

# **Bond Case Briefs**

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## **GOVERNMENTAL IMMUNITY - NEW HAMPSHIRE**

### **Ojo v. Lorenzo**

**Supreme Court of New Hampshire - April 3, 2013 - A.3d - 2013 WL 1316980**

*Supreme Court of New Hampshire holds that grand jury's finding of probable cause did not retroactively establish probable cause at time of arrest, declines to extend immunity to arresting officers.*

Arrestee sued arresting officer and police department for false imprisonment and malicious prosecution. The superior court granted defendants' motion to dismiss on ground of they were immune from suit because the grand jury found probable cause in the prior criminal prosecution.

On appeal, the Supreme Court of New Hampshire held that:

- Grand jury's probable cause finding did not establish probable cause at time of arrest, so as to entitle officer to immunity;
- Indictments did not collaterally estop arrestee from establishing that probable cause did not support his arrest;
- Arrestee's stated claims not barred by immunity;
- Finding of probable cause to bind arrestee over did not collaterally estop him from establishing that probable cause did not support his arrest;
- Police did not establish probable-cause defense to false imprisonment claims; and
- Indictments defeated malicious prosecution claim.

"In conclusion, we repeat that the 'public simply cannot afford for those individuals charged with securing and preserving community safety to have their judgment shaded out of fear of subsequent lawsuits or to have their energies otherwise deflected by litigation, at times a lengthy and cumbersome process.' We understand that '[p]olice officers are trusted with one of the most basic and necessary functions of civilized society, securing and preserving public safety.' Nonetheless, at this stage of the proceeding, the defendants have not demonstrated that they are entitled to immunity from suit, or that probable cause supported the plaintiff's arrest. We note that if further factual development of the record establishes the lack of any genuine issue of material fact regarding the existence of probable cause for the plaintiff's arrest, the summary judgment procedure remains available to the defendants to resolve this litigation short of a trial."