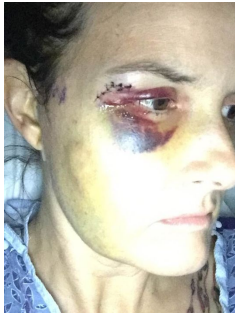


Wrongful arrest for domestic violence prompts calls for change

Stacey Barchenger, sbarchenger@tennessean.com 2:07 p.m. CST December 28, 2016



(Photo: Submitted by Ben Raybin)

For more than eight weeks last fall, two words kept Rachel Heffner from returning to her Nashville home.

She'd been designated the "aggressor" and the "defendant" in a domestic violence case, loaded with so many restrictions that she said prevented her from going home. As the 38-year-old single mother dealt with her own injuries — broken bones in her face, a fractured foot, knowing she called police on her own teenage son — she moved between friends' houses.

"The justice system is supposed to be there to help people, to protect people, and in this case that wasn't it at all," she said.

Heffner was not the aggressor, but that was not acknowledged by prosecutors or Nashville police until after her criminal charges were dismissed in October because her 17-year-old son did not show up in court. Now, police confirm charges against the teen are pending.

The Tennessean typically names only juveniles who have been charged with serious crimes.

Heffner and her lawyer are speaking out, saying there must be changes to how the justice system handles domestic violence cases. It's an unpopular position in a landscape of elected leaders who have cracked down on domestic violence in recent years.

But sometimes, as happened to Heffner, police arrest the wrong person. No one tracks how often that happens in the nearly 25,000 domestic violence calls Nashville police get each year.

Heffner's lawyer, [Ben Raybin of the law firm Raybin and Weissman](https://www.nashvilleinlaw.com/) (<https://www.nashvilleinlaw.com/>), in December sent a seven-page letter to Police Chief Steve Anderson, [District Attorney Glenn Funk](http://da.nashville.gov/) (<http://da.nashville.gov/>) and others who handle domestic violence cases, detailing Heffner's experience. He said he's seen other cases like hers.

Read the full letter at the end of this story.

And he makes several suggestions, including that [Metro Nashville Police Department](http://www.nashville.gov/Police-Department.aspx) (<http://www.nashville.gov/Police-Department.aspx>) conduct an internal affairs investigation of Heffner's arrest. He wants to know why Heffner's two sons, the 17-year-old and a 14-year-old who witnessed the fight, were not separated before being interviewed by police. Why the children were allowed to remain home alone after her arrest. Why police didn't continue an investigation that included Heffner's side of the story.

He suggested that judges should consider setting bond conditions and ordering a 12-hour hold in jail after an arrest on a case-by-case basis. Raybin said in his experience, the hold is given to every defendant, without a judge specifically determining whether it's actually necessary.

RELATED:

- [Domestic violence charges against David Chase dismissed](/story/news/crime/2015/07/01/domestic-violence-case-dropped-david-chase-nashville/29572521/) (</story/news/crime/2015/07/01/domestic-violence-case-dropped-david-chase-nashville/29572521/>)
- [Bill would make 12-hour hold after domestic violence arrest mandatory](/story/news/politics/2015/01/14/bill-hour-wait-domestic-violence-mandatory/21774567/) (</story/news/politics/2015/01/14/bill-hour-wait-domestic-violence-mandatory/21774567/>)
- [Bill keeps judges' power after domestic violence arrest](/story/news/politics/2015/03/03/bill-keeps-judicial-discretion-domestic-violence-arrests/24339473/) (</story/news/politics/2015/03/03/bill-keeps-judicial-discretion-domestic-violence-arrests/24339473/>)

Raybin said he has had clients arrested and held for the 12 hour "cooling off" period, even when the crime they are alleged to have committed occurred more than a year earlier. Three General Sessions judges who received the letter, [Gale Robinson](http://gscourt.nashville.gov/about-us/judges/division-i-judge-gale-b-robinson/) (<http://gscourt.nashville.gov/about-us/judges/division-i-judge-gale-b-robinson/>), [Allegra Walker](http://gscourt.nashville.gov/about-us/judges/division-iv-judge-allegra-walker/) (<http://gscourt.nashville.gov/about-us/judges/division-iv-judge-allegra-walker/>) and [Angelita Dalton](http://gscourt.nashville.gov/about-us/judges/division-iii-judge-angelita-blackshear-dalton/) (<http://gscourt.nashville.gov/about-us/judges/division-iii-judge-angelita-blackshear-dalton/>), declined to comment for this story. Diane Lance, Metro's director of family safety, said she received the letter but had not yet read it.

"This case is a reminder that some defendants may not only be innocent, but victims themselves," Raybin wrote, also calling on the district attorney to put in place procedures to more rapidly evaluate cases of wrongful arrest.

The fight

On Aug. 13, Heffner and her oldest son, then 17, got into a verbal fight. She said she had intervened in a fight between her two sons. That escalated, and Heffner threatened to call the police. When the 17-year-old grabbed her neck and then pushed her down the stairs, she said, she made the call to 911.

"I knew at that point he meant harm," she said.

"I feared for my own safety, and I feared for my younger son."

Heffner said her older son spit at her, and she spit back — she said she should not have — and then he punched her. She made multiple calls to the police, Raybin's letter says.

Police arrested Heffner on a charge of "provocative conduct" for spitting on her son based on what the teen said, claiming that he "struck (Heffner) in a defensive reaction," Raybin's letter says. Heffner's younger son, 14, corroborated the story.

Nashville police, when responding to domestic violence calls, are instructed to arrest the primary aggressor. That means arresting the person who started an altercation, even if that provocation was verbal. That is not always easy, department spokesman Don Aaron said, noting domestic violence calls can escalate quickly and be very complex.

Heffner was taken to a hospital because of her injuries. Later, and despite that she could barely walk, a magistrate judge ruled she was a threat to her son and should be held in jail for 12 hours, Raybin's letter says.

The court process

Buy Photo 



Rachel Heffner (Photo: Stacey Barchenger / The Tennessean)

As a condition of Heffner's bond, she could not have contact with her son and not return to their shared home. After an initial court appearance in August, a General Sessions judge allowed Heffner to go home. But that ruling was not enough for Heffner: She said because she was still under a court order not to see her son, and because she — the "aggressor" — was unable to get a restraining order against him, she did not feel safe returning.

Raybin began investigating Heffner's side of the story, asking prosecutors to re-examine the case. Heffner's other son, the 14-year-old, later told Raybin he was scared of his older brother and that's why he initially corroborated his brother's story to police, Raybin said.

Prosecutors could not reach the 17-year-old, who at the time was considered the victim.

A spokesman for the district attorney, Ken Whitehouse, said extensive measures were taken to find Heffner's oldest son. They tried two phone numbers several times trying to reach the teen, and sent an investigator and later police to find him but could not.

The teen did not show up in court for an initial probable cause hearing in October, so Raybin asked that the case be dismissed. Prosecutors did not object.

But that was not the end of Raybin's work on the case. He got police to reopen the investigation. He and Aaron, the police spokesman, confirmed detectives have since charged the 17-year-old in the incident.

And the police department's [Office of Professional Accountability \(http://www.nashville.gov/Police-Department/Chief-of-Police/Professional-Standards-Division.aspx\)](http://www.nashville.gov/Police-Department/Chief-of-Police/Professional-Standards-Division.aspx) has opened an internal investigation into Heffner's arrest, one that could examine whether policies need changing.

"They're going to look broadly at this scenario as given by Mr. Raybin and essentially do some fact finding," Aaron said. He said part of the issue, according to police documents he'd read, were the teens' false statements.

Heffner is now back in her home, and though her foot is still healing, her face is no longer marred by bruising. She hopes that sharing her story helps others in similar situations.

"Protect your own rights, because clearly with my experience with this, I don't feel like my rights were there," she said. "I was stripped of my rights."

[Letter asks for review of domestic violence cases](https://www.scribd.com/document/334889659/Letter-asks-for-review-of-domestic-violence-cases#from_embed)
(https://www.scribd.com/document/334889659/Letter-asks-for-review-of-domestic-violence-cases#from_embed) by TNdigital
(https://www.scribd.com/user/266712232/TNdigital#from_embed) on Scribd

R & W
RAYBIN & WEISSMAN, P.C.
ATTORNEYS AT LAW

David L. Raybin | David J. Weissman | Benjamin K. Raybin | Ashley Farrell

Hon. Gale Robinson
408 2nd Avenue North
Suite 5100
Nashville, Tennessee 37219

Gen. Glenn Funk
222 2nd Avenue North
Suite 500
Nashville, TN 37201

Hon. Angelita Dalton
408 2nd Avenue North
Suite 3110
Nashville, Tennessee 37219

Chief Steve Anderson
Nashville Police Department
3055 Lebanon Pike
Nashville, TN 37219

Hon. Allegra Walker
408 2nd Avenue North
Suite 4140
Nashville, Tennessee 37219

Diane Lance
Office of Family Safety
100 Metro Courthouse
Nashville, TN 37201

December 13, 2016

Re: Arrest and prosecution of Rachel Heffner
Complaint No: 2016-0728089
Case No: GS781080

Dear Participants in the Domestic Violence Criminal Justice System:

This letter regards Rachel Heffner, a victim of domestic violence who suffered numerous facial fractures and a fractured foot at the hands of her son [REDACTED]. Although she made numerous calls to 911 for help, she was arrested by responding officers when her son said she spit on him. Upon becoming a defendant charged with domestic assault, Rachel was denied immediate medical attention, left in jail for twelve hours despite serious injuries, prevented from returning to her home (where she is the only adult resident), and prosecuted for some nine weeks until the case was dismissed for failure to prosecute. While she was in jail and barred from her home, her two minor children were left unattended her home, including her assailant who took her car and her valuables.

As Rachel's attorney, I made numerous attempts to seek quicker investigation into the case to determine that Rachel was the victim, not the attacker. Apparently, investigation only

¹ Photographs showing her injuries are attached to this letter.

Fifth Third Center, 424 Church Street, Suite 2120 | Nashville, Tennessee 37219
P 615-256-6666 | F 615-254-4254 | www.NashvilleTnLaw.com

Reach Stacey Barchenger at 615-726-8968 and on Twitter @sbarchenger (<http://www.twitter.com/sbarchenger>).

MOST POPULAR STORIES

[Wrongful arrest for domestic violence prompts calls for change](http://www.tennessean.com/story/news/crime/2016/12/28/wrongful-arrest-domestic-violence-prompts-calls-change-nashville-police/95654968/)
(<http://www.tennessean.com/story/news/crime/2016/12/28/wrongful-arrest-domestic-violence-prompts-calls-change-nashville-police/95654968/>)



['It' city loses appeal for longtime Nashville residents](http://tennessean.com/story/opinion/contributors/2016/06/09/city-loses-appeal-longtime-nashville-residents/85625178/)
(<http://tennessean.com/story/opinion/contributors/2016/06/09/city-loses-appeal-longtime-nashville-residents/85625178/>)

[TDOT worker struck on I-40 on Christmas Eve dies](http://www.tennessean.com/story/news/crime/2016/12/29/tdot-worker-struck--40-christmas-eve-dies/95951166/)
(<http://www.tennessean.com/story/news/crime/2016/12/29/tdot-worker-struck--40-christmas-eve-dies/95951166/>)

[Nashville turns New Year's Eve into major tourism draw](http://www.tennessean.com/story/money/2016/12/28/nashville-turns-new-years-eve-into-major-tourism-draw/95879422/)
(<http://www.tennessean.com/story/money/2016/12/28/nashville-turns-new-years-eve-into-major-tourism-draw/95879422/>)

[TBI investigating officer-involved shooting in Spring Hill](http://tennessean.com/story/news/crime/2016/12/29/tbi-investigating-officer-involved-shooting-spring-hill/95951040/)
(<http://tennessean.com/story/news/crime/2016/12/29/tbi-investigating-officer-involved-shooting-spring-hill/95951040/>)

Read or Share this story: <http://tnne.ws/2iFpH6R>

 <p>\$60 30-Days</p>	<p>TRULY UNLIMITED 4G LTE DATA TALK•TEXT</p>	<p>LEARN MORE</p> <p>See Terms and Conditions of Service at SimpleMobile.com Video typically streams at DVD quality (480p).</p>	<p>DOLLAR GENERAL</p> <p>FAMILY DOLLAR</p>	 <p>SIMPLE Mobile</p>
--	---	--	--	---