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Supreme Court Update

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I. Scope of This Outline

This outline contains the seven criminal law and procedure cases heard by the Supreme Court in its 2021 Term that do not relate *solely* to federal criminal practice or federal habeas practice. It includes civil cases announcing rules potentially germane to criminal appellate practice. In each section, cases already decided are discussed first, followed by a description of the issues presented in those still awaiting decision at the time of writing. The final section briefly describes two cases slated to be heard in the October 2022 Term.

A terrific resource for all of these cases, and to track the Court's jurisprudence in general, is SCOTUSblog.com, which, for each case on which certiorari is granted, compiles the decision below, the briefs, the transcript of oral argument, and the Court's opinion, as well as expert commentary.¹

I. Fourth Amendment

Thompson v. Clark, 142 S. Ct. 1332 (2022): Fourth Amendment; Malicious Prosecution; Section 1983

Background and Issue: This case concerns the elements of a federal civil rights claim for violation of the Fourth Amendment premised on an allegedly unreasonable seizure pursuant to legal process – also known as “malicious prosecution.” Specifically, it addresses the question of what counts as “favorable termination” of a criminal case for purposes of proving malicious prosecution. Perhaps more importantly, however, the case provides the Court with the opportunity for the first time to clearly state whether a Fourth Amendment action for “malicious prosecution” can be brought at all (a matter on which the Fifth Circuit has expressed arguable skepticism). On both scores, the case may be relevant to state criminal litigation, to the extent that prosecutors or defense lawyers may negotiate or handle dismissal or other termination of a prosecution in the shadow of a potential federal civil rights action.

The case arose from a 2014 charge against Larry Thompson. Thompson lived with his wife, newborn daughter, and sister-in-law. His sister-in-law, who has cognitive delays, called 911, claiming that she had observed signs of child abuse on Thompson's infant daughter. When police and EMTs arrived, Thompson was unaware of the 911 call and did not understand why they were there. He asked the police to see a warrant, which they did not produce. When Thompson refused to let police into the house, they tackled him and pinned him to the ground. The infant was examined by the EMTs and medical personnel; both confirmed that there were no signs of abuse.

Following the incident, police filed a criminal complaint against Thompson for resisting arrest and obstructing an investigation. The complaint alleged that Thompson had violently resisted arrest. After spending two days in jail, Thompson was released. The prosecution offered an “adjournment in contemplation of dismissal,” but Thompson stated that he had done nothing wrong and rejected the offer. His attorney moved to

¹ See, SCOTUSblog, <http://www.scotusblog.com> (last visited May 7, 2021).

dismiss the charges for facial insufficiency, at which point the prosecution stated that they would dismiss the charges. The case was dismissed “in the interest of justice.” Thompson then filed a federal civil rights action pursuant to 42 U.S.C. § 1983 (right of action against state or local officials who cause deprivation of a federal right) alleging, inter alia, unreasonable seizure pursuant to legal process under the Fourth Amendment.

The Second Circuit, in which Thompson’s claim was filed, has recognized a cause of action for malicious prosecution arising under the Fourth Amendment and cognizable in a Section 1983 action. Like all circuits to have recognized such a claim, it requires as one element of the claim that the plaintiff establish “favorable termination” of their allegedly malicious prosecution. In *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018), the Second Circuit held that “favorable termination” in this context means that the proceeding ended in “a manner that affirmatively indicates [] innocence” Applying that rule to Thompson, the district court dismissed his malicious prosecution claim because the record contained no indication that the abuse charges were dismissed on the basis of innocence. Other circuits have interpreted the element of “favorable termination” differently, and more capaciously. The Eleventh Circuit requires a plaintiff to show that the proceeding “has ‘formally ended in a manner not inconsistent with his innocence. . . .’” *Laskar v. Hurd*, 972 F.3d 1278, 1293 (11th Cir. 2020). (The Fifth Circuit, for its part, cast doubt on – but did not foreclose – the possibility of any Section 1983 claim styled as “malicious prosecution” in *Castellano v. Fragozo*, 352 F.3d 939 (5th Cir. 2003).)

Thompson sought certiorari following the Second Circuit’s affirmance of the dismissal of his claim. The Supreme Court granted the petition to decide the following: “Whether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has “formally ended in a manner not inconsistent with his innocence,” *Laskar v. Hurd*, 972 F.3d 1278, 1293 (11th Cir. 2020), or that the proceeding “ended in a manner that affirmatively indicates his innocence,” *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018)”

Held: (6-3, Kavanaugh, J., Alito, J., dissenting). The Supreme Court reversed the dismissal of Thompsons’ claim, holding, “To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under § 1983 for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction.” *Thompson v. Clark*, 142 S. Ct. 1332, 1335 (2022). Further, in an instance of burying the lede (not so deeply that it fails to spark the ire of dissenting Justice Alito), the Court Justice Kavanaugh’s opinion announced in passing that “[t]he Court’s precedents recognize such a claim” for malicious prosecution under the Fourth Amendment.” *Id.* at 1337.

With regard to recognition of an actionable malicious prosecution claim at all, the Court’s analysis was brief at best, citing prior decisions of the Court (that had not quite held as much) and those of lower courts – a point that discussion of Justice Alito’s dissent, below, will return to. The bulk of the opinion is devoted to the question of what the elements of such a claim are – specifically, what if anything a plaintiff must prove with respect to “favorable termination.” The analysis is primarily historical, consistent with the

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