

## **Civil Rights Update**

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# **Seventh Circuit Issues Significant Opinions Regarding Malicious Prosecution and Qualified Immunity**

The Seventh Circuit Court of Appeals has issued important decisions addressing whether a plaintiff may bring a Section 1983 action based upon malicious prosecution and in what circumstances a police officer is entitled to qualified immunity. In one decision, the plaintiff sought to extend the reach of Section 1983 claims to include federal claims of malicious prosecution and to expand the limits of Fourth Amendment claims. The Seventh Circuit rejected these arguments and held fast to its precedent on these issues. In another decision, the Seventh Circuit provides guidance regarding the context-specific questions a court should ask to determine whether an individual officer is entitled to qualified immunity. Attorneys that defend civil rights claims should take note of these significant opinions.

### ***Llovet v. City of Chicago***

In *Llovet v. City of Chicago*, 761 F.3d 759 (7th Cir. 2014), the Seventh Circuit reaffirmed its decision in *Newsome v. McCabe*, 256 F.3d 747 (7th Cir. 2001), which held “that a federal suit for malicious prosecution by state officers is permissible only if the state in which the plaintiff had been prosecuted does not provide an adequate remedy, which . . . Illinois does.” *Lovett*, 671 F.3d at 670 (internal citation omitted). Recently, the Seventh Circuit concluded that Indiana state law does not provide an adequate remedy for malicious prosecution; consequently, in Indiana, it is now possible to bring a Section 1983 claim for malicious prosecution. See *Julian v. Hanna*, 732 F.3d 842, 848 (7th Cir. 2013). In *Llovet*, the plaintiff did not challenge the adequacy of Illinois’ remedy, but rather invited the court to overrule *Newsome* and authorize “a federal claim of malicious prosecution regardless of what alternative remedy a state provides.” *Llovet*, 761 F.3d at 760. The Seventh Circuit rejected the plaintiff’s invitation and also declined to expand the definition of the Fourth Amendment’s prohibition of seizures without probable cause to include the time after a person becomes a detainee pursuant to legal process, normally an arraignment. *Id.* at 760-62.

In *Llovet*, the plaintiff was acquitted of aggravated battery, and thereafter, sued two Chicago police officers and the City of Chicago under Section 1983 for malicious prosecution. *Id.* at 760. The plaintiff alleged that the officers falsified police reports and used those false reports to persuade the prosecutor to file an aggravated battery charge against him. *Id.* At the time the plaintiff was charged with aggravated battery, he was already in jail, awaiting trial on a charge of misdemeanor domestic battery. *Id.* at 762. The plaintiff did not deny that there was probable cause for his arrest on the misdemeanor charge, but was unable to make bail. *Id.* He was only released from jail after he was tried and acquitted of aggravated battery. *Id.* Thereafter, the

misdemeanor charge was dropped. *Id.* The plaintiff argued that the aggravated battery charge suspended his right to a speedy trial on the misdemeanor charge, resulting in a longer jail term than he would have experienced “had it not been for defendants’ malicious actions in framing him for the aggravated battery.” *Id.*

The Seventh Circuit held that because the initial seizure for the misdemeanor charge was supported by probable cause, the extended detention did not violate the Fourth Amendment. The Fourth Amendment, according to the court, “does not regulate the length of detentions after a judge or magistrate has determined that there is probable cause to detain a person on a criminal charge.” *Id.* The plaintiff argued that the Seventh Circuit should adopt a “continuing seizure” approach, as some other circuits have. The “continuing seizure” doctrine holds that an initially lawful detention may evolve into a Fourth Amendment violation if the initial detention extends beyond its lawful limits because of a new wrong. *Id.* at 763. The Seventh Circuit rejected this argument based on *Heck v. Humphrey*, 512 U.S. 477, 484 (1994), and the principle that “once detention by reason of arrest turns into detention by reason of arraignment . . . the Fourth Amendment falls out of the picture . . .” *Id.*

A new charge filed while a detainee is in jail is not an arrest or a seizure. Accordingly, the Seventh Circuit reasoned that the Fourth Amendment does not apply. *Id.* at 764. The Seventh Circuit opted not to expand the scope of the Fourth Amendment and made clear that the Fourth Amendment analysis ends once legal process, arraignment or otherwise, has been provided.

The Seventh Circuit also held fast to its decision in *Newsome*, which held that the “plaintiff could not bring a federal malicious prosecution claim based on the due process clause of the Fourteenth Amendment, because this malicious prosecution remedy under state law was adequate to give him all the due process to which he was entitled.” *Id.* at 762 (emphasis in original). In the face of recent Seventh Circuit decisions concerning the inadequacy of Indiana’s remedies for malicious prosecution, *Llovet* is important. The case reiterates that Illinois provides an adequate remedy. *Llovet*, *Newsome*, and other Seventh Circuit cases leave open the “possibility of a Fourth Amendment claim against officers who misrepresent evidence to prosecutors. . . .” *Llovet*, 761 F.3d at 761 (internal quotation marks omitted) (quoting *Johnson v. Saville*, 575 F.3d 656, 663-64 (7th Cir. 2009)). As a general rule, however, the plaintiffs seeking to assert a claim of malicious prosecution must continue to do so as a state law claim brought pursuant to supplemental jurisdiction.

### ***Mordi v. Zeigler***

In *Mordi v. Zeigler*, 770 F.3d 1161 (7th Cir. 2014), the Seventh Circuit analyzed a non-US citizen’s rights under Article 36 of the Vienna Convention on Consular Relations (Convention). At issue was whether three Illinois State Police officers were entitled to qualified immunity for their alleged failure to provide the proper notification under the Convention. In March 2009, Officer Todd Zeigler pulled over a vehicle driven by the plaintiff, Uche Mordi. *Mordi*, 770 F.3d at 1162. Drugs were discovered in the car and the plaintiff was arrested and taken to a police station for interrogation. *Id.* The plaintiff was interrogated by Officers Chance and Healy, and that evening he was transported by Zeigler to the Effingham County Jail where he was booked. *Id.* Criminal proceedings were initiated in state court. *Id.* at 1163. Later, federal prosecutors took over the case. *Id.* The plaintiff ultimately pled guilty to charges of unlawful possession of a controlled substance with intent to distribute. *Id.*

The plaintiff was a Nigerian national, and Nigeria is a party to the Convention. *Id.* at 1162. The “Convention requires the authorities of the receiving State to inform the foreign national of his rights under Article 36 to have his own consular officials alerted to his arrest or detention.” *Id.* Officer Zeigler was unaware of the plaintiff’s citizenship; however, Officers Chance and Healy were aware that the plaintiff was Nigerian and not a U.S. citizen. *Id.* at 1162-63. The plaintiff was not informed of his rights under the Convention, and did not learn about those rights until a year or so after pleading guilty. *Id.* at 1163. He filed a Section 1983 claim against Officers Zeigler, Chance, Healy, and others. Zeigler, Chance and Healy asserted they were

entitled to qualified immunity. *Id.* The district court denied the defendants' motion for summary judgment, which led to an interlocutory appeal. *Id.*

On appeal, the Seventh Circuit observed that

[o]nce a public official has raised a defense of qualified immunity, the plaintiff must establish two things in order to defeat the defense: first, that the facts alleged describe a violation of a protected right; and second, that this right was clearly established at the time of the defendant's alleged misconduct.

*Id.* at 1163-64. (Internal citation omitted).

As to the first question, prior Seventh Circuit precedent clearly established that the plaintiff did have a protected right under the Convention to have the Nigerian consulate notified of his status. *Id.* at 1164. As to the second question, the Seventh Circuit concluded that there is no clearly established rule that the officers had a duty to notify Mordi about his right to consular notification under the Convention. *Id.* at 1165-66.

The Convention states that authorities "shall inform the person concerned without delay of his rights under this subparagraph." *Id.* at 1165. The Seventh Circuit analyzed whether informing someone "without delay" means at the time of arrest, transportation, interrogation, booking, or at some other time. *Id.* at 1165-66. Concluding that the existing opinions did not offer much guidance on these questions, the court analyzed the facts as they related to Zeigler, Chance and Healy. Each defendant interacted with Mordi shortly after his arrest for a limited time. None of the officers were responsible for booking the plaintiff. The Seventh Circuit concluded that "the details of how to implement the Article 36 duty to inform the arrestee of his rights without delay have yet to be fixed." *Id.* at 1167. Accordingly, there was no clearly established law that the three officers violated and, therefore, the officers were entitled to qualified immunity. *Id.*

The Seventh Circuit noted that "[a]t a high level of generality, one might think that federal, state and local officials all should know the laws of the United States, including its treaties, and thus should all be held accountable if they fail to discharge 'known' duties like this one." *Id.* at 1165. *Mordi* instructs that this is not the correct perspective. Rather, a court should ask context-specific questions to evaluate the particular duties of the individual officer asserting qualified immunity.

## Conclusion

The Seventh Circuit's opinion in *Llovet* maintains the status quo for malicious prosecution and Fourth Amendment claims. As such, in Illinois, defense counsel should seek dismissal of malicious prosecution claims brought pursuant to Section 1983. The court's *Mordi* decision emphasizes that when qualified immunity is asserted as a defense, context matters. The Seventh Circuit will evaluate the particular duties of an individual officer. To do so, however, counsel will often need to provide significant factual detail, such as what information an officer knew about the plaintiff, when that information was learned, and how long the officer had the plaintiff in custody before delivering him to jail, to demonstrate that qualified immunity is appropriate.

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**Brian Smith** concentrates his practice in the areas of civil rights, professional liability, employment law and trucking/motor carrier litigation. Much of his practice entails defending government officials and medical professionals in cases alleging violations of constitutional rights. Brian also has experience defending employers before the Illinois Human Rights Commission and in federal court. He represents defendants in other tort litigation, including cases arising from automobile and trucking accidents.

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Mr. Smith began his career with *Heyl, Royster, Voelker & Allen, P.C.* by clerking in the firm's Urbana office. Following graduation from law school in 2007, he joined the firm in the Urbana office as an associate. During law school, he was a teaching assistant at the University of Illinois College of Law and a member of the *University of Illinois Law Review*.

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