Absolute and Qualified Immunity:
Recent U.S. Supreme Court and
Seventh Circuit Decisions

Fields v. Wharrie

In *Fields v. Wharrie*, 740 F.3d 1107 (7th Cir. 2014), the Court of Appeals for the Seventh Circuit held that a prosecutor cannot transform qualified immunity into absolute immunity by the introduction of fabricated evidence at trial. *Fields*, 740 F.3d at 1114. A prosecutor cannot retroactively immunize himself from suit by perfecting his wrongdoing through the introduction of the fabricated evidence at trial and then argue that the tort was not completed until its admission at trial, entitling the prosecutor to absolute immunity for acts committed at the trial stage. *Id.*

The court denied Prosecutors Lawrence Wharrie’s and David Kelley’s claims of immunity. No absolute immunity exists for a prosecutor’s administrative and investigative work fabricating evidence. Nor can a prosecutor retroactively transform such work into prosecutorial work because it was used at trial.

**Facts**

The lawsuit filed by Nathson Fields charged that the defendants deprived him of liberty in violation of the Fourteenth Amendment due process clause, committed torts of malicious prosecution, intentional infliction of emotional distress, and conspiracy in violation of Illinois law. The plaintiff accused the defendants of having coerced witnesses to give testimony that the defendants, as well as witnesses, knew to be false, resulting in his conviction for two murders and imprisonment for 17 years until he was acquitted on a retrial. *Id.* at 1109. He also later received a certificate of innocence from the court. *Id.*


Originally, the district court had dismissed the case on the grounds of absolute prosecutorial immunity. *Id.* at 1110. The only federal claim against Wharrie was based on his alleged misconduct in 1985. *Fields*, 740 F.3d at 1110. Fields did not appeal, but the prosecutors appealed, challenging the district court’s refusal to dismiss the other claims. This case was still alive in the district court when the district judge granted plaintiff’s Motion to Reconsider the Dismissal of one of his federal claims that Wharrie’s alleged fabrication of testimony by a witness during the investigation in 1985 led to the indictment of Fields and trial. *Id.* This circumstance was based upon the court’s intervening decision in *Whitlock v. Brueggemann*, 682 F.3d 567 (7th Cir. 2012). *Id.*
The claim that the district court judge reinstated against Wharrie is one that concerns his investigation of Fields in 1985. The court decision summarized and affirmed the rules of law regarding absolute immunity. *Id.* Absolute immunity is only for acts that are committed within the scope of employment as prosecutors. *Id.* (quoting *Buckley v. Fitzsimmons*, 509 U.S. 259, 273–76 (1993)). The court also reviewed qualified immunity rules, noting that prosecutors often go beyond their strictly prosecutorial work and involve themselves in investigation and other non-prosecutorial work. When they engage in such activity, they lose their absolute immunity and are left with qualified immunity that other investigators have when engaged in such work. *Id.* at 1111 (quoting *Buckley*, 509 U.S. at 275–76).

Fields was not arrested until June of 1985. *Fields*, 740 F.3d at 1111. Wharrie’s alleged procurement of false statements from a prospective witness in Fields’ forthcoming trial had taken place one month earlier. The trial took place a year later. Wharrie was one of the prosecutors at trial and argued that he was insulated from liability for his investigative work by the court’s decision in *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993). That case involved a malicious prosecution claim that prosecutors had coerced witnesses in the investigative stage to testify against the plaintiff. The Seventh Circuit held that Fields could not base a legal claim on those alleged acts of malfeasance until the evidence obtained by improper acts was introduced at trial. *Id.* He had not been injured, and therefore, no tort had been committed. *Id.* (citing *Buckley v. Fitzsimmons*, 20 F.3d 789, 796 (7th Cir.1994)). Wharrie argued that such acts did not support recovery under Section 1983 because they were not actionable until the coerced evidence was presented at trial. *Id.*

Presenting evidence at trial is a core prosecutorial function protected by absolute prosecutorial immunity and is a bar to any award of damages in a suit for malicious prosecution against the prosecutor. *Id.* The court acknowledged its *Buckley* decision and the principle that there is no tort without an actionable injury caused by defendant’s wrongful act. *Fields*, 740 F.3d at 1111. The court also focused its analysis on the differences between coerced, fabricated, and false testimony and held that the terms have distinctions that are relevant to Fields’ claim. *Id.*

The court rejected arguments that it overrule its decisions in *Buckley* and *Whitlock*. The court found it unnecessary to embrace either option. The court held those cases distinguishable. *Id.* at 1112. The present case is closer to the *Whitlock* side of the line. The court agreed with the district judge’s reinstatement of claim by Fields against Wharrie for his alleged fabrication of evidence in 1985 before the indictment and arrest of Fields. Both *Whitlock* and the present case differed from the *Buckley* decision in that the misconduct of the prosecutor in *Whitlock* was not about coercing witnesses, as was the case in *Buckley*, but rather was about fabricating evidence. In rejecting Wharrie’s argument, the court held Wharrie was asking the court to “bless a breathtaking injustice” and responded as follows:

Prosecutor, acting pre-prosecution as an investigator, fabricates evidence and introduces the fabricated evidence at trial. The innocent victim of the fabrication is prosecuted and convicted and sent to prison for 17 years. On Wharrie’s interpretation of our decision in *Buckley*, the prosecutor is insulated from liability because his fabrication did not cause the defendant’s conviction, and by the time that same prosecutor got around to violating defendant’s rights he was absolutely immunized. So: grave misconduct by the government’s lawyer at a time where he was not shielded by absolute immunity; no remedy whatsoever for the hapless victim.

*Id.* at 1113.

The court held that the defendant’s argument resulted in an offensive and senseless conclusion that was not consistent with the court’s *Buckley* decision, where the court said the following:

[That] the prosecutors later called a grand jury to consider the evidence this work produced does not retroactively transform that work from the administrative into the prosecutorial. A prosecutor may not
shield his investigative work with the aegis of absolute immunity merely because, after a suspect is eventually arrested, indicted, and tried, that work may be retrospectively described as “preparation” for a possible trial; every prosecutor might then shield himself from liability for any constitutional wrong against innocent citizens by ensuring that they go to trial.


**Conclusion**

The court held that Wharrie had not demonstrated entitlement to absolute or qualified immunity for his fabrication of evidence. *Fields*, 740 F.3d at 1114. “[I]t was established law by 1985 (indeed long before), . . . that a government lawyer’s fabricating evidence against a criminal defendant was a violation of due process. *Id.* (citing *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Pyle v. Kansas*, 317 U.S. 213, 215–16 (1942); *Mooney v. Holohan*, 294 U.S. 103, 110, 112–13 (1935) (per curiam)). The test for qualified immunity is focused on the objective legal reasonableness of an official’s act. *Id.* (quoting *Harlow*, 457 U.S. at 819). Public officials, including prosecutors, are expected to know what types of conduct violate the law (statutory or constitutional rights). Entitlement to absolute or qualified immunity depends on the official’s acts. *Id.* As a result, the existence of a cause of action depends upon whether those acts violated the law and caused injury.

Prosecutors entitled to immunity will be subject to an objective reasonableness test. They will be expected to know that certain conduct violates statutory and constitutional rights and cannot retroactively immunize themselves from suit for conduct performed during an investigative stage by introduction of the evidence at trial. Absolute immunity will not protect a prosecutor from acts that occurred during the investigative stage. Accordingly, the Seventh Circuit denied Wharrie’s motion to dismiss the federal and state claims against him relating to fabrication of false statements from a witness during an investigation in 1985.

**Stanton v. Sims**

In *Stanton v. Sims*, 134 S. Ct. 3 (2013) (per curiam), the United States Supreme Court held that a police officer was entitled to qualified immunity and was immune from a lawsuit for his warrantless entry into the yard of the plaintiff Drendolyn Sims while in hot pursuit of a fleeing misdemeanant. Officer Mike Stanton made a split-second decision to enter the plaintiff’s yard. That action, however, did not violate clearly established law entitling him to qualified immunity. *Stanton*, 134 S. Ct. at 7. The Court reviewed the status of the law at the time Officer Stanton made his decision to enter the plaintiff’s yard without a warrant. There were two opinions of the United States Supreme Court that were equivocal on the lawfulness of his entry: *Welch v. Wisconsin*, 466 U.S. 740 (1984), and *United States v. Johnson*, 256 F.3d 895 (9th Cir. 2001). Two opinions from the state court of appeals, *People v. Lloyd*, 216 Cal. App. 3d 1425 (1989), and *In re Lavoyne M.*, 221 Cal. App. 3d 154 (1990), had affirmatively authorized the entry; the most relevant opinion of the Ninth Circuit, *United States v. Johnson*, 256 F.3d 895 (9th Cir. 2001), was readily distinguishable; and two federal district courts in the Ninth Circuit had granted qualified immunity in the wake of that opinion, *Kolesnikov v. Sacramento County*, No. S-06-2155, 2008 WL 1806193 (E.D. Cal. Apr. 22, 2008), and *Garcia v. Imperial*, No. 08-2357, 2010 WL 3834020 (S.D. Cal. Apr. 22, 2008). Although both federal and state courts of last resort around the nation were also sharply divided on this point, the Supreme Court held that Officer Stanton did not violate clearly established law and was entitled to qualified immunity, immunizing him from the plaintiff’s lawsuit.
Facts

On May 27, 2008, Officer Stanton and his partner responded to a call about an unknown disturbance involving a person with a baseball bat in a neighborhood in La Mesa, California. *Stanton*, 134 S. Ct. at 3. This neighborhood was known to be associated with gangs and violence. Officer Stanton and his fellow officer, wearing uniforms and driving a marked police vehicle, approached the area where the disturbance had been reported and noticed three men walking in the street. Two of the men turned into a nearby apartment complex. The third crossed the street 25 yards in front of Stanton’s car and quickly walked toward a residence. *Id.* at 3–4.

Officer Stanton did not observe the suspect with a baseball bat, but considered his behavior suspicious and decided to detain him in order to investigate. He exited his patrol car and called out “police,” ordering him to stop in a loud voice. The suspect did not stop. He looked at Stanton, ignored his lawful order, and went through the front gate of a fence enclosing the plaintiff’s front yard. When the gate closed behind the suspect, it blocked Officer Stanton’s view of the yard. Stanton believed the suspect had committed a jailable misdemeanor under the California Penal Code by disobeying the order to stop. He made a split-second decision to kick open the gate and pursue the suspect. Unfortunately, the plaintiff was standing behind the gate when it flew open and struck her, cutting her forehead and injuring her shoulder. She filed suit against Stanton under Section 1983, alleging that Stanton unreasonably searched her home without a warrant in violation of the Fourth Amendment. The district court granted summary judgment to Stanton, ruling that he was entitled to qualified immunity because no clearly established law put him on notice that the conduct was unconstitutional. *Id.* at 4.

The Court of Appeals for the Ninth Circuit reversed. The Ninth Circuit held that Stanton’s warrantless entry into the plaintiff’s yard was unconstitutional because the plaintiff was entitled to an expectation of privacy in her home when there was no immediate danger. The suspect had committed only the minor offense of disobeying a police officer. Based on those facts, the Ninth Circuit held that Stanton was not entitled to qualified immunity. *Id.* at 4.

The United States Supreme Court reversed the Ninth Circuit and rejected its analysis. The Supreme Court held that it had not laid down a categorical rule for all cases involving minor offenses, saying only that a warrant is usually required. *Id.* at 6. While the rule regarding warrantless searches often involves a felony, the Court’s holdings were not limited to felonies. *Stanton*, 134 S. Ct. at 6.

The Court held that the suspect’s act of retreating into the house could not thwart an otherwise proper arrest. *Id.* The Court clarified its prior ruling in *Welsh v. Wisconsin*, 466 U.S. 740 (1984), by stating that it did not say that such an arrest of a misdemeanant is never justified; rather, such warrantless entry while in hot pursuit of a misdemeanant should be rare. *Id.*

The court’s review of its previous decisions as well as other court decisions on warrantless search entitled Stanton to immunity precisely because the law regarding warrantless entry while in hot pursuit of a fleeing misdemeanant was not clearly established. Officer Stanton’s split-second decision to enter the plaintiff’s yard entitled him to qualified immunity because he did not violate clearly established law.

Conclusion

Officers are entitled to qualified immunity for their actions and split-second decisions that do not violate clearly established law. The fleeing misdemeanant in *Stanton* could not thwart an otherwise proper arrest by retreating into a house or a yard. The court’s decisions regarding warrantless entry are very fact specific. A warrantless entry while in hot pursuit will entitle an officer to qualified immunity when they involve felonies and on rare occasions involve misdemeanors.
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