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Malley v. Briggs: The Court Offers a Civil Remedy for Fourth Amendment Violations on the Wake of an Eroding Exclusionary Rule, 19 J. Marshall L. Rev. 1101 (1986)

Ellen Keefe-Garner

RECENT DEVELOPMENTS

*MALLEY V. BRIGGS**: THE COURT OFFERS A CIVIL REMEDY FOR FOURTH AMENDMENT VIOLATIONS ON THE WAKE OF AN ERODING EXCLUSIONARY RULE

Since 1961 the exclusionary rule[1] has been the primary remedy for a violation of an individual's fourth amendment[2] rights.[3] Almost immediately after the exclusionary rule was held applicable to state law enforcement officers, however, exceptions restricting the rule's application developed.[4] In *Malley v. Briggs*,[5] the United States Supreme Court provided an alternative potential remedy for violations of an individual's fourth amendment rights. In *Malley*, the Court held by a majority of seven[6] that a police officer who causes an individual to be unconstitutionally arrested by presenting a judge with a complaint and an affidavit unsupported by probable cause is enti-

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* 54 U.S.L.W. 4243 (1986).

1. The exclusionary rule in essence provides that any evidence which police obtained by violating an individual's fourth amendment rights is inadmissible at a criminal trial against the wronged individual as proof of guilt. J. FERDICO, CRIMINAL PROCEDURE FOR THE CRIMINAL JUSTICE PROFESSIONAL 49 (3d. ed. 1985).

2. The fourth amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

3. In 1961 in Mapp v. Ohio the United States Supreme Court first held that the exclusionary rule would be enforced against state, as well as federal, law enforcement officers. Mapp v. Ohio, 367 U.S. 643, 655 (1961).

4. *E.g.*, State v.Janis, 428 U.S. 433 (1976) (illegally obtained evidence need not be suppressed at trial in a civil case brought by the United States); Stone v. Powell, 428 U.S. 465 (1976) (where state court provided a full and fair opportunity to litigate a fourth amendment claim, a state prisoner may not be granted federal *habeas corpus* relief on the grounds of an unconstitutional search or seizure); United States v. Calandra, 414 U.S. 338 (1974) (illegally obtained evidence can be used before a grand jury).

5. 54 U.S.L.W. 4243 (1986).

6. Justice White authored the opinion in which then Chief Justice Burger joined along with Justices Brennan, Marshall, Blackmun, Stevens, and O'Connor. Justice Powell filed a separate opinion in which he concurred in part and dissented in part. Justice Rehnquist joined in the opinion with Justice Powell.

tled to only qualified, not absolute, immunity from liability in civil rights actions.[7] The holding in *Malley* clears the way for individuals whose fourth amendment rights have been violated to sue directly the police officer who unlawfully caused them to be arrested.

In 1981, Rhode Island State Police Officer Edward Malley obtained a warrant to arrest James and Louisa Briggs.[8] The basis for the arrest warrant was information obtained through a court-authorized wiretapping of two phone conversations.[9] After reviewing all the evidence, a grand jury refused to indict the Briggs, and the charges were subsequently dropped.[10] The Briggs then sued Officer Malley for damages in a civil rights lawsuit brought under Title 42 of the United States Code, Section 1983.[11] Mr. and Mrs. Briggs claimed that Officer Malley, in applying for a warrant for their arrest under circumstances in which probable cause was lacking, violated their fourth amendment rights.[12] Officer Malley contended that he had absolute immunity from such a lawsuit.[13]

The United States Supreme Court affirmed the decision of the First Circuit Court of Appeals.[14] The Supreme Court addressed the question of what degree of immunity from a civil rights lawsuit brought under Title 42 of the United States Code, Section 1983 should be afforded a defendant police officer when it is contended that the officer caused the plaintiffs' unconstitutional arrests by presenting a judge with a complaint and an affidavit unsupported by probable cause.[15] The Court held that a police officer who causes a person to be unconstitutionally arrested through actions unsupported by probable cause is entitled to only qualified, not absolute, immunity from civil liability.[16]

The Court began its analysis by first rejecting the contention

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7. 54 U.S.L.W. 4243.
8. *Id.* at 4244.
9. *Id.*
10. *Id.*
11. *Id.* The United States Code provides:

> Every person who, under color, of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.
12. 54 U.S.L.W. at 4244.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* at 4243.

that a police officer who is acting within his official capacity has absolute immunity[17] from civil liability.[18] In reaching its conclusion, the Court examined, first, the history and purpose of Section 1983 and, second, the type of common law immunities which have been recognized for specific types of public officials.[19] The Court noted that for public officials in the executive branch of government the immunity recognized at common law has traditionally been only a qualified immunity.[20] The common law tradition of qualified immunity for members of the executive branch and the more recent recognition of qualified immunity for police officers sued under Section 1983 for false arrest militated, in the Court's view, against affording absolute immunity in the instant situation.[21]

The Court then rejected the argument that the police officer's position in applying for an arrest warrant is similar to that of either a complaining witness pursuing a criminal case or a prosecutor seeking an indictment.[22] The argument that a police officer's conduct is analogous to that of a complaining witness failed because complaining witnesses did not enjoy absolute immunity from civil liability at common law.[23] Furthermore, although a prosecutor seeking an indictment is, because of certain policy reasons, absolutely immune from civil liability, the same policy reasons do not apply to a police officer seeking a warrant.[24]

Overall, the Court stated that immunity will be available where a police officer who obtains a warrant was objectively reasonable in his or her belief that there were enough facts alleged in the complaint and supporting affidavit to establish probable cause.[25] The Court stated that this qualified immunity standard was, and would be, enough to shield all but those who are obviously incompetent or who intentionally violate the law.[26] The Court opined that the judicial system would in fact benefit from a rule of qualified rather than absolute immunity.[27] A rule of qualified immunity would, in the Court's view, have the effect of reducing premature applications for

17. Absolute immunity from damages liability in civil rights actions has been afforded to some law enforcement officers who in the course of performing their official functions violate a party's fourth amendment rights. *E.g.*, Briscoe v. LaHue, 460 U.S. 325 (1983) (witnesses); Imbler v. Pachtman, 424 U.S. 409 (1976) (prosecutors); Pierson v. Ray, 386 U.S. 547 (1967) (judges); Tenney v. Brandhove, 341 U.S. 367 (1951) (legislators).

18. 54 U.S.L.W. at 4244.

19. *Id.*

20. *Id.*; Harlow v. Fitzgerald, 457 U.S. 800, 807 (1982).

21. 54 U.S.L.W. at 4244.

22. *Id.* at 4244-4245.

23. *Id.* at 4244.

24. *Id.* at 4245.

25. *Id.* at 4244.

26. *Id.* at 4245.

27. *Id.*

warrants.[28] The judicial system would thereby be relieved of the burden of reviewing these premature warrants, and the possibility of premature arrests would be diminished.[29]

The Court then noted that the exclusion of evidence at a criminal trial, the traditional remedy for a violation of a party's fourth amendment rights, imposes significant costs on society.[30] The social costs include the exclusion of evidence probative of guilt at a criminal trial.[31] The exclusion of such evidence potentially burdens all of society because the prosecution's inability to use such evidence at trial hampers its efforts to convict those who are truly guilty. A damage remedy against a police officer shifts the cost of an unconstitutional arrest from all of society to the officer whose conduct in making an objectively unreasonable request for arrest resulted in the violation of an individual's rights.[32]

In its conclusion, the Court refused to adopt the position that a police officer's mere act of applying for a warrant made his or her request *per se* objectively reasonable.[33] The act of applying to a magistrate for a warrant did not, in the Court's view, break the causal chain between the improper application for a warrant and the unlawful arrest.[34] The Court noted that the magistrate certainly has a responsibility to determine from the facts alleged whether probable cause exists.[35] The Court maintained, however, that the officer applying for the warrant is not entitled to rely on the magistrate's determination that probable cause exists as a shield from civil liability.[36] From the Court's perspective, in order to minimize the danger of unconstitutional arrests based upon warrants lacking probable cause, it is reasonable to require a police officer seeking an arrest warrant to exercise reasonable professional judgment.[37] The test that the Court articulated for judging a police officer's reasonable professional judgment in arrest warrant situations was whether a reasonably well-trained police officer in the officer's position would

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28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 4246.
34. *Id.*
35. *Id.*
36. *Id.* The dissent noted that the majority's focus on the police officer's judgment of whether probable cause existed denigrates the importance of the magistrate's evaluation that probable cause existed. *Id.* at 4247 (Powell, Rehnquist, J.J., dissenting). The dissent further opined that this focus misconstrues the relative roles of the police officer and the magistrate in the judicial system. *Id.* at 4247-4248. The dissent concluded that in this case the police officer was entitled to rely on the magistrate's judgment that probable cause existed, and in the dissent's view this police officer should be immune from liability. *Id.*
37. *Id.* at 4246.

have known that the affidavit seeking issuance of the arrest warrant failed to establish probable cause and that he should not have applied for the warrant.[38]

The *Malley* opinion is significant for two reasons. First, the opinion exhibits the Court's unease with the societal costs inherent in the exclusionary rule. Second, the opinion demonstrates the Court's willingness to provide an alternative remedy for violations of fourth amendment rights.

The slow erosion of the exclusionary rule began almost immediately after its birth; a plethora of ever-expanding exceptions has limited the rule's effect.[39] In 1984, in *United States v. Leon*, for example, the United States Supreme Court carved out a far-reaching "good faith" exception to the exclusionary rule in search warrant situations.[40] Under *Leon*, the exclusionary rule lost much of its bite because, for the first time, application of the rule turned on a police officer's good faith. As long as a police officer acted in objective good faith in obtaining a search warrant, any evidence obtained as a result of the warrant was not required to be excluded at trial even if the warrant was determined to be invalid after its execution.[41] The Supreme Court adopted the good faith exception to the exclusionary rule because it recognized that the costs to society in excluding probative evidence were too great in those cases in which a police officer acted in good faith in procuring and executing a search warrant.[42]

In *Malley*, the Court's societal cost-benefit analysis was analogous to its analysis in *Leon*. Under the *Malley* opinion, the Court provided a remedy which is an alternative to the suppression of evidence for fourth amendment violations. Henceforth, police officers themselves will bear the burden of arrests that are unsupported by probable cause.[43] The shifting of the cost of unconstitutional arrests from society at large to the officers whose conduct causes such arrests should have the positive effect of lessening the need for exclusion of evidence because police officers will tend to consider more carefully the quantum of evidence required to establish probable cause in potential arrest warrant situations. Furthermore, since one of the purposes of the exclusionary rule is to deter police officers from violating individuals' fourth amendment rights,[44] a policy allowing direct lawsuits against the police officer for such violations will actually promote the same goal.

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38. *Id.*
39. For a sampling of exceptions to the exclusionary rule see *supra* note 4.
40. United States v. Leon, 52 U.S.L.W. 5155 (1984).
41. *Id.*
42. *Id.* at 5158.
43. *Malley*, 54 U.S.L.W. at 4245.
44. J. FERDICO *supra* note 1 at 50.

In sum, the *Malley* opinion articulates the Court's unease with the costliness of the exclusionary rule. In an effort to minimize the costs borne by society when application of the exclusionary rule impedes or prevents the prosecution of the truly guilty, the Court has permitted a civil remedy against police officers to those whose arrests are unlawfully caused. The shift of the cost in unconstitutional arrest situations from society to the errant police officer should promote greater responsibility on the part of police in evaluating the existence of probable cause for arrest. In marginal cases, police officers will tend to avoid arrest or at least defer arrest until they can develop more evidence against a suspect. On balance, the stygian spector of potential civil lawsuits should promote better police investigative work. By providing a civil remedy to individuals whose constitutional rights have been violated in arrest situations, the Court in *Malley*, has moved one step closer toward abolition of the exclusionary rule in favor of alternative civil remedies for fourth amendment violations.

Ellen Keefe-Garner