

Prosecuting Prosecution

Malicious



By Paul Engel

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- What rights do you have to defend your home against the illegal entry of law enforcement?
- When can you sue law enforcement officers for violating your rights?
- A recent case before the Supreme Court takes a step toward helping you sue when law enforcement and the justice system maliciously prosecutes you for defending your rights.

What can you do when government actors abuse their powers? I've talked before about the right to petition the government for a redress of grievance and how the judicial precedent of sovereign immunity violates that right. But what happens when law enforcement or the justice department abuses their prosecutorial powers? How do you seek redress for a malicious prosecution? For years it has been extremely hard to do so, but a recent Supreme Court opinion may balance the scales.

Thompson v. Clark, et. al.

The case we are looking at today is [Thompson v. Clark, et. al.](#) I want to look at this case from the point of view of all three sides: The parents, the emergency medical technicians (EMTs), and the police officers. The story starts with a misunderstanding.

On January 15, 2014, petitioner and Talleta (then his fiancée) were the proud parents of a one-week old daughter, Nala. That day, they brought Nala to her first check-up, where she received a clean bill of health. At around 10:00 p.m., the couple was at home and ready to sleep, dressed in only their underwear. Unbeknownst to the couple, Camille dialed 911. She stated that Nala often cries when petitioner changes her diaper and that she had seen “red rashes” on the Nala’s buttocks area (commonly known as, and later confirmed to be, diaper rash). Mistaking these for signs of abuse, Camille provided a description of petitioner and his address.

Thompson v. Clark, et. al. – Petition for Writ of Certiorari

As a parent, I have sympathy for Mr. Thomas and his then fiancée. They were preparing to go to bed when, unbeknownst to them, Talleta’s sister Camille calls 911, apparently mistaking crying and diaper rash as a signs of abuse.

In response, two Emergency Medical Technicians (“EMTs”) arrived to petitioner’s apartment building to investigate. The EMTs met Camille outside the building and she led them into petitioner’s apartment unit. Once inside, the EMTs saw Talleta sitting on the couch holding Nala safely. Petitioner entered the room and asked the EMTs why they were in his home. Unaware of Camille’s 911 call, petitioner informed the EMTs that no one in his home had called 911 and they must have the wrong address. Petitioner asked the EMTs to leave, and they did.

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A report of potential child abuse is taken very seriously, as it should be, so two EMTs were dispatched to investigate. At this point no one is aware of the misunderstanding, although the EMTs would later testify that, from their first encounter with Camille they noticed that she was not “all there upstairs.” Camille brings the EMTs into Thompson’s apartment where they do not see anything immediately wrong. To be fair

to the EMTs, simply because they see the mother safely holding the child does not dismiss the possibility of child abuse.

When Mr. Thompson enters the room he is understandably confused. What are these two EMTs doing in his apartment? Not knowing that Camille had called 911, Mr. Thompson assumes they have the wrong address and asks them to leave. So far, no laws have been broken and the encounter has proceeded calmly, but that is about to change.

Respondents, four NYPD officers, arrived thereafter in response to the 911 call and met with the EMTs who had just been inside petitioner's apartment. The EMTs reported that petitioner was upset to find them in his apartment and they left. They said they would "get in trouble" if they did not make contact with and examine the baby.

[Thompson v. Clark, et. al. – Petition for Writ of Certiorari](#)

This is where the tension begins to build. On the one hand, Mr. Thompson was understandably upset when he found two EMTs in his living room. He has a right to be secure in his own home. On the other hand, the EMTs have a report of possible child abuse that they need to investigate. Sadly, the four police officers escalate the situation unnecessarily.

Respondents went upstairs to petitioner's apartment unit and petitioner answered the door. They told petitioner that they were investigating possible child abuse and wanted to examine his daughter. Petitioner asked to speak to respondents' sergeant and, when they refused, asked respondents if they had a warrant to enter his home.

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At this point no laws have been broken. Mr. Thompson was well within his rights to require police to provide a warrant to enter his home, but look at the situation from the officers' point of view. They have a report of possible child abuse, so

we can assume they wanted to make sure the child was OK. With the power of law enforcement though, comes the responsibility of using it lawfully. It was still possible to resolve the issue calmly and peacefully. However, the police would rapidly escalate this from a report of possible child abuse to breaking and entering, assault, and unlawful detainment.

Respondents did not phone in a warrant; instead, they physically attempted to enter petitioner's home. When petitioner stood his ground in the doorway, respondents tackled petitioner to the floor and handcuffed him.

Despite having restrained petitioner, respondents entered and searched petitioner's apartment over his objection, without calling in a warrant. The EMTs then went back into petitioner's apartment, examined his baby, and saw what they understood to be diaper rash, with no signs of abuse. The EMTs stated that the 911 call meant that they had to take petitioner's baby to the hospital for evaluation, which later confirmed that it was only diaper rash.

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These four police officers committed crimes. While the report of possible child abuse gave them probable cause, it did not give them an exigent circumstance.

An exigent circumstance, in the criminal procedure law of the United States, allows law enforcement, under certain circumstances, to enter a structure without a search warrant ... It must be a situation where people are in imminent danger, evidence faces imminent destruction, or a suspect's escape is imminent.

[Exigent Circumstance – The Free Legal Dictionary](#)

The officers had no reason to believe the child was in imminent danger or that the parents were suspects who could escape. The officers had options that would allow the EMTs to

check on the child without violating Mr. Thompson's rights. They could have talked to Mr. Thompson, explained they had a 911 report, and were only concerned with the safety of the child. The officers could have contacted their sergeant for assistance. While they probably would have gotten their warrant if they had called for one, it would not be a valid one, since the probable cause for child abuse was not supported by oath or affirmation, as required by the Constitution.

... and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation...

U.S. Constitution, Amendment IV

So, in hindsight, the officers' best options were to talk with Mr. Thompson or call their sergeant for assistance. Instead, they attacked Mr. Thompson without cause.

Although Mr. Thompson did refuse to grant the police entry into his apartment, he was well within his rights since they did not have a warrant. The fact that he challenged an illegal entry into his home does not give the police the authority to restrain him. Mr. Thompson was defending the law, while the police were the ones violating it.

Once the EMTs examined the baby they saw it was nothing but diaper rash. I'm not sure if New York law requires a hospital examination after a report of child abuse, but such a law would violate due process since it assumes the guardian is guilty until proven innocent. This was another perfect opportunity to de-escalate the situation. Instead, the police once again escalated it.

Respondents escorted petitioner out of his building in handcuffs and put him in jail for two days. According to respondents, petitioner's mere refusal to let them into his home without a warrant to examine his child was sufficient basis to arrest and pursue charges for resisting arrest and

obstructing governmental administration.

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According to these four policemen, you have no rights in their presence. If you stand your ground when they try to violate your rights, they claim that's "obstructing governmental administration". Remember, the police had no legal authority to enter Mr. Thompson's apartment since they had neither warrant nor exigent circumstance. Therefore, they were not administering a governmental act, they were violating it.

During the criminal proceedings that followed, Mr. Thompson denied any wrongdoing and declined any plea deals offered by the prosecution. After three months, the prosecution simply dismissed the charges, without any plea or compromise. Mr. Thompson was free to go, but he didn't stop there.

After obtaining dismissal of the charges, petitioner filed this action under 42 U.S.C. § 1983 alleging that respondents violated his Fourth Amendment rights through warrantless entry of his home and by unreasonably seizing him pursuant to legal process (often described as a "malicious prosecution" claim, referring to the analogous common-law tort). Both claims survived summary judgment and proceeded to trial.

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Mr. Thompson sued in federal court claiming that the officers had violated at least two of his rights protected by the Fourth Amendment. Specifically, that the police entered his home without a warrant and seized him unreasonably. This is where things get a bit more sticky.

Malicious Prosecution

At trial, one of the principal disputes was whether petitioner had shown "favorable termination" of the criminal proceedings against him, as required to bring his § 1983 malicious

prosecution claim. Relying on Lanning v. City of Glens Falls,... respondents argued that criminal proceedings have not terminated favorably unless they “affirmatively indicated that the plaintiff was innocent of the crimes charged.” According to respondents, because the dismissal here did not affirmatively establish petitioner was innocent of the crime charged, he could not claim unreasonable seizure.

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According to the police officers’ attorney, since the judge did not specifically say that Mr. Thompson was innocent, he could not claim unreasonable seizure. If that sounds ridiculous to you, that’s not a surprise, since it sounded ridiculous to Mr. Thompson’s attorney as well.

Petitioner objected, arguing that dismissal of the charges was “sufficient to show that the plaintiff has had the case dismissed in his favor.” He pointed out that petitioner had rejected the prosecution’s offer for even an adjournment in contemplation of dismissal, causing the prosecutor to unconditionally dismiss the charges. Petitioner argued that “the judge is not required to say you are innocent,” something that “never happens.” Petitioner contended that respondent’s position would be absurd, requiring people who are wrongfully and unreasonably accused of crimes to object when the prosecution attempts to dismiss the charges against them and insist on going to trial.

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The District Court, following precedent set by the Second Circuit Court of Appeals, found for the officers. Although, in the court’s opinion, they stated that the Second Circuit was wrong and set the insane requirement that an innocent person object to the charges being dismissed in order to go to trial to get a verdict so they could sue for malicious prosecution. While the District Court also dealt with the question of who

had the burden of proof, the police or the home owner, in a case where exigent circumstances are claimed to make entry, the Supreme Court dealt only with the question of innocence in a malicious prosecution case.

Supreme Court

Justice Kavanaugh, who wrote the opinion, went all the way back to the American tort-law consensus as of 1871 to justify his opinion:

Held: To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under §1983 for malicious prosecution, a plaintiff need not show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that his prosecution ended without a conviction. Thompson has satisfied that requirement here.

Thompson v. Clark, et. al. – Certiorari Opinion

The Supreme Court reversed the judgment of the Second Circuit Court of Appeals and sent the case back for further review.

Conclusion

While this is a win for Mr. Thompson, it is only a battle in his war. He has not won his case yet, but with the opinion of the Supreme Court, he will at least have a chance.

As often as I point out the arrogance and illiteracy of our federal courts, I think it only proper that I point out when they are right as well. To all of you who have heard me talk about the need to stand your ground when government agents act beyond the law, it does my heart good to see that, at least in this case, there's a glimmer of hope that someone will receive a redress for their grievance when government officials attack.

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