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Jury hangs in case against sheriff

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NEWFANE — A lawsuit against the Bennington County Sheriff's Department ended in a mistrial Thursday after the jury deadlocked 10-1 over whether the department was liable for a sex assault by a deputy.

The Superior Court jury unanimously agreed that then-Deputy Richard Forrest coerced an East Dorset woman into having

sex in 1997. But after deliberating for almost six hours, a lone juror refused to find the department responsible.

"There was no evidence the department assisted in anything," juror Jay Milliken said in a telephone interview. "Common sense prevailed."

Jane Doe, as the victim is known in court papers, sued Sheriff Gary Forest and his department for damages. The sheriff is

the former deputy's younger brother.

Doe, who is now 27, claimed that she suffered permanent psychological injury as a result of the assault, which took place while Deputy Forrest was in uniform and on duty.

Her lawyers asked the jury Thursday to award her \$720,000.

"We have worked enormously hard. Our client has suffered terribly," attorney Bradley Myerson said in a telephone interview. "It

hurts almost as bad as a loss, but at least we're going to live to fight another day."

Defense attorney Pietro Lynn said he expected the court to schedule a new trial this spring or summer.

"It's fair to say the department is disappointed. We were looking forward to a resolution of this matter. But the jury has not

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been able to make a decision," he said.

Judge Karen Carroll instructed the jury that it could find the department liable if Richard Forrest's position as a police officer helped him commit the assault.

The jury was free to consider whether Forrest used his "special access" to citizens as a police officer. For example, did his job allow him to discover information about the woman or use his power to isolate her in some way? Or did Forrest's uniform, gun and handcuffs intimidate the woman into having sex?

Jurors said they decided almost immediately that Jane Doe had not consented to having sex in the back room of the store where she worked as a clerk. But whether

Forrest's uniform or position of power played a role became the focus of nearly five hours of discussion and debate.

"I was very frustrated," said juror Jennifer Ruopp, who eventually sided with the 10-vote majority.

"I don't think it should have ended up with that one person being so adamant that he wouldn't change his mind."

Jurors said they were surprised to learn from Judge Carroll that the issue of a sheriff department's liability was new legal ground in Vermont. In 2003, the Vermont Supreme Court reversed a lower court decision to dismiss Doe's lawsuit. The high court adopted the "vicarious liability theory," emphasizing the power that law enforcement officers have over citizens.

In his closing argument Thursday, Myerson told the jury that although the sheriff wasn't present when the assault took

place, he and his department put the deputy in a position to make it happen.

"They gave him his tools: guns, handcuffs, uniform, cruiser and a badge," Myerson said.

Deputy Forrest coerced Jane Doe into having sex "both through the symbols of his office ... and his very real threat to use those," Myerson said.

Witnesses testified during the trial that Deputy Forrest, whose nickname was Bull Puppy, stood 5 feet 11 and weighed about 235 pounds. But it wasn't just his bulk that intimidated Doe, according to Myerson.

"He's not just a big man," the lawyer told the jury. "He's a big man in uniform. And that's the difference."

But Lynn argued that there was no evidence that the sheriff's department did not train or properly supervise the deputy.

Lynn criticized Doe's case on several grounds, suggesting that she had exaggerated her psychological complaints. He attacked the credibility of a forensic psychologist who testified for the plaintiff at a cost of \$300 per hour. And he faulted Doe's attorneys for not allowing the jury to hear an audiotape of an interview the state police conducted with Doe immediately after the assault.

"You were not trusted with the truth," Lynn said when urging the jury to be "faithful to the facts and Vermont values."

Richard Forrest resigned his job the day after the assault. He later pleaded no contest in Bennington District Court to lewd and lascivious conduct and neglect of duty. He was given a three- to five-year suspended sentence and fined \$1,000.

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