

Nassau police face arrest suit

LI man says officers favored his foe, who knew a chief, in road-rage case

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A Westbury businessman plans to sue the Nassau police chief of detectives, 12 other officers, the department, the county and the district attorney's office, saying he was falsely arrested because of favoritism after a dispute with an auto repair shop owner who services the chief's personal car, according to court papers.

Roy Tuccillo, who lives in Jericho and owns a frozen-fish importing company, was detained by police during an argument over who was responsible for what was recorded in court as a road rage incident. It occurred on Middle Neck Road in Roslyn in June 2011 with Richard Tobin, a Glen Cove auto-repair shop owner, according to a notice of claim and a transcript of Tuccillo's trial.

The DA's office dismissed the case against Tuccillo in March, during the second day of his trial in First District Court in Hempstead, according to the transcript. He was being tried on criminal mischief and aggravated harassment charges.

Begins with '11 dispute

Tobin said Tuccillo's car rear-ended his black 2008 Mercedes SUV, causing severe damage, and that Tuccillo then threatened to kill him, according to the trial transcripts.

Tuccillo's account, given at the trial by his defense attorney, Edward Jenks of Mineola, indicated that Tobin threatened Tuccillo and later attempted to run him over when Tuccillo got out of this white 2007 BMW. Jenks said Tuccillo punched in the hood of Tobin's car to avoid being run over, ac-

ording to the transcript.

Tobin testified at the trial that he had repaired Chief of Detectives John Capece's personal car 10 times in the past five years and that the chief had paid him for the work, according to the transcript.

During the argument on Middle Neck Road, Tobin called Capece, who at the time was Nassau's chief of patrol, the supervisor of all uniformed officers, a prosecutor said during the trial. Capece then spoke with an officer at the scene, the prosecutor said. That phone call led to Tuccillo's arrest, Jenks said during the trial.

In a written statement, Tuccillo said: "This was the ultimate abuse of power and corruption . . . I was the victim [charged] with a crime I did not commit. Then, rather than investigating this as they should, they dragged me through the court system to punish me and . . . cover-up their wrongful acts."

Before the case was dismissed, presiding District Judge Valerie Alexander said of Capece's alleged involvement: "It is pretty outrageous conduct. I mean, [if] the allegations are [true]. This is pretty serious in terms of how exactly this whole matter occurred. You have [Chief Capece] speaking to a police officer on the scene, vouching for a complaining witness [Tobin], and then someone [Tuccillo] is arrested as a result of supposedly, you know, what happened."

Tobin did not answer or respond to repeated phone calls seeking comment. An employee of his Glen Cove auto shop said he was traveling in Spain and not reachable. "We certainly intend to defend the county vigorously," Nassau County Attorney John

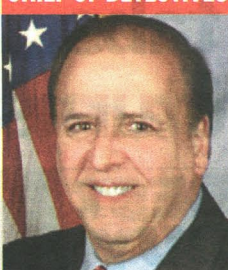
FILING LAWSUIT



PHOTO BY HOWARD SCHNAPP

Roy Tuccillo says he was treated unfairly after dispute with Nassau police official's mechanic.

CHIEF OF DETECTIVES



John R. Capece is a target of Tuccillo's allegations.

Ciampoli said.

Capece, arresting officer Willard Gomes and Det. Donald Bittner, a detective involved in the case, declined to comment, citing the ongoing litigation and police department policy.

Nassau police spokesman Kenneth Lack said no one had complained to the department about the arrest. If anyone had, Lack said, "We would have looked into it."

Chris Munzing, a spokesman for the district attorney's office, said, "We can't comment because we dismissed the case."

'Chance to clear his name'

Tuccillo said in an interview that when he tried to explain the situation from his point of view, a supervising officer at the scene called him a liar, spun him around, kicked one

ankle out, so he lurched forward, told him he was under arrest, and handcuffed him.

Frederick Brewington, Tuccillo's attorney in the civil suit to be filed in federal court, has filed a notice of claim against the department, the county, Gomes, Bittner, 10 unnamed police officers, as well as Capece, the police department and the district attorney's office.

Brewington would not specify the amount of damages being sought.

The notice of claim, a legal document required to be filed before a government is sued, accuses the officers, the county and the DA of malicious prosecution, false arrest, abuse of process, unlawful search and seizure, defamation, negligent infliction of emotional distress, abuse of official authority, negligence, false imprisonment and violation of civil rights.

"Mr. Tuccillo has been made to suffer for nearly two years, and now, finally has the chance to clear his name and have those that wrongfully used their authority answer for what they did," Brewington said in a statement.

Assistant District Attorney Richard Corrao said during the trial that Gomes acknowledged Tobin had called Capece from the scene, according to the trial transcript. Corrao said Tobin then put Capece on the phone with Gomes, the transcript continued.

Gomes did not recall the exact conversation he had with Capece, but "it was something

to the effect that he was vouching for the complaining witness [Tobin] that he was a good guy," Corrao said, according to the transcript.

Interference blamed

"At best we had a road rage incident between two people, yet one of them ends up in handcuffs while the other one walks," said Jenks.

Jenks said that Tuccillo had a passenger in the car whom the police declined to interview and that three valets in the parking lot of the Bryant and Cooper restaurant near the scene signed depositions two days after the arrest supporting Tuccillo's account. The valets told police at the scene that they had not seen anything, but two days later said they had been afraid to talk to the police, Jenks said.

Johnny Chumpitaz, one of the valets, said, "Nobody should have been arrested."

The DA reduced the charges against Tuccillo from felony criminal mischief to criminal mischief as a misdemeanor along with aggravated harassment as a misdemeanor and harassment as a violation.

The district attorneys also offered to drop the case if his client agreed to an action in contemplation of dismissal, meaning all charges would be dropped and his arrest record would be expunged, Jenks said.

But Tuccillo refused. "I didn't do anything wrong and wasn't going to take it," Tuccillo said.