

Vt. Supreme Court says sheriff can be sued for deputy's crime

WILSON RING

Associated Press Writer

MONTPELIER — The Vermont Supreme Court ruled Friday that the Bennington County sheriff can be sued for damages over a crime committed by one of his deputies.

"We're elated," said Bradley Myerson, of Manchester, one of the victim's attorneys. "We feel that justice was done and we look forward to holding the sheriff and the sheriff's department accountable for what the sheriff's brother did to our client while he was on duty."

Myerson said he and co-counsel David Putter plan to ask the presiding judge for a change of venue out of Bennington County. While local publicity is a factor, he noted

that the Bennington County Sheriff's department is responsible for juries and security at the courthouse.

"It would not be right," said Myerson. "It would be unfair to our client." He said the department's presence in the court would taint the proceedings.

Myerson said the case will likely be sent back to Bennington Superior Court, and the presiding judge could schedule a conference and order that the case be mediated. If the mediation is unsuccessful, the trial would resume. Myerson said the judge could wait until after mediation to rule on a request for a change of venue.

Myerson hopes to return to the courtroom soon. "We want to get this case tried," he said. "Our client's been waiting a long

time. What happened to her was terrible enough."

The Supreme Court ruled 3-2 that it would be up to a lower court to decide if Sheriff Gary Forrest and the department could be found liable for a sexual assault committed by Deputy Richard Forrest in 1997 while on duty and in uniform.

"We hold that if plaintiff can show that an on-duty law enforcement officer was aided in accomplishing an intentional (crime) involving a sexual assault... by the existence of the employment relationship... liability will apply," said the decision, written by Supreme Court Justice John Dooley.

In the dissent, Justice Marilyn Skoglund

See *SHERIFF*, page 4A

Deputy was convicted of lewd conduct

SHERIFF, from page 1A

and Chief Justice Jeffrey Amestoy argued the decision could make many employers liable for the actions of their employees.

"The majority has created a threat of vicarious liability that knows no borders," said the dissent, written by Skoglund. "The standard that it articulates applies to a broad range of employees whose duties grant them unique access to and authority over others, such as teachers, physicians, nurses, therapists, probation officers, and correctional officers, to name but a few."

The case began in 1997 when Richard Forrest forced the victim,

identified in court papers as Jane Doe, to perform a sex act on him at an East Dorset convenience store where she worked.

Forrest was wearing his uniform and carrying a gun and handcuffs, but he did not threaten the victim with the gun or handcuffs.

After he left the victim called police. Forrest, the brother of Bennington County Sheriff Gary Forrest, was arrested and later convicted of lewd and lascivious conduct. He resigned his position and was given a suspended jail sentence.

The victim sued.

The Bennington County Superior Court dismissed the case, ruling that the sheriff and the depart-

ment could not be held liable for the illegal actions of a deputy that were not sanctioned by the department.

But the victim appealed.

The Supreme Court agreed with two of the points made by the lower court, but disagreed with one point.

The victim's attorneys argued that Richard Forrest's position as a deputy made it possible for him to commit the crime.

They used a legal doctrine known as Restatement of Agency, which is part of a code of legal standards that guide courts and Legislatures about how to apply the law.

It says that an employee can be

held liable when the employee is "purported to act or to speak on behalf of the principal and there was reliance upon apparent authority."

In this case, the court ruled, Richard Forrest would have been unable to sexually assault the victim if he would not have been wearing his uniform.

Now it will be up to the lower court, and possibly a jury, to decide if Gary Forrest and his department should be held liable.

In the majority opinion, Dooley wrote that the case was specifically about police officers. He disagreed that it would greatly expand the liability of employers in sexual harassment cases.