



COERCED VICTIM STATEMENTS, PROBABLE CAUSE, AND CIVIL LIBERTY

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On October 13, 2016, the Tenth Circuit Court of Appeals of decided the *Estate of David Papadakos et al. v. Norton et al.*, in which the court examined the issue of whether law enforcement officers violate the Fourth Amendment if they rely upon allegedly coerced statements when they develop probable cause and make an arrest. The relevant facts of *Papadakos*, taken directly from the case, are as follows:

Papadakos adopted B.P. in 2010. At the time, B.P. was twelve years old and had been in and out of foster care for more than half of his life. B.P. had also been the victim of repeated sexual abuse and suffered from numerous mental health problems.

In October 2012, B.P. ran away and went to a classmate's home after Papadakos threatened to ground him. B.P. told his classmate that Papadakos had sexually abused him. When [Detective] Norton learned of this allegation, he attempted to interview B.P. at his classmate's home. But B.P. refused to speak with Norton.

The next day, [Detective] Jorgensen interviewed B.P. at B.P.'s school. After the interview, Norton arranged for B.P.'s transport to the Children's Justice Center. Despite B.P.'s protests, defendants questioned B.P. there for several hours over the course of multiple days. According to the Estate, both Jorgensen and Norton (collectively, the defendants) coerced and intimidated B.P. during these interviews and supplied him with the information that they wanted to hear until B.P. finally alleged that Papadakos sexually abused him on multiple occasions. For instance, B.P. alleged that while camping with Papadakos, B.P. awoke in their shared tent to find Papadakos' hand on B.P.'s penis.

Based on these allegations, Norton questioned Papadakos. Papadakos told Norton that he remembered the camping incident. But he maintained that any contact with B.P.'s penis was accidental and must have occurred while Papadakos was asleep. Papadakos also admitted that he and B.P. often slept together in Papadakos' bed at home and that

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Papadakos once awoke to find B.P. rubbing B.P.'s erect penis on Papadakos' hand. Papadakos reported that on at least 30 different occasions, B.P. removed Papadakos' underwear while Papadakos slept. Finally, when Norton asked Papadakos if it was possible that Papadakos was playing with B.P.'s penis while Papadakos was asleep, Papadakos replied that he wasn't sure.

Norton arrested Papadakos without a warrant on October 25, 2012. That same day, Utah charged Papadakos with two counts of aggravated sexual abuse of a child and ten counts of forcible sexual abuse. As a result, Papadakos lost his job as the vice principal of a middle school, was expelled from a university graduate program, and was no longer allowed to participate in the Boy Scouts of America. Shortly before his preliminary hearing date, Papadakos committed suicide.ⁱⁱ

The Estate of Papadakos then sued Detective's Norton and Jorgensen and the City of Vernal (UT) and alleged that the detectives violated Papadakos rights under the Fourth and Fourteenth Amendments by relying on allegedly coerced statements from the victim, B.P., in establishing probable cause. The Estate also alleged a state law claim of malicious prosecution. The district court granted both detectives qualified immunity and dismissed the suit. The Estate appealed the grant of qualified immunity to the Tenth Circuit Court of Appeals.

The first issue the court addressed on appeal was whether the malicious prosecution claim could proceed, as a matter of law. This is because an essential element that must be proven by a plaintiff in a malicious prosecution claim is that *the prosecution was terminated in favor of the plaintiff*. Typically, when a prosecution is terminated in favor of a plaintiff, this is because a judge dismissed the suit for lack of probable cause or a prosecuting attorney dropped the case finding that there was no probable cause for arrest.

However, Papadakos case was terminated by the prosecution based upon his death rather than a finding of a lack of probable cause or a finding of his innocence. As such, the plaintiff cannot prove an essential element of this claim so it fails as a matter of law. Thus, the Tenth Circuit affirmed the decision of district court on the malicious prosecution claim.

The second issue before the court of appeals was whether the detective's reliance on the allegedly coerced statements from the victim, B.P., in developing probable cause for Papadakos' arrest violated the Fourth Amendment. The Estate argued that the interview of B.P. conducted by Detective Jorgensen and the subsequent interviews elicited coerced information from the juvenile victim.

Regarding the Estate's claim, the court stated

[W]here false statements have been relied on to establish probable cause, 'the existence of probable cause [for § 1983 purposes] is determined by setting aside the false information.'" Wilkins, 528 F.3d at 805 (alteration in original) (quoting *Wolford v. Lasater*, 78 F.3d 484, 489 (10th Cir. 1996)). Thus, even assuming that Norton knowingly relied *in part* on false statements to arrest Papadakos, the Estate appears to recognize that the defendants only violated Papadakos' Fourth Amendment rights if, after "setting aside" those allegedly false statements, *see id.*, Norton lacked probable cause to arrest Papadakos.

Moreover, the Estate must do more than show that Norton lacked probable cause to arrest Papadakos to succeed on its Fourth Amendment claim. To defeat the defendants' assertion of qualified immunity, the Estate must show that Norton lacked even arguable probable cause to arrest Papadakos. See *Stonecipher v. Valles*, 759 F.3d 1134, 1141 (10th Cir. 2014) ("In the context of a qualified immunity defense on an unlawful search or arrest claim, we ascertain whether a defendant violated clearly established law 'by asking whether there was "arguable probable cause" for the challenged conduct.' (quoting *Kaufman v. Higgs*, 697 F.3d 1297, 1300 (10th Cir. 2012))). And "[a]rguable probable cause" exists so long as an officer's "conclusions rest on an objectively reasonable, even if mistaken, belief that probable cause exists." *Id.* Thus, the defendants are entitled to qualified immunity on the Estate's Fourth Amendment claim if, after removing B.P.'s allegedly false statements from the calculation, "a reasonable officer could have believed that probable cause existed to arrest or detain" Papadakos. *Id.* (quoting *Cortez v. McCauley*, 478 F.3d 1108, 1120 (10th Cir. 2007)).ⁱⁱⁱ [emphasis added]

Thus, assuming for the purpose of the plaintiff's argument, that the statements were coerced, in order to determine if a Fourth Amendment violation occurred, the court must first carve out that coerced information from the facts used to establish probable cause. Then, if probable cause still exists, there is not a Fourth Amendment violation. However, if probable cause does not exist, then the court must determine if arguable probable cause exists with the coerced information removed from the analysis. Arguable probable cause exists if another reasonable officer in the same situation would have believed that probable cause existed. If arguable probable cause is found, the officers are entitled to qualified immunity from suit, therefore, there is still no Fourth Amendment liability for the officers.

In Papadakos' case, the court examined the facts known to the detectives that did not come from B.P.'s interviews. The court described those facts as follows:

(1) B.P.'s classmate's statement that B.P. said he ran away from home because Papadakos sexually abused him; and (2) Papadakos' own statements to Norton. For instance, Papadakos verified that he and B.P. often slept together in the same bed. Papadakos remembered the camping trip during which B.P. accused Papadakos of touching B.P.'s penis, but maintained that Papadakos could have only initiated the contact while he was asleep. He described an incident in which he awoke to find B.P. rubbing his erect penis on Papadakos' hand. And he reported that on at least 30 occasions, he awoke to find that B.P. had removed Papadakos' underwear while Papadakos slept. Finally, when Norton asked Papadakos if it was possible that Papadakos played with B.P.'s penis, Papadakos didn't deny that it was possible; he merely maintained that he couldn't be sure what he did in his sleep.^{iv}

The court then stated that, in light of the above facts, even if they assume there was not *actual* probable cause to arrest Papadakos, there was still *arguable probable cause* to believe he violated the Utah Code related to sexual abuse of a child.^v The court then held

[W]e conclude that after removing B.P.'s allegedly false and coerced statements from the probable-cause calculation, "a reasonable officer could have believed that probable

cause existed to arrest or detain" Papadakos for violating § 76-5-404.1(2). *Stonecipher*, 759 F.3d at 1141 (quoting *Cortez*, 478 F.3d at 1120). Thus, Papadakos' arrest didn't violate his clearly established Fourth Amendment rights, and the defendants are entitled to qualified immunity on the Estate's Fourth Amendment claim. See *id.*

Therefore, the Tenth Circuit affirmed the district court's grant of qualified immunity for the detectives in this case.

The final issue before the court was whether the detectives violated Papadakos' Fourteenth Amendment rights when they used allegedly coerced statements to develop probable cause to arrest Papadakos. The Fourteenth Amendment guarantees Due Process. Papadakos's Estate argued first that his rights were violated when the detectives violated a Utah state law that sets forth requirements for removing a child from a home or school as part of an investigation. The Estate argues that the detectives violated the procedures and requirement of this state law and that amounted to a Fourteenth Amendment violation.

The court of appeals stated

[E]ven assuming that the defendants violated § 62A-4a-202.1(1)(a), **"a state's violation of its own laws does not create a claim under § 1983."** *Rector v. City & Cnty. of Denver*, 348 F.3d 935, 947 (10th Cir. 2003).^{vi}

Thus, a violation of a state's procedural law does not create federal constitutional liability; thus, this argument fails.

The second argument the Estate offered for a Fourteenth Amendment violation is that the detective's reliance upon the coerced statements alone violated Papadakos' Due Process rights. However, to this argument, the court of appeals cited their previous case law and United States Supreme Court case law and stated the following:

In *Becker* [v. *Kroll*, 494 F.3d 904 (10th Cir. 2007)], we concluded that "the unavoidable construction of *Albright* is that no § 1983 claim will arise from filing criminal charges without probable cause under the substantive due process protections of the Fourteenth Amendment." *Id.* at 918. **Instead, "the Fourth Amendment govern[s] 'pretrial deprivations of liberty.'" *Taylor v. Meacham*, 82 F.3d 1556, 1560 (10th Cir. 1996) (quoting *Albright*, 510 U.S. at 274).** And while we recognized that exceptions to this general rule might exist—e.g., "where some quantum of harm occurs in the interim period after groundless criminal charges are filed but before any Fourth Amendment seizure," *Becker*, 494 F.3d at 922 (quoting *Albright*, 510 U.S. at 291 (Souter, J., concurring)), such an exception wouldn't apply here because Papadakos was arrested and charged on the same day.^{vii} [emphasis added]

Thus, when a person is charged and arrested, the Fourth Amendment applies to a claim regarding lack of probable cause due to the use of allegedly coerced statements, rather than the Fourteenth Amendment. The court did leave open the possibility of a Fourteenth Amendment claim in a circumstance where "groundless" charges are brought but no arrest occurred but the plaintiff still suffered harm. However, that was not the case here because Papadakos was arrested. As such, the

Fourth Amendment governs and that was already discussed with immunity granted in the previous issue.

Therefore, the Tenth Circuit affirmed the decisions of the district court in this case.

ⁱ No. 15-4172 (10TH Cir. Decided October 13, 2016)

ⁱⁱ Id. at 2-3

ⁱⁱⁱ Id. at 8-9

^{iv} Id. at 10

^v Id. (See Utah Code. Ann. § 76-5-404.1(2) ("A person commits sexual abuse of a child if . . . the actor touches the . . . genitalia of any child . . . with the intent to arouse or gratify the sexual desire of any person . . ."))

^{vi} Id. at 11

^{vii} Id. at 13

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