



Jury Finds Unlawful Detention At Logan Airport *Verdict stems from treatment of African-American passenger after arrival in 2003*

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BOSTON -- Friday evening, the jury in the *Downing v. Massachusetts Port Authority* trial found that state police had unlawfully detained King Downing at Logan Airport in October 2003. Mr. Downing also agreed to a settlement of his claims against the Massachusetts state trooper principally responsible for the unlawful detention, William Thompson.

King Downing, a Harvard-educated lawyer, testified at the trial that he was stopped for questioning by state police troopers after simply using a phone on his way out of Logan Airport on the morning of October 16, 2003. Police demanded to see Mr. Downing's identification and travel documents, which he was under no obligation to provide. After initially being told that he must leave the airport, which he intended to do anyway, Mr. Downing was surrounded by five state troopers and told he was under arrest. Although the police had no reason to stop him, Downing was detained for forty minutes until he finally acceded to police demands for his identification and travel papers.

"The jury found that Mr. Downing was unlawfully detained by the State Police," said attorney Peter B. Krupp, of the firm Lurie & Krupp LLP, who represented Mr. Downing in cooperation with the American Civil Liberties Union of Massachusetts. "The jury verdict puts the state police on notice that its programs, including the post-9/11 Passenger Assessment Screening Program, must assure in the future that voluntary encounters between troopers and members of the traveling public do not become the type of unlawful detention that Mr. Downing experienced."

Downing had stopped on his way out of the airport to use a pay phone outside the secure area, and he contended that the only thing that would have attracted the attention of the trooper was his appearance. Mr. Downing is an African American who wears a beard. Downing testified that while he was on the phone, a state trooper positioned himself just a few feet away where he could easily listen in on Downing's call. When Downing objected, the trooper demanded to see his identification.

Ironically, Mr. Downing is the National Coordinator of the ACLU's Campaign Against Racial Profiling.

Downing's legal team had argued that his detention was the result of the Passenger Assessment Screening System (also known as the Behavior Assessment Screening System). The PASS program was designed to thwart terrorists and was put into effect at Logan Airport in 2003. Similar screening systems are now in use at dozens of airports around the country.

The jury did not find that the incident on Oct. 16, 2003, was necessarily the result of the PASS program, but nonetheless found that the police had unlawfully detained Mr. Downing because they had detained him without reasonable suspicion to believe he had committed any crime. The defendants had steadfastly contended that at all times during the 30-40-minute encounter with the police, Mr. Downing was free to leave the police. The jury rejected this notion.

"A jury with no blacks found that my rights were violated," said King Downing. "This case sends a message to blacks, and to all people, to stand up for their rights."

"This jury verdict upholds an important principle," said Carol Rose, Executive Director of the ACLU of Massachusetts. "In the United States, people cannot be stopped without cause by the police and required to produce identification and papers proving that they have a right to be in a particular place. 'Your papers please' is a phrase that is alien to a free society."

"Police and airport security personnel should be on the lookout for genuinely suspicious behavior, but the law is clear that they may not stop someone unless they have a reasonable suspicion that a crime or an act of terrorism might be committed. The use of behavioral characteristics, like those that were kept secret in this case, does not justify the detention of someone in a non-secure area."

The ACLU of Massachusetts has questioned the use of behavioral pattern recognition out of concern that it increases the likelihood of racial profiling. "The police are going to find suspicious behavior where they look for it," Rose explained. "And experience teaches us that they are more likely to look for it among people of color or a particular ethnicity. We will all be safer if security personnel base their investigations on evidence, not simply racial characteristics."

For more information about the case, see:

<http://www.aclu.org/safefree/general/18765prs20041110.html>

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