Immunity: Absolute Immunity for Grand Jury Witness Does Not Extend to Matters Outside of Grand Jury Testimony

Coggins v. Buonora, No. 13-4635 (2d Cir. Jan. 13, 2015).

A New York police officer's absolute immunity as a grand jury witness does not insulate him against Section 1983 charges based on matters outside the scope of his grand jury testimony, the Second Circuit recently held.

In 2004 Darryl Coggins was stopped by a police officer in Floral Park, New York. Coggins was not told why he was pulled over though he asked throughout the stop. He ultimately passed field sobriety tests and a roadside portable breath test. He continued to ask why he was stopped. Coggins believed it was because of his race. At some point during the interaction Coggins saw the officer place his hand on his gun. He feared for his life and fled. As he was running away he heard a back-up officer that had arrived yell "shoot him in the back, shoot him in the back." Coggins kept running then but turned himself into police later that day. Based on the back-up officers' statements to the district attorney he was charged with criminal possession of a firearm – the officers said they "heard a metal noise" during the foot pursuit of Coggins. The grand jury indicted Coggins for this charge. However, an unnamed Floral Park police officer came forward after the hearing and told Coggins' attorney that the two officers had perjured themselves in the hearing. Ultimately, the officers were indicted for perjury and plead guilty.

Coggins sued the officers involved and Nassau County, New York alleging that the officers failed to follow procedures and policies of the county police department, falsified police reports, failed to file proper paperwork regarding the stop and foot chase, and conspired with each other to create "an altered version of what transpired." He also alleged one officer, Craig Buonora, knew the documents regarding his stop, chase, and arrest were false and did nothing to correct them and, in fact, testified to false facts. Lastly, he alleged this behavior from Nassau police officers is routine, especially with regard to black males.

The district court dismissed Coggins' malicious prosecution and abuse of process claims, but denied Buonora's motion to dismiss the other claims. That decision was appealed to the Second Circuit, which affirmed the district court. Buonora then filed another motion to dismiss and/or a motion for summary judgment based on his qualified or absolute immunity as a grand jury witness. When the court denied Buonora's defense of qualified and/or absolute immunity, Buonora filed an interlocutory appeal.

HELD: The Second Circuit affirmed the lower court decision to deny the officer's absolute and qualified immunity.

DISCUSSION: The court began by noting that the Supreme Court announced, in *Rehberg v. Paulk*, 132 S. Ct. 1497 (2012), a bright-line rule that all grand jury witnesses,

police officers included, have absolute immunity from § 1983 suits based on their testimony. It narrowed the question before it, however, to whether "a law enforcement officer is entitled to absolute immunity as a grand jury witness pursuant to *Rehberg* when a § 1983 plaintiff alleges that the officer withheld and falsified evidence *in addition to* committing perjury before the grand jury." This was a question of first impression for the Second Circuit.

The court reviewed *Rehberg*, noting that the case dealt with an investigator lying to the grand jury and that the Supreme Court held there is immunity for *witness testimony.* It also pointed out the Supreme Court's footnote limiting its decision, specifically that it "d[id] not suggest that absolute immunity extends to all activity that a witness conducts outside of the grand jury room. For example, [the Court] ha[s] accorded only qualified immunity to law enforcement officials who falsify affidavits and fabricate evidence concerning an unsolved crime."

Buonora framed Coggins' claims as, at their essence, all stemming from matters in his grand jury testimony. The Second Circuit disagreed with this characterization. For if such a precedent were set the court had a difficult time understanding where it would end – an officer "could immunize for § 1983 purposes any unlawful conduct prior to and independent of his perjurious grand jury appearance merely by testifying before a grand jury." As a result, the court developed a test: "When a police officer claims absolute immunity for his grand jury testimony under Rehberg, the court should determine whether the plaintiff can make out the elements of his § 1983 claim without resorting to the grand jury testimony. [If] the claim exists independently of the grand jury testimony, it is not "based on" that testimony, as that term is used in *Rehberg*. [But], if the claim requires the grand jury testimony, the defendant enjoys absolute immunity under *Rehberg.*"

Evaluating the case at hand, the Court found much of the alleged misconduct unrelated to the grand jury testimony, including the falsified police reports, the statements of the unnamed officer that came forward, Buonora's statements to the district attorney, Buonora's knowledge that the police report ultimately filed by his partner was false, and the radio transmissions recorded the night in question. These facts, in existence long before the grand jury testimony, were "independently actionable" according to the court and the simple fact that Buonora's testimony paralleled these facts did not mean that Coggins' claims were "based on" that testimony. The Second Circuit thus affirmed the lower court.

http://www.ca2.uscourts.gov/decisions/isysquery/5f43be1d-7756-40ac-a5c1-58cf38deca17/3/doc/13-4635_opn.pdf (last accessed Jan. 29, 2015).