

Legal studies

Law, Common Law



Thompson-Starr (B) Police Officer, excessive force, qualified immunity. Part One For many years police officers have enjoyed the power of authority over the general public with the motto “ to protect and serve”. If this is the case, then let this become the yardstick that will measure the conduct that police most earnestly proclaim. Police officers are held as the safeguard of the community. They are designed to protect the people from the criminal elements and serve as role models for those who need to understand law and order.

But when this breach occurs, when the police believe that they can do whatever they decide without a form of accountability, police brutality is birthed. The case of Solomon v. Auburn Hills Police Department is a prime example of unnecessary police involvement. This case is a result of information, misinformation, direction, and misdirection as to the physical presence of an adult to accompany children to a particular movie in that theatre. To have two beefy police officers arrive to resolve a dispute over a ticket purchase to me appears to have been a waste of valuable police work.

Nonetheless, the officers instructed Ms. Solomon to leave, which she refused believing that she had bought tickets in this theatre what was the difference of which show. The management made it clear that the children had to be accompanied and it was obvious that Ms. Solomon was not going to leave her minor children alone to go r-rated and could not leave the r-rated alone to go g-rated. Believing that she resolved it by just selecting one show, the security guards for some reason decided to evict her from the selected show because she did not purchase her ticket for the same movie.

The police entered told Solomon she had to leave; again she refused. Officer Miller decided to arrest her for trespassing and grabbed her arm. Solomon pushed the seat backed away from the officer who decided now that she was getting arrested on charges of assaulting a police officer. The police persuaded her to the lobby where the altercation continued with Officer Miller and Raskin grabbing Solomon's arms and slamming her up against a wall and pushing her face into a display case.

This scuffle left Ms. Solomon injured. Ms. Solomon was later taken to the hospital and diagnosed with having a comminuted fracture of her left elbow, several bruises, and was hospitalized because she needed surgery for her fracture, scheduled a second surgery for later, and had to have physical therapy. Solomon later on a plea bargain pleaded guilty to trespass and attempted resisting arrest. The incident as a whole was over reactive, abusive, and dumb on both parties.

The use of qualified immunity is designed to protect government officials from those who bring lawsuits against them because they did not agree with the discretionary matter in which the officials interpreted and enforced the law. The police use it to protect themselves if they exhibited excessive force they believed necessary to subdue a criminal. But the nature of the offense also has a bearing on how much force should be used. In this case the district court used the Saucier test to determine if Solomon's constitutional rights violation was established and was the officer's action reasonable by a reasonable objective officer's standard.

The court also determined the severity of the crime, if the person is a flight risk, and did their action take place because the police feared for their own safety. Because all of this fell short, the court affirmed the district court's denial for summary judgment. Of course I agree with the opinion of the district court. If the police are quick to react to any given situation knowing that they are placed in a position to make split second decision, if they are not capable of such reasoning then they should seek another line of work.

Police authority comes with knowledge, protection, sound judgment, and containment. It would be unreasonable to believe that police cannot arrest anyone. But is unreasonable is when they take their jobs so seriously that they endanger others by their actions. Because of one woman's refusal to leave the theatre over a movie ticket, she is arrested, injured, and probably humiliated in front of her children all on the over reaction of two police officers. Although I believe that Officer Raskin should have been party to this since he neither aided nor stopped either party from going any further.

Ms. Solomon's refusal also played a role in causing this incident to spin out of control. She should have thought about her family's safety first. When security guards arrived and then the police, a bell should have gone off in her head telling her something more was going to happen besides disputing a theatre ticket. Calmly get up out of the seat, return to the lobby, and then try to explain what happened and the rationale. If that failed then leave, the movie theatre made it such drama just to go to the right theatre and who could go where, to me it was not worth it.

Thompson-Starr (D) Congress seeking to modify Miranda Rule The Miranda warning is what police must give when they arrest someone and place them into their custody. This warning must state the fact that what they say may be held against them and that they have the right to remain silent, to get an attorney, and to have a free attorney if they cannot afford one. When given properly, any statement made by the defendant during custody cannot be used in a court of law.

Mirandize has become synonymous with protection against abusive police and their powers and overzealous prosecutors trying to get a speedy trial. When this rule became law, it was at a time when there was so much establishment protest and unrest that no one was definite on the government's position of trying to maintain civil obedience. Through it all, the Miranda Warning helped protect the innocent as well as the guilty, key pieces of evidence got tossed because people claim they were not instructed to remain silent or entitled to legal representation.

The question of reliability of statements made in police custody cannot be caused by fear, bargaining, physical and mental abuse. The ruling had controversy in the late sixties that Congress decided to create a law that would overrule the Supreme Court's decision. The case of Dickerson v. United States is an example of the Miranda controversy. Dickerson, indicted for bank robbery, conspiracy to commit bank robbery and other charges, revealed some information to the FBI, decided later that he did not want it used at his trial and sought to have it suppressed.

Standing on the Miranda warning, Dickerson claimed his rights were not read and was granted motion to suppress. The district court agreed that no Miranda was given but believes there was a gray area under a statute which makes the statements admissible and ruled Dickerson's statements as voluntary. Congress challenged the Miranda by viewing it as not a constitutional holding and that congress by statute had the last say on its admissibility. The case was reviewed by the Supreme Court. The court acknowledged that custodial police interrogations increased concerns about questionable confessions, the interrogation process is known for mental deprivation from isolation and pressure. The court further noted that this method only effect those who are weak and cannot withstand any confinement. Constitutional guidelines had been established so that when statements are made they would not violate anyone's constitutional rights under the Fifth Amendment. The court continues to explain the necessities of Miranda and the challenges that many judges have to properly interpret the question of coercion versus voluntary.

The question of overruling Miranda was put before the court to rule and they determined it be a constitutional rule that congress cannot supersede legislatively and therefore declined to overrule Miranda and reversed the court of appeals decision. From a liberal perspective, many civil liberties group would view this as a victory because the Supreme Court would not tamper with the Miranda ruling. The conservatives would challenge anything they believe affects the strength of the constitution. They believe that once a law has been established and based on constitutional findings, that no Johnny come lately law should easily reverse it.

Thompson-Starr (E) Attorney compensation based on contingency fee arrangement A contingency fee is a payment to a lawyer of a percentage of the proceeds his client won in a case. The lawyer would receive nothing if his client does not recover anything. Clients have the right to discharge their attorneys without giving a reason but can be challenged as in the case of Joy Salmon v. Virginia Atkinson. This case covers the discharged attorneys suing under quantum meruit recovery for legal work that they performed while still retained by the client.

Quantum meruit, as explained by the Illinois Supreme Court, is based on the implied promise of a recipient of services to pay for the services which are of value to him. The recipient would be unjustly enriched if he were able to retain the services without paying for them. It appears after reading this case, that the appellant wanted to use the appellees to do her legal research and not pay for it. First, she enters into a contract that states she would give the attorneys fifty percent of any recovery awarded plus costs and expenses. This is making the attorneys profit from this lawsuit more than the client.

Secondly, after the appellees had drawn up a petition for the appellant to file, the appellee now wanted to think about filing the claim that she originally implement through the attorneys. Then it took her several weeks to decide that she no longer needed their services even though she took the petition with her. To avoid further verbal communication with them, appellant discharges them by a letter. The attorneys notified their ex-client to inform her that she ended an agreement or contract and they are entitled to work done, especially after finding out that the appellant filed her claim pro se.

The attorneys took the ex-client to court and the circuit court ruled in favor of the appellees. The appellant filed a motion of judgment notwithstanding the verdict, arguing that because the contingent fee contract specified that no fee can be recovered if there is not any recovery. The appellant continued filing motions hoping that one would be granted. Then appellant finally filed an appeal. On the appeal, appellant argued that appellees should not have been able to collect a quantum meruit fee because there was no recovery and this was written in the contract.

The court then oscillated with the California rule versus the New York rule. Under the California rule, attorneys that are discharged are barred from receiving any recovery if the client did not receive any. Under the New York rule, discharged attorneys recovery is not tied into the client's recovery and therefore can receive compensation for work done prior to their termination. The Supreme Court of Arkansas citing Illinois's Supreme Court held that the claimant's recovery should not be linked to a contingency contract, but on quantum meruit, getting what they rightfully deserve.

Why shouldn't the attorneys receive what they rightfully worked on? They did not request to still consider the fifty percent, cost, and expenses. All they wanted was money for the time, research, and hard work they put together to provide a petition that they later presented to the client who ended up taking it with her and stalling them by saying she had to think about a procedure that she initiated over her deceased common law spouse's estate.

If a client would walk into an attorney's office and hire him to do all the legal research and writing of necessary documents, then later decides they no

longer requires their services, I would view as a deceptive means of gaining legal help without paying for it. It is not morally right and now there is a law that shows that there is a remedy if this happens by unscrupulous people. The court in this case did not touch on the right to discharge the attorney, what they focused on was the recovery for work performed.