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Qualified Immunity: Absence of Specific Precedent in State-Created Danger Case Does Not Prevent "Clearly Established" Finding

Estate of Frank P. Lagano v. Bergen County Prosecutor's Office, No. 13-3232 (3d Cir. Oct. 15, 2014).

Where law enforcement officers allegedly revealed the identity of a confidential informant to organized crime, resulting in the informant's murder, they cannot avoid a finding that their behavior violated a "clearly established" constitutional right merely because the specific fact pattern had not yet been the subject of a judicial determination.

Frank Lagano became the subject of an organized crime investigation in Bergen County, New Jersey and in 2004 the Bergen County Prosecutor's Office ("BCPO") executed a search warrant for his home. Thereafter, the BCPO charged Lagano with several crimes including racketeering, promoting gambling, criminal usury and conspiracy. The Chief of Detectives Michael Mordaga allegedly met with Lagano and instructed him on two occasions to hire a specific attorney, which he promised would make his "legal problems go away." Lagano refused the offers and instead became a confidential informant for the state Attorney General's Office. In 2007 Lagano was shot and killed. His estate alleged the sometime after he became an informant and refused Mordaga's offers the BCPO and Mordaga disclosed his confidential informant status to organized crime figures, resulting in his murder. The estate filed suit against BCPO and Mordaga alleging a due process claim under the state-created danger theory.

The District Court rejected the theories and dismissed the case. The estate appealed.

HELD: The Third Circuit vacated the lower court holding and remanded to the District Court with instructions to apply the proper §§ 1983 and 1985 standards.

DISCCUSION: The Third Circuit first addressed the lower court's holding that the case was dismissed because neither BCPO nor Mordaga are "persons" under §§ 1983 and 1985. The District Court found BCPO was an arm of the state and Mordaga, as BCPO Chief of Detectives, was a state official – neither of which conferred personhood to them as that term is understood under the applicable federal statutes. The Circuit noted however that local governmental bodies and their officials are "persons" under the statutes when the prosecutors perform administrative functions "unrelated to the duties involved in criminal prosecution." Taking the allegation in the light most favorable to the plaintiff-estate, the Circuit Court noted the complaint showed Mordaga and others within BCPO were not operating as criminal investigators because Mordaga met Logano in his home, advised him to hire a specific attorney, and advised that doing so would eliminate his legal problems. In short, his relationship with Lagano extended beyond that of his official role as the Chief of Detectives, thus making him and BCPO "persons" under §§ 1983 and 1985. Moreover, Mordaga had been was sued in his personal capacity, as well as his official. The Court reversed the lower court on this issue.

As for the claim that the defendants violated Logano's due process rights under the state-created danger theory, the Court vacated the lower court holding. To prove a state-created danger claim the plaintiff must show "(1) the harm ultimately caused was foreseeable and fairly direct; (2) a state actor acted with a degree of culpability that shocks the conscience; (3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of persons subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general; and (4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all." (internal citation omitted). Mordaga responded to this claim by asserting qualified immunity, with which the lower court had agreed since "[t]here are no published cases that extend the state created danger right to confidential informants in the Third Circuit[,] . . . it would be unfair to hold that a constitutional right was 'clearly established.'"

The Third Circuit rejected this reasoning. It noted that for nearly two decades the Circuit had established that a state-created danger violates due process and the simple fact that it had not yet been applied "in the context of a confidential informant is not dispositive on the qualified immunity defense." The issue was whether the facts proffered by the estate fall within the theory and whether "it would be clear to a reasonable officer that the alleged disclosure was unlawful under the circumstances." (internal citations omitted). The Court declined to issue an opinion on the qualified immunity question, but given the lower court's failure to apply the proper standard, vacated the holding and remanded with the proper standard set forth.

http://www2.ca3.uscourts.gov/opinarch/133232p.pdf (last accessed Oct. 22, 2014)