

Bootstrapping or Malicious Prosecution



By Paul Engel

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- Law enforcement has to have probable cause to get an arrest warrant, right?
- Can someone sue for malicious prosecution if there was not probable cause for all of the charges in a warrant?
- Are malicious prosecution and a Fourth Amendment violation mutually exclusive?

How far can law enforcement go when it comes to arresting someone? For example, if police have probable cause to charge you with a misdemeanor, how far can they “bootstrap” that charge into something more serious? That appears to be the question in the case [Chiaverini v. City Of Napoleon, Ohio](#). While dealing with a misdemeanor situation, Mr. Chiaverini was subsequently charged not only with another misdemeanor, but a felony as well. One little problem: The police had no probable cause for the felony.

Background

Dealing with law enforcement can be a stressful situation. Mr. Chiaverini may have felt that he was right to not hand over property he had paid for to those claiming it was theirs. However, it may have been more stressful when a couple of police officers showed up.

This dispute began with a set of peculiar interactions between a jewelry store owner and police officers in Napoleon, Ohio. ...

The jeweler, Jascha Chiaverini, bought a ring for \$45 from a (petty) jewel thief. The ring's rightful owners found out about the sale, and asked Chiaverini to return their property. Chiaverini said no, so the owners contacted the police. Two officers, on a later visit to the store, directed Chiaverini to surrender the ring to its owners. But Chiaverini refused their request too, saying that it contradicted a letter he had just received from the police department telling him to retain the ring as evidence. And when repeating his refusal to another officer the next day, Chiaverini suggested (for reasons unclear) that he was operating his store without a license. The result of that unprofitable exchange was that the police turned their attention from the original theft to Chiaverini's business.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

This started as a dispute over who owned a ring and how that property should be handled. I'm not sure why Mr. Chiaverini mentioned he was operating his store without a license. Perhaps that's an object lesson about chatting with law enforcement, something I do not do. As a result of that utterance, the police stopped focusing on the original theft and turned their eyes to Mr. Chiaverini's business.

Soon afterward, the officers launched a criminal proceeding against Chiaverini in municipal court. They filed three complaints, each charging him with a separate offense. Two were misdemeanors: receiving stolen property and dealing in precious metals without a license. The third was a felony: money laundering.

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After a criminal investigation three complaints were filed against Mr. Chiaverini. First, receiving stolen property, a

misdemeanor related to the original dispute. Second, dealing in precious metals without a license, another misdemeanor which logically came from Mr. Chiaverini's utterance about his business. Last, and not only most serious, but most important, felony money laundering.

To support their accompanying application for an arrest warrant, the officers submitted an affidavit making the case for probable cause on all three charges, but focusing on the felony. ... For that charge to succeed, Chiaverini must have known when he bought the ring that the transaction involved the proceeds of unlawful activity.

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Since a warrant requires probable cause, the application for an arrest warrant included an affidavit. This is required by the Fourth Amendment:

and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[U.S. Constitution, Amendment IV](#)

The warrant requires an oath or affirmation that the probable cause is true. So what was in the affidavit the police used to get the arrest warrant?

In support of that element, the officers averred that Chiaverini always suspected the ring was stolen. The judge issued the requested warrant, and the officers arrested Chiaverini. He remained in custody for three days, until his arraignment.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

The officers averred (claimed) that Chiaverini always suspected the ring was stolen. This was a necessary component of the money laundering charge. But how did the officers know that Mr. Chiaverini suspected the ring was stolen? The details matter, especially in a criminal case; suspecting that something is stolen isn't the same as knowing it. Based on that affidavit, the judge issued the arrest warrant, the officers arrested Mr. Chiaverini, who then spent three days in jail awaiting arraignment.

At a later preliminary hearing, the judge heard testimony about the evidence supporting the officers' probable-cause allegations. ... The officers maintained that Chiaverini had admitted in their interview to suspecting the ring was stolen; Chiaverini denied making any such statement.

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So it turns out that when it came to admitting that Mr. Chiaverini knowing the ring was stolen, it was the word of the officers versus Mr. Chiaverini. Now the officers did have to swear or affirm under penalty of perjury that their testimony was truthful, but does the word of a couple of officers, without any other evidence, rise to the level of probable cause? In fact, isn't their assertion that Mr. Chiaverini "admitted" something hearsay? Shouldn't this interview have been recorded, meaning there was a record of Mr. Chiaverini's admission?

At the hearing's conclusion, the judge again found probable cause, and set the three charges for trial.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

As flimsy as this affidavit is, the hearing judge found probable cause and sent the case to trial. However, the county prosecutors seemed less than enthused.

The county prosecutors, though, decided that they had higher priorities. They failed to present the case to a grand jury in the required time. The court therefore dismissed the charges.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

In order to indict Mr. Chiaverini for the felony, the case had to be presented to a grand jury for indictment. However, the country prosecutors didn't bother. When the time limit for the prosecutors to file expired, the judge dismissed the charges.

Malicious Prosecution

Which brings up the question of how Mr. Chiaverini was treated during all of this.

But Chiaverini decided not to let matters lie. After all, he had been arrested and held for three days, he thought unjustifiably. So he sued the officers under §1983, alleging what is known as a Fourth Amendment claim for malicious prosecution.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

This is where things get a little fuzzy for me. Is this a malicious prosecution case or an unreasonable seizure case? Then I did some research on the legal definition of malicious prosecution.

An action for damages brought by one against whom a civil suit or criminal proceeding has been unsuccessfully commenced without Probable Cause and for a purpose other than that of bringing the alleged offender to justice.

[Malicious Prosecution – The Free Legal Dictionary](#)

So there is a relationship between malicious prosecution and Fourth Amendment protections against unreasonable seizure,

since both malicious prosecution and an unreasonable arrest warrant both lack probable cause.

To prevail on that claim, he had to show (among other things) that the officers brought criminal charges against him without probable cause.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

Probable Cause by Association

Let's start with the fact that the police apparently had probable cause on two of the three charges: The two misdemeanors. On the other hand, Mr. Chiaverini focused on the felony charge, which was the focus of the officers.

In addressing that issue, he gave special attention to the felony charge for money laundering. According to Chiaverini, the officers lacked probable cause for that charge for two reasons. First, they had no reason to think he knew the ring was stolen; indeed, he said, their claim that he had admitted as much was an out-and-out lie. And second, they could not show—as, in his view, Ohio law required—that the ring was worth more than \$1,000; its value was far less, more in line with its \$45 purchase price. So Chiaverini concluded that his suit satisfied the “without probable cause” element of a Fourth Amendment malicious prosecution claim.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

Mr. Chiaverini's first point is easy enough: Why did the police officers think Mr. Chiaverini knew beforehand that the ring was stolen? The second point is a little trickier. Mr. Chiaverini claims that the value of the ring is far below the minimum value required by law. Mr. Chiaverini claims the value of the ring is closer to the \$45 he paid for it than the \$1,000 minimum the law required. While I am no expert, the

only relevant law I could find was Title 13, Section 1315.55 of the Ohio Revised Code:

(4) No person shall conduct or structure or attempt to conduct or structure a transaction that involves the proceeds of corrupt activity that is of a value greater than ten thousand dollars if the person knows or has reasonable cause to know that the transaction involves the proceeds of corrupt activity.

[13 Ohio Revised Code §1315.55](#)

There may be other statutes I am unaware of, but it certainly seems that the minimum dollar value far exceeds the value of the ring. This leaves us with the heart of the case: Does probable cause for one crime justify the seizure for any other allegations, regardless of whether or not there is probable cause for them?

After the District Court granted summary judgment to the officers, the Court of Appeals for the Sixth Circuit affirmed. It did so without addressing either of Chiaverini's arguments about the felony charge's basis. In the Sixth Circuit's view, there was clearly probable cause to support the two misdemeanor charges the officers had filed. ... And because that was true, the court thought, the validity of the felony charge did not matter. "So long as probable cause supports at least one charge against Chiaverini (like his receipt-of-stolen-property violation)," then his malicious-prosecution claim "based on other charges (like his money-laundering charge) also fail[s]." ... Or said another way, a single valid charge in a proceeding would insulate officers from a Fourth Amendment malicious-prosecution claim relating to any other charges, no matter how baseless.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

I can see the logic of the Sixth Circuit until we consider

what happened to Mr. Chiaverini. Yes, he was arrested, which would have happened with or without the money laundering charge. However, he also spent three days in jail awaiting arraignment. Would that have happened for only misdemeanor charges? What about bail? Would his bail have been as high without a felony charge on the list? Apparently, I was not the only one to think this way.

In taking that position, the Sixth Circuit stepped out on its own. Three other Courts of Appeals have held that the presence of probable cause for one charge does not automatically defeat a Fourth Amendment malicious-prosecution claim alleging the absence of probable cause for another charge.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

The Dissent

Not everyone on the Supreme Court agreed with the decision. While Justice Kagan was joined by Justices Roberts, Sotomayor, Kavanaugh, Barrett, and Jackson, Justices Thomas and Gorsuch both filed dissents, and Justice Alito joined with Justice Thomas. For this article, I will focus on Thomas' dissent.

Jascha Chiaverini sued several city officials for damages under 42 U. S. C. §1983. He alleged that they violated his Fourth Amendment rights by subjecting him to a malicious prosecution. I continue to adhere to my belief that a "malicious prosecution claim cannot be based on the Fourth Amendment." ... Accordingly, I would affirm the dismissal of Chiaverini's claim.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

Justice Thomas believes that a malicious prosecution claim cannot be based on the Fourth Amendment. I must admit I was confused at first, until I looked up the definition of

malicious prosecution. As I've already quoted, the Free Legal Dictionary defines malicious prosecution is an action against someone for an unsuccessful proceeding that was started without probable cause.

To raise a successful claim under §1983, a plaintiff must allege the deprivation of "rights, privileges, or immunities secured" to him by the Constitution. ... In this case, Chiaverini claims that he was seized without probable cause in violation of the Fourth Amendment.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

Is it that Mr. Chiaverini was seized without probable cause or that his seizure was extended or enhanced because of a warrant issued without probable cause?

A malicious-prosecution claim bears little resemblance to an unreasonable seizure under the Fourth Amendment. Consider what is required to establish a claim of malicious prosecution. A plaintiff must show that "(i) the suit or proceeding was 'instituted without any probable cause'; (ii) the 'motive in instituting' the suit 'was malicious,' . . . ; and (iii) the prosecution 'terminated in the acquittal or discharge of the accused.'" ... These elements have no overlap with what is required to establish a Fourth Amendment seizure violation.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

Did Justice Thomas read his own dissent? The Fourth Amendment clearly states that "no Warrants shall issue, but upon probable cause," and that a malicious prosecution case also requires that proceeding without probable cause. How does that not overlap? The case against Mr. Chiaverini was discharged, so the only element of a malicious prosecution left is to ask if the charge was malicious?

Malicious prosecution is therefore not an appropriate tort analog for a §1983 claim alleging a seizure in violation of the Fourth Amendment.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

Again, I'm confused. A malicious prosecution case requires that the case be brought without probable cause, which is a prima facie violation of the Fourth Amendment. In a case where probable cause for one of the charges was not established, that involves a deprivation of rights under color of law, which is the purpose of §1983.

The Court's decision to forge ahead with combining the malicious-prosecution and Fourth Amendment frameworks will inevitably create confusion. As I have explained, an unreasonable seizure under the Fourth Amendment requires a seizure; a malicious-prosecution claim does not.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

It appears Justices Thomas, Alito, and I believe Gorsuch, have a preconceived notion that malicious prosecution and a Fourth Amendment claim are not only different, but never the twain shall meet, even if they both require a lack of probable cause. While a malicious prosecution claim may not require a seizure, it doesn't exclude it.

Conclusion

How did the court find in this case?

Held: The presence of probable cause for one charge in a criminal proceeding does not categorically defeat a Fourth Amendment malicious-prosecution claim relating to another, baseless charge. The parties, and the United States as amicus curiae, all agree with this conclusion, which follows from

both the Fourth Amendment and traditional common-law practice.

[Jascha Chiaverini, et al., Petitioners v. City Of Napoleon, Ohio, et al.](#)

So when a court issues an arrest warrant, probable cause must be established for all charges, not just one of them. I supposed if all of the charges were misdemeanors or of similar severity, it may not have impact on the treatment of the accused. However, in the case of Mr. Chiaverini, the invalid charge was much more serious than the valid charges.

In some ways I agree with Justice Thomas. I don't know if a malicious prosecution claim, over and above the deprivation of rights protected by the Fourth Amendment, improved Mr. Chiaverini's case or not. What I do not see is how the Fourth Amendment claim would invalidate it.

As always, it appears the devil is in the details. If Mr. Chiaverini had a letter from the police telling him to hold onto the ring, he should have simply informed the officers and left it at that. As numerous attorneys have said, there is no benefit from talking to the police, and this case is an example. If Mr. Chiaverini had not continued his conversation with the officers, the subject of his precious metals license may never have come up, leading to the second misdemeanor charge. Without that admission, the police may not have turned their investigative eye from the ring to Mr. Chiaverini's business. Then again, if the judge had better considered the probable cause for the money laundering charge, it may not have been included in the arrest warrant. Put all of this together and it appears Mr. Chiaverini's situation went from bad to worse because of ongoing discussion with the police.

I think this case should be a warning, not only about talking to the police when not legally necessary, but also reading the fine print, especially of warrants. Should Mr. Chiaverini's malicious prosecution claims turn out to be valid, it may also

impact the other charges by association.

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