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RECENT DEVELOPMENT

SMITH V. DANIELCZYK: POLICE OFFICERS ENJOY QUALIFIED, RATHER THAN ABSOLUTE, IMMUNITY FOR DEFAMATORY STATEMENTS MADE IN THE APPLICATION FOR A SEARCH WARRANT.

By: Oyinade Koya

In a matter of first impression, the Court of Appeals of Maryland held that police officers enjoy qualified, rather than absolute, immunity for defamatory statements made in the application for a search warrant. *Smith v. Danielczyk*, 400 Md. 98, 928 A.2d 795 (2007). The Court concluded that an application for a search warrant, unlike a judicial proceeding, is not an adversarial process where the truth of particular statements or allegations can be determined later. *Id.* at 123-26, 928 A.2d at 810-12.

Robert Smith (“Smith”) and Vicki Mengel (“Mengel”) were Baltimore City police officers assigned to a seven member “Flex Squad”, which came under investigation when a woman alleged that she had been raped by a police officer in the Flex Squad office. Scott Danielczyk (“Danielczyk”) and John Jendrek (“Jendrek”), police officers charged with the investigation of the alleged rape, entered applications for search warrants to inspect the Flex Squad office and its various lockers. On December 29, 2005, warrants were issued to search the office and lockers. During the execution of these warrants, officers assigned with the search discovered controlled dangerous substances (“CDS”) throughout the office. After the initial search, Danielczyk and Jendrek prepared an application for another warrant to search the office and its various lockers.

In their affidavit supporting the application for the second search warrant, Danielczyk and Jendrek affirmed the execution of the first warrants, described the CDS discovered in the office, and stated that all members of the Flex Squad, including Smith and Mengel, used the office. According to Danielczyk and Jendrek, probable cause existed to show all members of the Flex Squad used the office to facilitate their criminal activity. Additionally, the affidavit declared that Danielczyk possessed prior knowledge of allegations that Mengel had

been implicated in the theft of cell phones belonging to detainees as well as planting CDS on citizens in order to knowingly make false arrests.

On May 5, 2006, Smith and Mengel filed a complaint for defamation against Danielczyk and Jendrek in the Circuit Court for Baltimore City. The complaint alleged that Danielczyk and Jendrek made false statements against Smith and Mengel in their application for the subsequent search warrant. Danielczyk and Jendrek filed a motion to dismiss the complaint, arguing that, as authors of a criminal warrant, they enjoyed an “absolute and qualified privilege” to a defamation suit. On August 3, 2006, the circuit court granted the motion to dismiss, with prejudice, but did not hold a hearing or provide any rationale for its conclusion. Smith and Mengel appealed to the Court of Special Appeals of Maryland, but before the inauguration of those proceedings, the Court of Appeals of Maryland issued a writ of certiorari, *sua sponte*.

The Court of Appeals of Maryland first determined whether police officers enjoy absolute or qualified immunity when making certain statements in an application for a search warrant. *Smith*, 400 Md. at 116-17, 928 A.2d at 806. To do this, the Court distinguished between absolute and qualified immunity. *Id.* at 117, 928 A.2d at 806. The Court concluded that an absolute privilege provides immunity “regardless of the purpose or motive of the defendant, or the reasonableness of his conduct.” *Id.* at 117, 928 A.2d at 806 (quoting *Di Blasio v. Kolodner*, 233 Md. 512, 522, 197 A.2d 245 (1964)). A qualified privilege, however, is contingent on an “absence of malice and is forfeited if it is abused.” *Smith*, 400 Md. at 117, 928 A.2d at 806.

The Court of Appeals of Maryland recognized that statements made in the course of a judicial proceeding have been consistently protected by an absolute immunity, even if those statements are made maliciously. *Id.* at 117, 928 A.2d at 806. In concluding as such, the Court relied primarily on three cases, including *Maulsby v. Reifsnider*, *Hunckel v. Voneiff*, and *Bartlett v. Christhilf*. *Smith*, 400 Md. at 117-20, 928 A.2d at 806-08 (citing *Maulsby v. Reifsnider*, 69 Md. 143, 14 A. 505 (1888), *Hunckel v. Voneiff*, 69 Md. 179, 14 A. 500 (1888), *Bartlett v. Christhilf*, 69 Md. 219, 14 A. 518 (1888)). The Court first noted that, per the above cases, judicial proceedings typically included testimony, counsel arguments, and pleadings or documents filed in anticipation of litigation. *Smith*, 400 Md. at 121, 928 A.2d at 809. Using the holding in *Bartlett*, for instance, the Court pointed out that

statements given by parties to a lawsuit in their pleadings or similar documents are part of a judicial proceeding and are therefore protected by absolute immunity. *Smith*, 400 Md. at 119-20, 928 A.2d at 807-08 (citing *Bartlett*, 69 Md. 219, 14 A. 518 (1888)).

The Court then looked at the issue of whether an application for a search warrant possessed the necessary characteristics to constitute part of a judicial proceeding. *Smith*, 400 Md. at 121, 928 A.2d at 809. Danielczyk and Jendrek asserted that an application for a search warrant was part of a judicial proceeding, pursuant to a Court of Special Appeals of Maryland case entitled *Picone v. Talbot*. *Smith*, 400 Md. at 121, 928 A.2d at 809 (citing *Picone*, 29 Md. App. 536, 349 A.2d 615 (1975)). However, the Court of Appeals of Maryland in the instant case determined that the defendants' reliance on *Picone* was misplaced, as *Picone* misconstrued the holding of *Bartlett v. Christhilf* as applying to applications for search warrants. *Smith*, 400 Md. at 119, 928 A.2d at 807. Rather, the Court clarified that *Bartlett* stood for the proposition that statements made by parties in a lawsuit in their pleadings or similar documents filed in anticipation of litigation are entitled to absolute immunity. *Smith*, 400 Md. at 122, 928 A.2d at 809.

The Court refused to extend *Bartlett* to applications for search warrants because the function of an adversarial judicial proceeding is to extract truthful statements through cross-examination and the presentation of contradictory evidence, whereas the purpose of an ex parte application for a search warrant is merely to investigate facts. *Smith*, 400 Md. at 123-26, 928 A.2d at 810-12. The Court found that an ex parte application for a search warrant was an investigatory proceeding at best. *Id.* at 125, 928 A.2d at 811. Therefore, because an application for a search warrant was not part of a judicial proceeding, the Court of Appeals of Maryland held that the statements made by Danielczyk and Jendrek within their application for a search warrant were protected by a qualified, not absolute, privilege. *Id.* at 128, 928 A.2d at 813.

In *Smith*, the Court of Appeals of Maryland demonstrates the significance of firmly establishing the scope of absolute immunity. While police officers should have the unimpeded ability to effectively pursue their duties, these public officials cannot use legal principles to justify illegal or improper behavior. If the purpose of absolute immunity with respect to judicial officers is to ensure unbridled access to the truth, then those entrusted with preliminary or investigatory roles have an obligation to maintain this standard. With *Smith*, the

Court of Appeals of Maryland exhibited a reluctance to extend a deeply rooted common law privilege to activities that fail to provide an opportunity for all sides to give their accounts of the events that transpired. Consequently, police officers, and other public officials, must be cognizant of the truth in all of their official duties.