McDermott, bleary eyed, stepped outside her front door in little more than a nightshirt.

She asked if he could come in the house, promising Smith would plead guilty if, in fact, he was drunk (he eventually did just that).

Officers rebuffed the question.

"I explained to her that he was already under arrest," Officer Tom Royal wrote in a police report on the incident.

McDermott heard a less-measured response.

"He said, 'Well, it's a little late for that. He's going to jail,'" she said, imitating the officer in a tone that might be called petty. "Don't be smart alecky to me in responding to a simple question and expect me to be polite to you, either."

The exchange went downhill from there.

McDermott at the time was studying psychology and criminology at Drury, and had recently taken a constitutional law class. She'd also once been married to a lawyer.

As Royal searched her son's truck, McDermott began demanding he and four other officers leave her property. She told them they didn't have authority to carry out the search in her driveway.

Royal's report says the woman's language was stronger than that and that she demanded to know the name of his "(expletive) sergeant."

The officer threatened to arrest McDermott, he wrote, and "she backed back into the house, hollering the whole time."

In the home she pulled on jeans, put in her denture, slipped on her shoes. Then she called 911, demanding to speak to a police sergeant. On the other end of the line, Officer Michael Wray told McDermott the officers were within their rights to search the vehicle on her property.

She cursed, hung up and went back to her porch.

"I didn't cow to them," McDermott said recently. "I stood my ground and I wasn't afraid."

Royal by this time had summoned his police dog, Caesar, and was once again checking Smith's truck.

"She was hollering loudly wanting to know 'what the (expletive) I was doing inside the truck!'" Royal reported. "Knowing Caesar would view her actions as hostile, I quickly turned to maintain control of Caesar, making sure he did not go to the source of the hostility."

In fact, the dog was facing McDermott with his hackles raised. Still, the woman refused to go back inside.

Handcuffs emerged, and McDermott was arrested under a city ordinance making it illegal to "resist or obstruct a city officer making an arrest or serving any legal writ, warrant or process or executing or attempting to execute any other duty imposed upon him by law."

Her shouting, and its effect on Caesar, constituted an obstruction of the officers' duties, the city later argued.

According to McDermott, Royal slapped a cigarette from her hand and threw her from the porch. She landed on her stomach on the front lawn, she says.

While officers were cuffing her, Caesar, unbidden, bit McDermott on her left thigh and buttock. Royal would later receive a formal reprimand because of the bites, court documents indicate.

The injured McDermott, who still bemoans the ruination of a pair of new Levi's at the jaws of Caesar, was made to lie near the tailpipe of a running police cruiser. Then she was taken by police wagon — which, she insists, not only stank of urine but was "wet" with it — to Cox North hospital for treatment of the bite wounds.

At the hospital, McDermott was alleged to have tried to bite Officer John Smith. She was treated and taken to the Greene County Jail.

As she walked out with her son later that morning, McDermott felt the rage flicker.

"It was just outrageous to me that because of objecting to their dog on my property — to their presence on my property — that they were completely and absolutely dismissive of my rights," she said, her voice rising with anger all these years later. "I'm still pissed."

THE MIND-SET, THE MOTIVATION

If it seems McDermott mistrusted the police that night more than the typical citizen, it's probably because she did.

The small, fiery 57-year-old does not dispute this.

Asked about her view of law enforcement, McDermott launches into a litany of police abuses she's encountered or heard about over the years.

In her thinking, police, by virtue of their position in society, are frequently aloof and corruptible.

"I think the whole thing about power and power corrupting absolutely is alive and well in a whole bunch of police forces across this nation and that it is only gonna get worse," McDermott said.

This viewpoint is, in part, informed by a brush with police in early 1990.

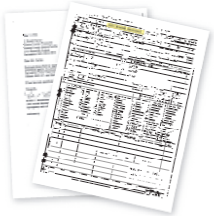
In that year, she was convicted of biting an officer in the hand as he tried to restrain her at her home.

The officer — who was responding to McDermott's call for assistance due to a domestic situation — wound up grabbing her by the thumb, she said. She'd just received surgery on the digit and, fearful the operation would have to be repeated, she says she acted on instinct. She received no fine or jail time, she said, and the offense does not show up in court records.

And so what happened that night in 1998, and the time since, could be viewed through this prism: A woman already mistrustful of cops, acting irrationally because of it.

Or, the arrest and years of litigation that ensued might be seen another light: A citizen who — believing her rights have been abused and despite advice to the contrary — fights City Hall.

"This is kind of storybook justice," said University of Missouri Law School Dean Larry Dessem, who was briefed on McDermott's one-woman campaign against the city. "This is kind of the romantic version of it, that she's been able to make that work."



NEWS-LEADER .COM **Documents:** Read the police report on McDermott's arrest, McDermott's affidavit to prosecutors, McDermott's suit against the city of Springfield, the judge's ruling finding the Springfield ordinance unconstitutional and the judge's injunction ordering city to stop enforcing the ordinance online at *News-Leader.com*

THE TRIALS, THE RESOLVE

McDermott found herself facing two criminal charges.

The first was for violating City Ordinance 26-17, the officer-obstruction law. The second was for third-degree assault on a law enforcement officer, a state charge that stemmed from McDermott allegedly trying to bite Officer Smith in the hospital.

She began searching for an attorney.

"Everybody was telling me: 'You're not going to win, you're going to lose. You might as well cut a deal,'" McDermott said.

She didn't consider it.

"I stood up for my rights and I didn't do anything with violence and I didn't do anything with threats," she said. "So no, I'm not pleading to anything."

Armed with what she described as "nothing more than my training at Drury and a really crappy marriage to a really lousy lawyer," McDermott set about preparing her own defense.

In the obstruction case, she requested a jury trial, ensuring the matter would be heard by a Greene County judge rather than in municipal court.

For the state charge, she obtained the services of the public defender's office. The office, however, was concerned she didn't qualify for indigent legal service.

So she handled the case herself, though a public defender stayed on as standby counsel.

In telling this part of her story, McDermott likes to recount a hearing before then-Greene County Circuit Judge Don Burrell, who presided over the assault case.

"The judge says: 'Well, you know, Ms. McDermott, the odds of you being able to win this without an attorney...' And all the sudden I just got struck with something and I go: 'The odds, your honor? What are the odds on that and can I get in on that pool?' And he just kind of chuckled."

In her first trial, decided by a jury, McDermott was convicted of obstructing an officer. Shortly after, however, a judge set aside that verdict, and she was granted a new trial.

In the meantime, McDermott and her standby public defender, Chris Nielson, went before Burrell for her trial on third-degree assault.

Following testimony on the morning of Sept. 20, 1999, Burrell concluded, "I am not firmly convinced of the defendant's guilt," according to a newspaper account. McDermott was acquitted without putting on a single piece of evidence.

"She seemed to have quite a bit of information at hand," recalled Nielson, now a private attorney. "She seemed to be savvy and obviously she did a good job."

In January of the following year, McDermott and Assistant Municipal Prosecutor Ron Dirickson squared off in court for her second trial on the charge of obstructing an officer.

Greene County Circuit Judge Calvin Holden took the matter under advisement and, on Jan. 28, 2000, McDermott was acquitted of that charge, too.

It had been two years since she was pulled from her front yard. The struggle of balancing parenting, college classes and frequent court appearances had exhausted her.

But McDermott was not done with the city of Springfield.

As City Attorney Dan Wichmer attests: "Her whole job is just to raise hell with us."

THE FIGHT GOES FEDERAL

Four days after her second acquittal, McDermott filed suit against the city in U.S. District Court.

The complaint — described now by McDermott as "terrible. The worst piece of writing I've ever done in my life" — alleged a violation of her First, Fourth and Fourteenth Amendment rights, as well as the Civil Rights Act of 1871.

Her claims were far-reaching. McDermott said she'd been improperly arrested, the victim of excessive force, had her free speech trampled and been subjected to many more abuses.

Named as defendants were the city of Springfield, Royal and other officers, Police Chief Lynn Rowe and Dirickson, the assistant city prosecutor.

At the University of Missouri, law students spend a year learning the rules of federal procedure, Dessem said. McDermott launched into the case without a day of such training.

"There are many fine trial lawyers who do not wish to practice in the federal courts because there are many more rules," Dessem said. "It's more technical. It's more unforgiving."

McDermott signed up for an account with the U.S. court system's PACER site, an online portal for filing and accessing case records.

She began researching applicable case law.

A friend donated money so she could buy law books.

The case began its slow crawl forward.

THE CASE, THE COSTS

To date, McDermott's suit against the city of Springfield has lasted more than nine years, seven months.

At least six attorneys have represented the city and police department, at a cost recently calculated at $116,587.16. The case docket includes more than 330 entries.

McDermott tallies the time in different figures: Hours that might've been spent with friends and family lost to legal briefs. Three computers she claims died from overexertion over the course of the lawsuit. Sleepless nights.

"There have been so many times in this where I just wanted to walk away from it," she said. "I just wanted it to be done with. I feel like I don't know why I'm supposed to do this, but I'm still compelled.

"There is comeuppance for this evil. You can't do this to people."

THE RULING

For McDermott and the attorneys opposing her, the nine-year lawsuit has proven a bumpy ride.

The matter has been tossed twice by U.S. District Court Judge Dean Whipple, who repeatedly found McDermott was rightfully arrested.

Issuing his second dismissal in June 2005, Whipple wrote: "The Court cannot believe that the First Amendment gives McDermott the right to knowingly obstruct an officer from the lawful performance of his duty and jeopardize the safety of others by agitating a police dog."

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With each apparent conclusion, however, came an appeal from McDermott. Each appeal, in turn, spurred a ruling from the United States Court of Appeals for the Eighth Circuit, ordering the lower court to address some new issue.

After the case was tossed and appealed the second time, McDermott finally got a jury trial. At issue: whether the city violated the woman's right to free speech.

Whipple also was to decide if Springfield's obstruction ordinance was constitutional.

The three-day trial was held in March 2008 and ended with jurors ruling the city did not violate McDermott's First Amendment rights.

The judge also asked the jury to decide how much money McDermott should receive if he found the law unconstitutional.

On Aug. 28, 2008, Whipple did just that, ruling the wording of Ordinance 26-17 had the capability of criminalizing protected speech.

"Ordinances must be written to recognize the balance between police regulation and the first amendment right to criticize police actions that is necessary for a free society," he wrote.

The order meant McDermott would receive $25,000 from city coffers decided by the jury. It didn't mean much more.

While the federal suit played out, the city restructured its ordinances. Rather than being numbered 26-17, the law McDermott was arrested under was listed as 78-32(1).

For this reason, the city contended Whipple's ruling didn't apply to the current law. McDermott argued it did.

Whipple settled the confusion on Aug. 13, when he issued an order barring the city from enforcing the ordinance, regardless of its number.

THE REPERCUSSIONS

So the case, as it stands now, means essentially this:

Officers had the right to arrest Robin McDermott on Jan. 23, 1998.

Prosecutors, too, had a right to charge her, though she didn't commit the crimes of which she was accused.

The city, however, does not have the right to enforce the law McDermott was arrested under in the first place.

City leaders have until Sept. 14 to decide whether they'll appeal Whipple's latest ruling or attempt to redraft the ordinance.

In the meantime, change is under way.

"In the short run, we've changed our policies and procedures to come into compliance," said Rowe.

He described the outlawed ordinance as "a means to control out-of-control individuals, and to ultimately protect officers from assaults and things of that nature."

"It's a tool that's been taken away, but hopefully we'll resolve it," Rowe said.

Police still have options for limiting interference when they're on duty. When Springfield reconfigured its ordinances in 2000, a number of paragraphs were added underneath the obstruction law's original wording.

These provisions make it illegal to resist detention, enter a crime scene, engage in conduct that could impede lawful duties or refuse an officer's lawful orders.

"They fill the gap," said Springfield City Prosecutor Johnnie Burgess. "We're not left with our hands tied."

Since Whipple's decision, the prosecutor's office has pulled nearly 300 pending cases where an individual is charged with violating some provision of ordinance 78-32. Nearly a quarter of those have been dismissed, Burgess said. Others have been refiled under a different ordinance.

"(The law) is frequently used by the police department, and up until the injunction came along we had no reason to believe there was anything wrong with it," Burgess said.

The court clerk's office has pulled more than 1,000 pending cases involving the law, according to Chief Municipal Judge Todd Thornhill. More than 360 have been dismissed.

Burgess acknowledged it's not uncommon for his office to prosecute officer obstruction violations. But he said attorneys make sure a case has merit before charges are filed.

"You can't prosecute someone for voicing an opinion," he said, even if that opinion involves profanity. "That's just part of a police officer's job. We pay them to take it."

THE REFLECTIONS

The $25,000 awarded to McDermott by jurors has yet to be paid.

She says the city wants her to sign a contract holding it blameless for her arrest and prosecution before paying up. McDermott refuses.

The city says a dispute over how much interest it must add to the $25,000 has yet to be resolved.

Check or no check, McDermott takes a cautious satisfaction in what the last years have reaped.

"I wanted to be vindicated," she said, "and I didn't think the acquittals had done that.

"I wanted to make sure this never happened to another person."

Hearing news recently that the police have left off enforcing the law that landed her in jail those years ago, she brightened. Learning that the court has dropped cases surrounding the law, she cheered.

But McDermott knows it's not over — that the city might appeal the decision she's worked for, that she might have to once again pick up the cause.

She thinks about that, and the anger that took hold that night in 1998 emerges.

"They just thought they were gonna run all over me," McDermott said, her voice once again rising. "That's what it was. They thought they were gonna run all over me the way they run all over everyone that's not represented, and I, by God, wasn't gonna let it happen.

"Not without a fight."