

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2017-000639

Jimmy A. Richardson, II, Solicitor Fifteenth Judicial Circuit, On Behalf of The 15th
Circuit Drug Enforcement Unit,.....Respondent.

v.

Eighty-five thousand six hundred eighty seven and 45/100 dollars (\$85, 687.45); 2010
Chevrolet Impala vin# 2GIW15EKOA1166142; 2008 Mercedes
vin#JH2PC400X9K201006; various weapons, miscellaneous gold men's jewelry,
electronics and real property located at 732 Dragonfly Drive, Myrtle Beach, SC, TMS#:
1642201065, Defendant Property,

Michael A. Hatten, Stephanie N. Hatten a/k/a Stephanie N. Mackie, Joseph L. White,
Eleanor J. Carter, Bryon A. Gidney, Kristin J. Milby, Ivan K. Chatman and Steven N.
Mackie, Defendants,

Of whom Stephanie N. Hatten a/k/a Stephanie N. Mackie is the.....Appellant.

REPLY BRIEF

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ARGUMENT IN REPLY

I. APPELLEE MISAPPREHENDS THE LAW OF PROSECUTORIAL IMMUNITY.

Appellee relies on Yaselli v. Goff, 275 U.S. 503, 48 S.Ct. 155,(1927) as it is cited in Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496(2001), in a section of the opinion titled "Origins of Prosecutorial Immunity in the United States." Williams v. Condon, 347 S.C. at 234, 553 S.E.2d at 500. However, Appellee ignores the more modern and relevant line of cases also cited in Williams: Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984 (1976)("We recognize that the duties of the prosecutor in his role as advocate for the State involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom ... These include questions of whether to present a case to a grand jury, whether to file an information, whether and when to prosecute, whether to dismiss an indictment against particular defendants, which witnesses to call, and what other evidence to present. Preparation, both for the initiation of the criminal process and for a trial, may require the obtaining, reviewing, and evaluating of evidence. At some point, and with respect to some decisions, the prosecutor no doubt functions as an administrator rather than as an officer of the court. Drawing a proper line between these functions may present difficult questions, but this case does not require us to anticipate them."), and Imbler's progeny, Burns v. Reed, 500 U.S. 478, 111 S.Ct. 1934 (1991) ("We do not believe ... that advising the police in the investigative phase of a criminal case is so 'intimately associated with the judicial phase of the criminal process that it qualifies for absolute immunity." Emphasis added, citations omitted.); and Buckley v. Fitzsimmons, 509 U.S. 259, 113 S.Ct. 2606 (1993) ("When the functions of prosecutors and detectives are the same, as they were here, the immunity that

protects them is also the same.” “The functional approach of Imbler, which conforms to the common law theory, leads us to the same conclusion. Comments to the media have no functional tie to the judicial process just because they are made by a prosecutor. ... The conduct of a press conference does not involve the initiation of a prosecution, the presentation of the state’s case in court, or actions preparatory for these functions. ... Statements to the press may be an integral part of a prosecutor’s job ... and they may serve a vital public function. But in these respects, a prosecutor is in no different position than other executive officials who deal with the press, and, as noted above, qualified immunity is the norm for them.”)

Appellee advanced the extraordinary argument that Solicitors are immune from all prosecution for actions undertaken while acting in their “official duties,” which is not the law of this State or the law of the United States. See Williams v. Condon 347 S.C. 227, 553 S.E.2d 496 (2001); Burns v. Reed, 500 U.S. 478, 111 S.Ct. 1934 (1991), Buckley v. Fitzsimmons, 509 U.S. 259, 113 S.Ct. 2606 (1993), Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984 (1976), and Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002). More accurately, Solicitors are entitled to absolute immunity when acting as a prosecutor, not an administrator. Williams, 347 S.C. at 250, 553 S.E. 2d at 509. While there is no doubt that a Solicitor acting as the prosecutor of a criminal case in the court of General Sessions is protected by the common law doctrine of absolute prosecutorial immunity, the Faile court emphasized that the importance is on the act, not the actor as to whether a state actor enjoys absolute or qualified immunity. Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536, 540-541 (2002).

The cases and common law relied upon by Appellee arose at a time when Solicitors were responsible for one thing: the prosecution of criminal cases in General Sessions Court. None of the cases take in to account the broader powers of modern Solicitors which reach well beyond General Sessions court. Under the modern forfeiture statute, Solicitors are vested with the power to appear in Common Pleas court under S.C. Code §44-53-530, and no court has addressed whether judicial immunity is appropriate under these new, broader powers.

II. POLICY ARGUMENTS FAVOR LIMITING IMMUNITY FOR SOLICITORS IN ACTIONS UNDERTAKEN IN COMMON PLEAS COURT.

From a policy perspective, Solicitors enjoy judicial immunity under the common law for the prosecution of criminal cases in General Sessions court largely because there are multiple checks and balances on their power. In order to initiate a proceeding in General Sessions court, a neutral magistrate has to sign an arrest warrant and a grand jury must make a finding of probable cause in order to charge a Defendant. In a civil forfeiture under §44-53-530, an agency seizes property and a Solicitor files a lawsuit. There is no neutral party involved in the initiation of the proceeding to provide a check on the Solicitor's power to seize a citizen's property. While the citizen may have the property returned to him via jury trial one or two years in the future, in the meantime the private citizen has been deprived of their most basic liberty without recourse. Further, both the seizing agency and the Solicitor derive their funding, and hence their salary, vehicles, and office amenities from these civil forfeiture proceedings¹, so the Solicitor has a vested interest in proceeding with forfeiture actions, no matter how specious.

¹ Note that S.C. Code §44-53-530 provides: "(e) All real or personal property, conveyances, and equipment of any value defined in Section 44-53-520, when reduced to proceeds, any cash more than one thousand

III. APPELLEE IMPROPERLY RELIES ON AN UNPUBLISHED OPINION.

Appellee relies on Maples v. Myers, 2004 WL 6331521 (Ct. App. June 10, 2004) in contravention of Rule 268(d)(2), SCACR (“Unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.”). Additionally, that opinion addresses the personal liability of a Solicitor in a forfeiture case, an issue not raised in the current proceeding. It is worth noting that the Appellant in that case proceeded pro se, so the issues were not fully briefed or researched.

IV. APPELLEE PROPOSES A REMEDY THAT CONTRAVENES EXISTING CASE LAW AND CAUSES JUDICIAL INEFFICIENCY.

Appellee asserts that Appellant’s only available recovery for damages relating to unlawfully seized property would be to sue the “15th Circuit Drug Enforcement Unit and/or the agents involved in the seizure of her property.” Appellee ignores Appellant’s argument that an agency relationship exists between Solicitor Richardson and the 15th Circuit Solicitor’s Drug Enforcement Unit, and that such agency relationship is ripe for the discovery phase of this litigation. Further, in Farmer v. Florence County Sheriff’s Office, 401 S.C. 606, 738 S.E.2d 473 (2013), our Supreme Court held that when property seized under the counterfeit good statute (which mirrors the language of S.C. Code §44-53-530) was mishandled, it was not the seizing agency which owed a duty to the owner of the property, but the Solicitor or the Attorney General who did not institute a forfeiture action in a timely manner. Since the Solicitor or the Attorney General are the only authorities

dollars, any negotiable instruments, and any securities which are seized and forfeited must be disposed as follows: (1) seventy-five percent to the law enforcement agency or agencies; (2) twenty percent to the prosecuting agency; and (3) five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.” It is also worth noting that this forfeiture litigation is so lucrative that the Solicitor outsources its forfeiture legal work to private counsel.

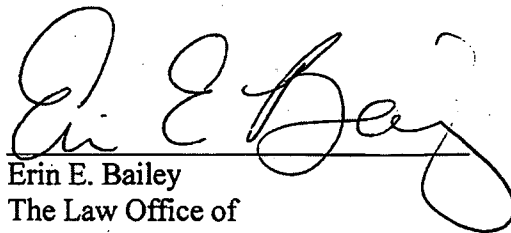
that can institute a forfeiture proceeding, they are also the only authorities that can release the property, and the only authorities who owe a duty to the person whose property was seized.

Appellant further notes that, logically, if the Solicitor has the legal authority to bring the forfeiture action on behalf of his own employees of the DEU, the Solicitor has the legal authority to return the property to its rightful owner and be counterclaimed against for tortious actions arising from the same occurrence. See generally, Rule 17, SCRCP; Reporter's Note to Rule 13, SCRCP ("counterclaims arising out of the same transaction or occurrence that is the subject of the action are 'compulsory' under Rule 13 (a) and are barred by res judicata or estoppel by judgment if not asserted.")

V. CONCLUSION

The right to one's property is so fundamental to our system of Government that it is specifically enumerated in the Fifth Amendment to the Constitution of the United States. U.S. CONST. amend. V. As Justice John Marshall eloquently articulated in Marbury v. Madison, 5 U.S. 137, 162-63, 2 L.Ed. 60 (1803), "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."

Respectfully submitted this 31st day of July, 2017.

A handwritten signature in cursive script, reading "Erin E. Bailey". The signature is written in black ink and is positioned above a horizontal line.

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