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IN THE SUPREME COURT OF THE STATE OF ALASKA

YONG H. YI,)
)
)
Appellant,)
vs.)
)
HARRIS S. YANG, SHARON YANG,)
MAX ARTHUR LAMOUREAU, Y & I)
CORPORATION, OFFICER LAWRENCE)
PEYTON MERIDETH and the CITY)
OF FAIRBANKS,)
Appellees.)

Supreme Court Case No. S-13427

Superior Court Case No 4FA-04-2761 CI

APPEAL FROM THE DECEMBER 8, 2008 JUDGMENT OF THE
SUPERIOR COURT, FOURTH JUDICIAL DISTRICT AT FAIRBANKS
THE HONORABLE RANDY M. OLSEN, PRESIDING

LAW OFFICE OF ROBERT JOHN

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Filed in the Supreme Court of
The State of Alaska, this 4th
day of January, 2011

, Deputy Clerk

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**CONSTITUTIONAL PROVISIONS. CODES, STATUTES
AND RULES RELIED UPON**

UNITED STATES CONSTITUTION

Amendment IV

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.

TITLE 42--THE PUBLIC HEALTH AND WELFARE

CHAPTER 21--CIVIL RIGHTS

SUBCHAPTER I--GENERALLY

Sec. 1983. Civil action for deprivation of rights

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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. 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.

AS 12.25.030. Grounds For Arrest By Private Person or Peace Officer Without Warrant.

- (a) A private person or a peace officer without a warrant may arrest a person
- (1) for a crime committed or attempted in the presence of the person making the arrest;
 - (2) when the person has committed a felony, although not in the presence of the person making the arrest;
 - (3) when a felony has in fact been committed, and the person making the arrest has reasonable cause for believing the person to have committed it.
- (b) In addition to the authority granted by (a) of this section, a peace officer
- (1) shall make an arrest under the circumstances described in AS 18.65.530;
 - (2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,
 - (A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990 ;
 - (B) committed the crime of violating a protective order in violation of AS 11.56.740 ; or
 - (C) violated a condition of release imposed under AS 12.30.025 or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has reasonable cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270 ;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under the age of 18 and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release before trial on felony charges brought under AS 11.41.410 - 11.41.458.

AS 12.25.033. Arrest Without Warrant For Operating Vehicle While Under the Influence of An Alcoholic Beverage, Inhalant, or Controlled Substance.

A peace officer may arrest a person without a warrant, whether or not the offense is committed in the presence of the officer, when the officer has probable cause to believe that the person to be arrested has committed the crime of operating a motor vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a similar city or borough ordinance, if the violation is alleged to have occurred less than eight hours before the time of arrest.

AS 12.25.160. Arrest Defined.

Arrest is the taking of a person into custody in order that the person may be held to answer for the commission of a crime.

AS 22.05.010. Jurisdiction.

(a) The supreme court has final appellate jurisdiction in all actions and proceedings. However, a party has only one appeal as a matter of right from an action or proceeding commenced in either the district court or the superior court.

(b) Appeal to the supreme court is a matter of right only in those actions and proceedings from which there is no right of appeal to the court of appeals under AS 22.07.020 or to the superior court under AS 22.10.020 or AS 22.15.240 .

(c) A decision of the superior court on an appeal from an administrative agency decision may be appealed to the supreme court as a matter of right.

(d) The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030 . The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals or the superior court, as applicable.

(e) The supreme court may issue injunctions, writs, and all other process necessary to the complete exercise of its jurisdiction.

JURISDICTIONAL STATEMENT

Yong H. Yi (Yi) appeals from the judgment of the superior court entered December 8, 2008. This Court has jurisdiction pursuant to AS 22.05.010 and Appellate Rule 202(a).

STATEMENT OF THE ISSUES PRESENTED

1. Whether the trial court erred in dismissing Yong Yi's claims against Officer Merideth where the evidence clearly indicated that Officer Merideth falsely arrested Yong Yi without a warrant.
2. Whether Officer Merideth violated either Alaska law or 42 USC §1983 when he falsely arrested Yong Yi.
3. Whether the trial court erred when it held that Officer Merideth was entitled to qualified immunity.
4. Whether the trial court erred when it held that the City of Fairbanks was entitled to immunity.

STATEMENT OF THE CASE

I. Summary Of The Case

This case stems from a convoluted dispute between Yong Yi and Harris Yang over various matters regarding Yong Yi's lease of the Klondike Bar and Restaurant from Harris Yang. The pinnacle of the dispute appeared to occur on the morning of December 19, 2004, when a series of 911 calls were made, including calls reporting the need to evict the Yis from the premises and reporting a break-in at the bar and restaurant. An altercation ensued before any officers arrived. After officers responded to the scene,

Yong Yi and Kenny Yi were placed under arrest for misdemeanor assault and criminal mischief. Subsequent to the arrest, the Yis amended their previously-filed contract/business dispute Complaint against a number of defendants and thereby added the “arresting officer,” Fairbanks Police Officer Peyton Merideth and the City of Fairbanks. The Yis alleged that Officer Merideth falsely arrested Plaintiffs Yong Yi and Kenny Yi and that the City of Fairbanks Police Department deprived the Yis of property. The Yis asserted that the actions of Officer Merideth and the City gave rise to two claims under 42 USC §1983, and a claim for the tort of false arrest.

Defendants Officer Merideth and the City of Fairbanks moved for summary judgment on the claims against them. The Plaintiffs opposed. The oral argument on the motion was held on April 14, 2008, at which the court granted Officer Merideth's and the City's motion, dismissing Officer Merideth and the City of Fairbanks from the case, presumably on the basis of qualified immunity. This appeal by Yong Yi followed.

II. Factual Background

By way of background, this matter arises from various disputes over Yong Yi's lease of the Klondike Bar and Restaurant in Fairbanks from Harris Yang. The Yis managed the bar and restaurant portion of the Klondike, while the Inn portion, across the street from the bar and restaurant, was managed by Yang. However, for the most part, the business and personal dealings and disputes between Yang and Yi are irrelevant to this appeal.

On the morning of December 19, 2004, the Fairbanks Police Department received a series of 911 calls regarding the Klondike Inn/Klondike Restaurant and Bar.¹ The first caller identified himself as Joe Hayes.² Hayes stated that he was calling on behalf of the owner of the Klondike, Yang, who was attempting to seize his property from Yi, who was managing the property.³ Hayes also told the dispatcher that he was holding the deeds to the property, that the owner was changing the locks, and that the owner wanted the police to trespass the management group from the property.⁴ The dispatcher asked Hayes if the owner had obtained a writ of assistance, and told Hayes that the owner would have to bring the writ to the police station to request a civil standby.⁵

The second caller identified himself as John Dockery, the front-desk clerk at the Klondike Inn.⁶ Dockery advised the dispatcher that he believed the Yis were violating a trespass order that prohibited the Yis from being within 1000 feet of the Inn.⁷ Dockery reported that the Yis were sitting out in front of the Inn.⁸ Dockery was unsure whether the trespass order was obtained through the courts.⁹

Dockery's call was interrupted when the dispatch received a call from Kenny Yi.¹⁰ Kenny Yi reported that someone was trying to break in to the bar and restaurant.¹¹ He

¹ Exc. 64-77, 145-197.

² Exc. 64-65.

³ Id.

⁴ Id.

⁵ Id.

⁶ Exc. 66.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Exc. 66-69, 186-189.

¹¹ Id.

also reported that the person had broken the lock on the door and that he had caught the person.¹² Kenny Yi indicated that he did not know the identity of the person and had never seen him before.¹³ The dispatcher indicated that the police were on their way.¹⁴

At this point, the dispatcher returned to the call with Dockery.¹⁵ The dispatcher expressed frustration with the idea that Dockery and Kenny Yi were each claiming that the other was trying to break into the restaurant and bar.¹⁶ The dispatcher abruptly ended the phone call with Dockery by stating that an officer was being sent to the Klondike.¹⁷

The dispatcher then called Officer Merideth and requested that he proceed to the Klondike with another officer.¹⁸

Subsequently, a woman identifying herself as the bartender at the Klondike called 911. She reported a robbery attempt and stated that the perpetrators were trying to leave in a silver minivan and tried to run someone over.¹⁹ A third person can be heard in the background saying that they tried to run over my brother and me.²⁰ At the request of the dispatcher, the caller put Kenny Yi on the phone.²¹ The officers apparently appeared on the scene and the call was terminated.

Max Lamoureux made the final call to the dispatcher. Lamoureux claimed to be a manager of the Klondike Inn and told the dispatcher that he was locked in a hotel room

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Exc. 70.

¹⁶ Id.

¹⁷ Id.

¹⁸ Exc. 71.

¹⁹ Exc. 71-73, 189-191.

²⁰ Id.

²¹ Exc. 73-74, 192.

with another manager, Jung Lee.²² Lamoureaux also told the dispatcher that the Yis “ran into it [truck] . . . they were trying to kill us . . . they smashed the front and back window . . . they were in the back of the truck.”²³ He told the dispatcher “we did nothin’ but get in the truck and drive in the opposite direction, and they attacked us.”²⁴ The police arrived at the scene and the call was terminated.

Fairbanks Police Officers Lawrence Payton Merideth, Douglas Welborn, and David McKillikan, along with Sergeant James Geier, responded to the scene.²⁵ Officers Welborn and Merideth arrived at the Klondike around 9:45 a.m. and McKillikan and Geier arrived shortly thereafter.²⁶ Officer Merideth contacted Lamoureaux and the other people in the office of the Klondike Inn, while Officer Welborn contacted the group of people standing in front of the bar and restaurant, including Kenny Yi, Yong Yi, and Hyong Yi.²⁷ Officer Merideth’s conversations were not taped,²⁸ Officer Welborn’s conversations were taped.²⁹ Outside of the inn’s office, Officer Merideth also apparently observed a white Ford pickup truck with a shattered windshield and shattered rear windows.³⁰

²² Exc. 74-77, 192-196.

²³ Exc. 75, 194.

²⁴ Exc. 76, 195.

²⁵ Exc. 94, 99.

²⁶ Exc. 95.

²⁷ Exc. 204.

²⁸ Id.

²⁹ Id.

³⁰ Exc. 95, 204.

Max Lamoureaux reported to Officer Merideth that the Yis attacked Lamoureaux when he tried to serve eviction papers on the Yis.³¹

The Yis reported to Officer Welborn that when they arrived at the bar and restaurant that morning, they saw Lamoureaux, and Lamoureaux attempted to run away.³² The Yis discovered that the lock on the restaurant door had been broken and they called the police.³³ Kenny Yi thereafter observed Lamoureaux leaving the inn's office in a white pickup truck.³⁴ Kenny Yi approached the truck and told Lamoureaux that the police had been called.³⁵ Despite the fact that Lamoureaux was told the police were coming, Lamoureaux continued to try to drive away, and in the process, tried to run over one of the Yis.³⁶ The Yis jumped in Lamoureaux's truck in an attempt to prevent him from driving away, and they admitted to breaking the truck's windows during that attempt.³⁷

Officer Merideth contacted Officer Welborn via radio and directed him to have Yong Yi and Kenny Yi stand clear of the other people so Lamoureaux could identify them as Lamoureaux's "attackers."³⁸ An officer then handcuffed the Yis and informed them that they were under arrest, and that Officer Merideth was the arresting officer.³⁹

³¹ Exc. 87, 204.

³² Exc. 152-153, 158.

³³ Exc. 152.

³⁴ Exc. 153.

³⁵ Exc. 153.

³⁶ Exc. 153, 161.

³⁷ Exc. 164-168.

³⁸ Exc. 179, 211.

³⁹ Exc. 179-183.

At no time were the Yis informed that they were arrested by anyone other than the police.⁴⁰

After they were taken into custody by Fairbanks Police Officers, Yong Yi and Kenny Yi were booked at the Fairbanks Correctional Center. Several hours later, some time after 1:00 p.m., Max Lamoreaux apparently came to the Fairbanks Police Department. At that time, he prepared and signed documents that were denominated citizens arrest forms as to Yong Yi and Kerry Yi.⁴¹

III. The Motion For Summary Judgment

On February 20, 2007, Defendants Merideth and the City filed a motion for summary judgment dismissing all claims against them.⁴² In the motion, Merideth and the City asserted that there was no genuine factual dispute that a citizen arrested the Plaintiffs, and thus Plaintiffs' tort claims of false arrest and §1983 claims were groundless as to Officer Merideth.⁴³ Merideth and the City also asserted that they were entitled to dismissal of the claims against them based on qualified and statutory immunity.⁴⁴ The Plaintiffs opposed Defendants' motion, and Defendants filed their reply.⁴⁵

IV. The Oral Argument And The Trial Court's Rulings

On April 14, 2008, Superior Court Judge Randy Olsen heard oral argument on the parties' motions. Without extensive oral argument by either party, the Court held that

⁴⁰ Exc. 183.

⁴¹ Exc. 78-84, 95, 256.

⁴² Exc. 41-112.

⁴³ Exc. 42.

⁴⁴ Exc. 43.

⁴⁵ Exc. 113-144, 273-277.

Officer Merideth was entitled to immunity from both the §1983 claim and the state tort claim of false arrest.⁴⁶ And based primarily on the pleadings, and according to Anderson v. Creighton, the Prentzel case, and the Sheffield case, the Court held that the City of Fairbanks was also entitled to qualified immunity.⁴⁷ The Court also found that the City did not take property from the Plaintiffs.⁴⁸ Accordingly, the Court held that the Plaintiffs did not have a cause of action against Officer Merideth and the City.⁴⁹ The Court then granted the Defendants' motion and dismissed Officer Merideth and the City of Fairbanks from the case.⁵⁰

STANDARD OF REVIEW

Orders granting summary judgment are reviewed de novo, viewing all facts and drawing all reasonable inferences in the light most favorable to the party against whom judgment was entered.⁵¹ "It is well established that 'the evidentiary threshold necessary to preclude the entry of summary judgment is low.'"⁵²

⁴⁶ Tr. at 17-18; Exc. 292-293.

⁴⁷ Tr. at 18; Exc. 293.

⁴⁸ Tr. at 18; Exc. 293.

⁴⁹ Tr. at 18; Exc. 293.

⁵⁰ Tr. at 18; Exc. 278, 281, 293.

⁵¹ Crawford v. Kemp, 139 P.3d 1249, 1253 (Alaska 2006) (citing Samaniego v. City of Kodiak, 2 P.3d 78, 82-83 (Alaska 2000)).

⁵² Hammond v. State, Dep't of Transp. & Pub. Facilities, 107 P.3d 871, 881 (Alaska 2005) (quoting John's Heating Serv. v. Lamb, 46 P.3d 1024, 1032 (Alaska 2002)).

ARGUMENT

I. The Trial Court Erred When It Dismissed Yong Yi's Claims Against Officer Merideth Because The Evidence Clearly Indicated That Officer Merideth Falsely Arrested Yong Yi Without A Warrant.

At oral argument on the parties' motions, the superior court refrained from ruling as to the validity of Max Lamoureaux's citizen's arrest of Yong Yi and Kenny Yi. Instead, the court simply granted Officer Merideth's and the City of Fairbanks' motion and dismissed them from the case on the basis of immunity. However, the superior court should have addressed the validity of the citizen's arrest because the court was required to decide the issue of whether Officer Merideth's conduct violated the constitutional rights of the Yis even before the officer and the City were entitled to a finding of immunity. Accordingly, the superior court erred when it failed to rule on the validity of Officer Merideth's arrest and/or the validity of Lamoureaux's citizen's arrest because the evidence established that the Yis' arrest was clearly invalid.

In a suit against an officer for an alleged violation of a constitutional right, the requisites of a qualified immunity defense must be considered in proper sequence.⁵³ Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive.⁵⁴ Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation."⁵⁵ The privilege is "*an immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is

⁵³ Saucier v. Katz, 533 U.S. 194, 200 (2001).

⁵⁴ Id.

⁵⁵ Id. (quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)).

erroneously permitted to go to trial.”⁵⁶ As a result, the United States Supreme Court “repeatedly [has] stressed the importance of resolving immunity questions at the earliest possible stage in litigation.”⁵⁷

A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry.⁵⁸ In the course of determining whether a constitutional right was violated, a court might find it necessary to set forth principles that will become the basis for a holding that a right is clearly established.⁵⁹ This is the process for the law's elaboration from case to case, and it is one reason for the United States Supreme Court's insisting upon turning to the existence or nonexistence of a constitutional right as the first inquiry.⁶⁰ The law might be deprived of this explanation were a court simply to skip ahead to the question of whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.⁶¹

If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.⁶² On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next sequential step in the sequence is to ask whether the right was

⁵⁶ *Id.* (quoting *Mitchell v. Forsyth*, 472 U.S. at 526).

⁵⁷ *Id.* at 200-201 (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (*per curiam*)).

⁵⁸ *Id.* at 201 (citing *Siegert v. Gilley*, 500 U.S. 226, 232 (1991)).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

clearly established.⁶³ This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.⁶⁴ To be “clearly established,” the “contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.”⁶⁵

In this case the facts, taken in the light most favorable to Yi, show that Officer Merideth violated Yi's constitutional right to be free from warrantless arrests for minor criminal offenses committed outside the officer's presence.⁶⁶ This right is clearly established, as even Officer Merideth understood that he could not arrest the Yis without a warrant because Officer Merideth did not witness the Yis' alleged actions.⁶⁷

Yong Yi and Kenny Yi were arrested without a warrant for misdemeanor assault and criminal mischief. Alaska follows the long-standing common law rule that police and citizens may only make warrantless arrests for misdemeanors committed in their presence.⁶⁸ Both the state legislature and the courts have demonstrated a commitment to preserving the “in the presence” rule for most misdemeanors in Alaska.⁶⁹ The Alaska Legislature has created limited exceptions to the “in the presence” rule for misdemeanor-

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id. at 202 (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)).

⁶⁶ Cf. Prentzel v. State, 169 P.3d 573, 589 (Alaska 2007).

⁶⁷ Exc. 206-207.

⁶⁸ AS 12.25.030(a)(1).

⁶⁹ See Herrin v. State, 449 P.2d 674, 677-78 (Alaska 1969).

level drunk driving, domestic violence, and violation of prisoner release conditions.⁷⁰ The brief legislative history on these statutory exceptions indicates that the legislature determined that the potential danger to the public posed by these particular misdemeanors warranted an exception to the “in the presence” rule, but intended to preserve the rule generally.⁷¹

The City and Officer Meredith asserted in their Motion for Summary Judgment that it could not be contested that Max Lamoureux had a valid reasonable belief that Yong Yi and Kenny Yi were committing misdemeanors in his presence, and accordingly, Lamoureux could conduct a citizen’s arrest in accordance with AS 12.25.030.⁷² This reasonable belief was allegedly evidenced by the fact that Lamoureux eventually signed a citizen’s arrest report and an accompanying sworn statement.⁷³ However, that Lamoureux may have witnessed the Yis’ actions and thereafter signed a citizen’s arrest report is not enough to support a citizen’s arrest of Yong Yi and Kenny Yi under Alaska law, particularly because Alaska also follows the common-law rule that a person wishing to make a warrantless misdemeanor arrest must make the arrest without unnecessary delay.⁷⁴

⁷⁰ AS 12.25.030, AS 12.25.033.

⁷¹ See Lael Harrison, *Citizen’s Arrest or Police Arrest? Defining the Scope of Alaska’s Delegated Citizen’s Arrest Doctrine*, 82 Wash. L.R. 431, 436 (2007) (citing Minutes of Alaska House Judiciary Committee (May 19 and 22, 1975) (discussing Alaska Senate Bill 182, indicating concern regarding the potential for “abuse” of the DUI exception, and eventually amending the proposed blanket exception to a limited eight-hour window after the offense)); see also AS 12.25.033.

⁷² Exc. 52-53.

⁷³ Exc. 82-84.

⁷⁴ See Herrin, 449 P.2d at 677-78 (“In order to justify a delay, there should be a continued attempt on the part of the officer or person apprehending the offender to make the arrest;

After a citizen witnesses a misdemeanor, delay for purposes unrelated to making an arrest invalidates the power to arrest without a warrant.⁷⁵ This Court has indicated that delay for matters corollary to the arrest, such as securing the area or chasing a fleeing offender, is necessary delay that does not destroy the authority to arrest.⁷⁶

Although the Court has not considered a case of delay in citizen's arrest, the common-law prohibition of unnecessary delay should apply to citizen's arrests as well as police arrests.⁷⁷ Generally, courts have held that a delay by a citizen making an arrest to seek and wait for assistance does not invalidate an otherwise legal citizen's arrest.⁷⁸ However, the citizen's attention must be focused solely on making the arrest throughout the delay.⁷⁹ Although the Court has never directly considered delay in a citizen's arrest,

he cannot delay for any purpose which is foreign to the accomplishment of the arrest.”) (quoting Jackson v. Superior Court, 219 P.2d 879, 882 (Cal. App. 1950)); see also 5 Am. Jur.2d Arrest §55 (1995) (“The arrest must be made at the time of the offense, or some part of it, is being committed, or within a prompt and reasonable time after its commission, or upon fresh and immediate pursuit of the offender.”).

⁷⁵ See Herrin, 449 P.2d at 677-78.

⁷⁶ See Herrin, 449 P.2d at 677-78 (holding that short delay by officer to remove another woman from the building for her safety and to wait for reinforcements was reasonable and did not invalidate the arrest); see also id. at 678 n.16 (“[T]here may be justification for delay, as for instance, when the interval between the commission of the offense and the actual arrest is spent by the officer in pursuing the offender, or in summoning assistance where such may reasonably appear to be necessary.”) (quoting Smith v. State, 87 So.2d 917, 919 (Miss. 1956)).

⁷⁷ See 6A C.J.S. §13 (2004) (“If a private person fails to make an arrest immediately after commission of the offense, his or her power to do so is extinguished and a subsequent arrest is illegal.”).

⁷⁸ See, e.g., Hill v. Levy, 256 P.2d 622, 624 (Cal. App. 1953) (finding short delay reasonable during which the arresting citizen confronted and argued with the offender, sought help from an uncooperative hotel manager, and then sought help from the police); Ogulin v. Jeffries, 263 P.2d 75, 77-78 (Cal. App. 1953).

⁷⁹ See Herrin, 449 P.2d at 678.

it has held that the delay prohibition applies to police arrests and indicated that it also applies to citizen's arrests.⁸⁰

In 1983, the Alaska Court of Appeals adopted the delegated citizen's arrest doctrine in Moxie v. State.⁸¹ Alaska courts have yet to address the ambiguities created by Moxie, but as in the present case, police officers in Alaska continue to rely on the delegated citizen's arrest doctrine in arresting misdemeanor offenders in a variety of situations.

The underlying facts of Moxie were simple, and the court reached its holding in a short opinion with little discussion.⁸² Mr. Moxie assaulted a hotel manager, and when the police officer arrived at the hotel, Mr. Moxie had already been physically restrained.⁸³ The hotel manager informed the officer that she wanted to press charges, signed a citizen's arrest form, and asked the officer to take Moxie into custody.⁸⁴

Mr. Moxie challenged his conviction for resisting arrest, arguing that he had been arrested illegally because the police officer who took him into custody did not witness him commit the misdemeanor.⁸⁵ While acknowledging that the police officer did not witness the misdemeanor, the court held Mr. Moxie's arrest to be a valid citizen's arrest.⁸⁶ The court described the officer as "agent" of the hotel manager who had

⁸⁰ See id. (noting that the rule prohibiting unnecessary delay applied to the "officer *or person apprehending the offender*" (emphasis added)).

⁸¹ Moxie v. State, 662 P.2d 990 (Alaska App. 1983).

⁸² See id. at 991.

⁸³ See id. at 990-91. Presumably the hotel manager and other hotel patrons and staff restrained Mr. Moxie, although the opinion does not say.

⁸⁴ See id. at 991.

⁸⁵ Id. at 991.

⁸⁶ See id.

“initiated” the arrest after witnessing the misdemeanor and had then properly delegated to the officer the task of taking Mr. Moxie into custody.⁸⁷

Relying exclusively on California case law, which expressed policy concerns about citizen safety,⁸⁸ the court held in Moxie that an arresting citizen may “delegate” the task of taking physical custody of an offender to a police officer.⁸⁹ However, Moxie did not define the scope of the newly-created delegated citizen’s arrest doctrine; specifically, Moxie does not describe how much arrest responsibility a citizen may delegate to an officer who did not witness the offense before the arrest ceases to be a valid citizen’s arrest and becomes an invalid police arrest.⁹⁰ In Moxie, all that remained for the officer to do was to handcuff the offender.⁹¹ These facts are so straightforward that another court considering the case might have held that the citizen’s arrest was complete when Mr. Moxie was restrained before the officer arrived.⁹² The court’s only guidance as to the scope of the doctrine is found in its statement that “it is not the sole responsibility of a

⁸⁷ See id.

⁸⁸ See id.; Green v. Dep’t of Motor Vehicles, 137 Cal. Rptr. 368, 371 (Cal. App. 1977); People v. Sjosten, 68 Cal. Rptr. 832, 835-36 (Cal. App. 1968). Moxie cites Green and Sjosten as examples of the California law on which it relies. See Moxie, 662 P.2d at 991.

⁸⁹ See Moxie, 662 P.2d at 991.

⁹⁰ See id. at 990-91.

⁹¹ See id. at 991.

⁹² See e.g., Moll v. United States, 413 F.2d 1233, 1235-36 (5th Cir. 1969) (holding citizen’s arrest complete and legal under Florida law where woman saw man with his hand in her purse, asked what he was doing, chased him out of the building, and apprehended him with the help of bystanders before the police arrived); People v. Harris, 63 Cal. Rptr. 849, 851-52 (Cal. App. 1967) (holding citizen’s arrest complete and legal where citizen witnessed hit-and-run, followed offender, pulled him over, and told him to wait for the police to arrive).

person making a citizen's arrest to subdue, control, and transport the arrestee into the formal custody of the state."⁹³

Additionally, Moxie fails to explain how to distinguish between a citizen making an arrest and a citizen-witness reporting a crime. In Moxie, there was no question that the hotel manager had initiated the arrest because Moxie had already been physically restrained.⁹⁴ Although Moxie lists responsibilities a citizen may share with officers (subdue, control, and transport), the opinion does not say what responsibilities a citizen must retain in order to make a citizen's arrest. The court did not appear to consider it dispositive that the citizen in Moxie signed a "citizen's arrest form."⁹⁵ Signing a citizen's arrest form is unlikely to automatically turn an ordinary witness into an "arresting citizen" because Alaska law defines "arrest" as "the taking of a person into custody in order that the person may be held to answer for the commission of a crime."⁹⁶ Alaska courts have strictly interpreted this statute,⁹⁷ and should find that a citizen does not "initiate" an arrest without taking steps towards placing the suspect into custody. Most likely, citizen's arrest forms are used simply for police liability and record-keeping purposes.⁹⁸

Nevertheless, California courts indicate that the common-law prohibition on unnecessary delay applies to delegated citizen's arrests in the same way it applies to other

⁹³ Moxie, 662 P.2d at 991.

⁹⁴ See Moxie, 662 P.2d at 990-91.

⁹⁵ See id.

⁹⁶ AS 12.25.160.

⁹⁷ See Lindsay v. State, 698 P.2d 659, 663 (Alaska App. 1985).

⁹⁸ See Johanson v. Dep't of Motor Vehicles, 43 Cal. Rptr.2d 42, 47 (Cal. App. 1995) (finding citizen's arrest form did not constitute dispositive evidence of the charge for which offender was arrested).

warrantless misdemeanor arrests. Two of the cases cited in Moxie specifically refer to the delay prohibition.⁹⁹ The arrests in both cases were deemed valid even though the citizen did not immediately physically arrest the offender upon witnessing the crime.¹⁰⁰ The citizens in those cases delayed physical arrest to wait for the arrival of the police,¹⁰¹ which is generally considered a necessary delay.¹⁰²

The delay prohibition also forbids a citizen from going about business unrelated to the arrest before the arrest is complete.¹⁰³ For a delegated citizen's arrest to be valid, the citizen must remain focused on accomplishing the arrest even after seeking and receiving the help of the police.¹⁰⁴ In one of the California cases cited by Moxie, the court upheld a delegated citizen's arrest where the citizen left the scene in order to locate an officer, but rejoined the police at the scene directly afterwards.¹⁰⁵ In its holding, the court specifically referred to the common-law delay prohibition, noting that "[t]his is not a case

⁹⁹ See Green v. Dept. of Motor Vehicles, 137 Cal. Rptr. 368, 371 (Cal. App. 1977) ("[H]e did secure the aid of a police officer as promptly as possible."); Sjosten, 68 Cal. Rptr. at 836 ("Promptness, clearly exhibited here, is the only remaining requirement of a valid citizen's arrest for a misdemeanor without a warrant.").

¹⁰⁰ See Green, 137 Cal. Rptr. at 371 ("Respondent was arrested within 35 to 40 minutes of the time that [the citizen] saw her enter her driveway"); Sjosten, 68 Cal. Rptr. at 834-36 (describing chain of events between when the citizen witnessed the crime and when police took physical custody of the offender, and later concluding that the arrest did not violate the delay prohibition).

¹⁰¹ See Green, 137 Cal. Rptr. at 371; Sjosten, 68 Cal. Rptr. at 834-36.

¹⁰² Cf. Herrin, 449 P.2d at 677-78; see also Ogulin v. Jeffries, 263 P.2d 75, 77 (Cal. App. 1953).

¹⁰³ Cf. Herrin, 449 P.2d at 677-78 ("In order to justify a delay, there should be a continued attempt on the part of the officer or person apprehending the offender to make the arrest; he cannot delay for any purpose which is foreign to the accomplishment of the arrest.") (quoting Jackson v. Superior Court, 219 P.2d 879, 882 (Cal. App. 1950)).

¹⁰⁴ See Sjosten, 68 Cal. Rptr. at 834-35 (finding delegated citizen's arrest legal where citizen, after calling the police, continued to watch the offender until the police took physical custody of the offender).

¹⁰⁵ See Green, 137 Cal. Rptr. at 370.

where the citizen observing the offense went about his other business and then later decided to effectuate an arrest.”¹⁰⁶

California courts also require that, to effectuate a valid delegated citizen’s arrest, the citizen must show intent to arrest.¹⁰⁷ Although the California cases do not precisely define the “intent” requirement, a close reading of the case law indicates that the citizen must both engage in substantial action to further the arrest and provide certain information to the police about the offender and the offense.¹⁰⁸

There are two prongs to the intent requirement. First, although it is not necessary that the citizen physically confront the offender,¹⁰⁹ the citizen must take some action towards apprehending the offender. This requirement can be satisfied by taking action, including verbally confronting the offender¹¹⁰ or watching and following the offender until custodial arrest by the police.¹¹¹ Second, the citizen must summon the police to the scene and be able to identify the offender to the police, giving the offender’s whereabouts if necessary.¹¹² The intent requirement serves to distinguish between a citizen making a

¹⁰⁶ Green, 137 Cal. Rptr. at 371.

¹⁰⁷ See People v. Johnson, 176 Cal. Rptr. 684, 686 (Cal. App. 1981); People v. Richards, 140 Cal.Rptr. 158, 159-60 (Cal. App. 1977).

¹⁰⁸ See Johnson, 176 Cal. Rptr. at 686 (finding delegated citizen’s arrest legal where citizen witnessed the offense, followed the offender, and then reported the offense and pointed out the offender’s whereabouts to the police).

¹⁰⁹ See Sjosten, 68 Cal. Rptr. at 836.

¹¹⁰ See Padilla, 229 Cal. Rptr. at 311.

¹¹¹ See Johnson, 176 Cal. Rptr. at 686.

¹¹² See id.

delegated citizen's arrest and a citizen who merely calls the police to report witnessing a crime.¹¹³

Accordingly, California courts require that citizens act with intent and without delay to make valid delegated citizen's arrests. When the citizen simply reports a crime to the police and leaves them to act independently, the arrest is not a valid citizen's arrest. The citizen must remain focused on the arrest from start to finish, taking substantial action to further the arrest and giving specific information to the police so that they may take the offender into custody.

Because Moxie agreed with California case law when it adopted the delegated citizen's arrest doctrine, and because the limitations found in California case law comport with Moxie's legal holding and rationale, this Court should apply California's limitations on the delegated citizen's arrest doctrine.¹¹⁴ Specifically, the Court should explicitly apply the common-law delay prohibition to delegated citizen's arrests, just as it does to all other warrantless misdemeanor arrests, and should require that citizens show intent to arrest, rather than leaving the police to act independently. Applying these limitations also supports the underlying policy rationale of citizen safety.

Applying these principles to this case -- the common-law delay prohibition to delegated citizen's arrests and the rule that a citizen may not go about business unrelated to the arrest even after calling the police but must continue efforts to make the arrest with

¹¹³ See Richards, 140 Cal. Rptr. at 160 (finding insufficient evidence of intent to arrest where citizen called police to report a crime but left to the officers the decision of whether to arrest the offender).

¹¹⁴ See generally, Lael Harrison, *Citizen's Arrest or Police Arrest? Defining the Scope of Alaska's Delegated Citizen's Arrest Doctrine*, 82 Wash. L.R. 431, 436 (2007).

police assistance -- both demonstrate that Lamoureaux's citizen's arrest was invalid.¹¹⁵ The trial court accordingly erred when it failed to address the validity of the citizen's arrest.

In California cases upholding delegated citizens' arrests, the citizen is focused on the arrest from the time of observing the crime through custodial arrest.¹¹⁶ However, in the present case, the evidence clearly establishes that Lamoureaux was never focused on arresting the Yis, let alone from the time he observed their actions. Even Lamoureaux himself stated in his deposition that he did not know he was arresting the Yis, and in fact believed that the police were arresting the Yis.¹¹⁷ Moreover, Lamoureaux did not even sign a citizen's arrest report until nearly four hours after the incident.¹¹⁸ It is illogical that Lamoureaux was focused on arresting the Yis for nearly four hours after he observed their actions. Lamoureaux's citizen's arrest of the Yis was unnecessarily delayed, thus invalidating the warrantless arrest. Indeed, to allow the police to justify a warrantless arrest by having a citizen fill out a form after the fact is tantamount to allowing the police to justify a warrantless search or seizure by seeking a warrant after the fact, something which this Court has repeatedly condemned in no uncertain terms.¹¹⁹

Likewise, this Court should also consider that Lamoureaux never showed intent to arrest. Under the intent requirement, Lamoureaux should have taken substantial action to

¹¹⁵ See Green, 137 Cal. Rptr. at 371.

¹¹⁶ See e.g., Padilla v. Meese, 229 Cal. Rptr. 310, 315 (Cal. App. 1986) (holding delegated citizen's arrest valid where citizen told drunk driver to pull over and waited with him for the arrival of the police).

¹¹⁷ Exc. 257.

¹¹⁸ Exc. 78-84.

¹¹⁹ See Woods & Rohde, Inc. v. State, Dept. of Labor, 565 P.2d 138, 149 (Alaska 1977).

further the arrest of the Yis. California requires that citizens actively involve themselves in delegated arrests, rather than simply calling the police and leaving them to proceed independently.¹²⁰ Moreover, Moxie speaks of the officer “aiding” the citizen and of the officer as the “agent” of the arresting citizen.¹²¹ This language implies that the citizen should be the decision-maker and driving force behind the arrest. Moxie refers to the scope of the delegation in terms of physical tasks: to “subdue, control, and transport the arrestee into the formal custody of the state.”¹²² Moxie further notes that these duties are not the “sole responsibility of a person making a citizen’s arrest . . .”¹²³ This language does not completely relieve the citizen of any arrest responsibilities and does not allow the police to take over a situation entirely. Consistent with this language, Lamoureux should have taken on responsibility for the Yis’ arrest by directing the actions of the police, thus showing the kind of “intent” required by California courts to make a valid delegated citizen’s arrest. Applying California’s intent requirement in Alaska is consistent with Moxie and would serve to protect Alaska’s warrant requirement.

Officer Merideth did not have the authority, and knew he did not have the authority to arrest the Yis without a warrant. Thus, Officer Merideth attempted to pass off the arrest of the Yis as a valid citizen’s arrest by Max Lamoureux, presumably to cover up any liability Officer Merideth faced for falsely arresting the Yis. However, contrary to Officer Merideth’s assumed presumptions, the evidence clearly establishes that Lamoureux’s citizen’s arrest was invalid under both Alaska law and the California

¹²⁰ See Richards, 140 Cal. Rptr. at 160.

¹²¹ See Moxie, 662 P.2d at 991.

¹²² See id.

¹²³ Id.

law that is consistent with Alaska precedent. Accordingly, this Court should find that the citizen's arrest of the Yis was invalid. Because the citizen's arrest was invalid, this Court should also find that Officer Merideth violated both the Alaska law prohibiting false arrest and 42 USC §1983.

II. Officer Merideth Violated Both The Alaska Law And 42 USC §1983 When He Falsely Arrested Yong Yi.

A. The State-Law Tort Claim

The elements of the false arrest tort are (1) a restraint upon the plaintiff's freedom; (2) without proper legal authority.¹²⁴ In the present case, it is undisputed that Yong Yi's and Kenny Yi's freedom was restrained when they were handcuffed and transported to Fairbanks Correctional Center by Fairbanks police officers.¹²⁵ Yong Yi asserts that because Lamoureaux's citizen's arrest was invalid -- as indicated in Section I. of this brief -- the restraint upon the Yis' freedom was executed without legal authority. The Yis were thus falsely arrested by Fairbanks Police Officer Merideth because he did not have the legal authority to arrest the Yis.

B. Section 1983 Claim Against Officer Merideth.

Yong Yi also asserts that Officer Merideth violated his and Kenny Yi's civil rights when, acting under color of state law, Officer Merideth subjected the Yis to a warrantless arrest.

¹²⁴ Waskey v. Municipality of Anchorage, 909 P.2d 342, 345 (Alaska 1996) (citing Hazen v. Municipality of Anchorage, 718 P.2d 456, 461 (Alaska 1986)).

¹²⁵ Exc. 51-52.

To sustain an action under §1983, Yi must show: “(1) that the conduct complained of was committed by a person acting under color of state law and (2) that the conduct deprived [them] of a [federal] constitutional right.”¹²⁶ Yi asserts that he made out a prima facie case under §1983, showing that Officer Merideth acted under color of state law and deprived him of his Fourth Amendment right to be free from unreasonable searches and seizures by arresting him without a warrant, and without any circumstances creating an exception to the warrant requirement. Since Lamoureaux’s citizen’s arrest was invalid, Alaska law did not authorize Officer Merideth to arrest Yong Yi; thus, the arrest was a per se violation of Yi’s Fourth Amendment rights.

III. Because Officer Merideth Did Not Have The Discretion To Arrest Yong Yi And Kenny Yi On Misdemeanor Charges, The Trial Court Erred When It Held That Officer Merideth Was Entitled To Qualified Immunity.

In the Motion for Summary Judgment, Officer Merideth asserted that he was entitled to qualified immunity as to Plaintiffs’ §1983 false arrest claim.¹²⁷ Although Officer Merideth did not assert he was entitled to immunity as to the state-law false arrest tort claim, the trial court nevertheless held that Officer Merideth was entitled to qualified immunity under both the §1983 claim and the state-law false arrest tort claim.¹²⁸ Yong Yi insists that his §1983 and state false arrest claims were established by the evidence; Officer Merideth arrested the Yis without a warrant and Officer Merideth lacked the

¹²⁶ Crawford v. Kemp, 139 P.3d at 1255 n.10.

¹²⁷ Exc. 56-57.

¹²⁸ Tr. at 17-18; Exc. 292-293.

authority to make the arrest because he neither witnessed the Yis' actions nor acted pursuant to a valid citizen's arrest.

A. The State-Law Tort Claim

Again, in the present case, it is undisputed that Yong Yi's freedom was restrained when he was handcuffed and transported to Fairbanks Correctional Center by Fairbanks police officers,¹²⁹ and the restraint upon his freedom was executed without legal authority. Fairbanks Police Officer Merideth thus falsely arrested Yi under Alaska tort law because he did not have the legal authority to arrest Yi.

Alaska courts follow the Aspen Exploration Corp. v. Sheffield test for official immunity from a state-law tort claim.¹³⁰ The test asks three questions:

First, does the doctrine of official immunity apply to the [government's] official conduct? Second, if it does apply, is the immunity absolute or qualified? And third, if it is only a qualified immunity, did the [government] official act corruptly, maliciously, or in bad faith?¹³¹

(1) Does the doctrine of official immunity apply to the officer's conduct?

In answering the Aspen test's first question, this Court has stated that "official immunity applies to an official's conduct if (1) it is within the scope of the official's authority, and (2) it is a discretionary act."¹³² Yi asserts that these requirements are absent here because Officer Merideth lacked the authority to arrest them. While ordinarily making an arrest is within the scope of an officer's authority,¹³³ if an individual commits a misdemeanor outside the presence of an officer, it is illegal for that officer to

¹²⁹ Exc. 51-52.

¹³⁰ See Aspen Exploration Corp. v. Sheffield, 739 P.2d 150 (Alaska 1987).

¹³¹ Alpine Indus., Inc. v. Feyk, 22 P.3d 445, 447-48 (Alaska 2001).

¹³² Id. at 448.

¹³³ See Prentzel, 169 P.3d at 584.

arrest the individual without a warrant. Officer Merideth was fully aware that he could not arrest the Yis on misdemeanor charges since their actions were not committed in his presence.¹³⁴ If the Yis were to be arrested, Officer Merideth knew that a witness to the events would have to place the Yis under “citizen’s arrest.” However, as explained in the foregoing, Max Lamoureaux’s “citizen’s arrest” was illegal and invalid. Thus, Officer Merideth did not abuse any discretion that he had to arrest the Yis; rather, he lacked the authority to arrest the Yis. Moreover, Officer Merideth did not have any discretion to arrest for misdemeanor actions he did not witness. The first prong of the Aspen test cannot be satisfied, and the inquiry ends here. The official immunity doctrine does not apply to Officer Merideth’s conduct. Nevertheless, assuming arguendo that immunity does apply to the officer’s conduct, the Court must then analyze the other prongs of the Aspen test.

(2) Does absolute or qualified immunity apply to the officers’ conduct?

The second question of the Aspen test asks whether the immunity should be absolute or qualified.¹³⁵ The trial court held that Officer Merideth and the City of Fairbanks were entitled to qualified immunity.¹³⁶

To determine whether immunity is absolute or qualified, the Court must balance three factors:

- (i) The nature and importance of the function that the officer performed to the administration of government (i.e. the importance to the public that this function be performed; that it be performed correctly; that it

¹³⁴ Exc. 206-207, 219.

¹³⁵ Aspen, 739 P.2d at 159.

¹³⁶ Tr. at 17-18; Exc. 292-293.

- be performed according to the best judgment of the officer unimpaired by extraneous matters);
- (ii) The likelihood that the officer will be subjected to frequent accusations of wrongful motives and how easily the officer can defend against these allegations; and
 - (iii) The availability to the injured party of other remedies or other forms of relief (i.e. whether the injured party can obtain some other kind of judicial review of the correctness or validity of the officer's action).¹³⁷

On balance, it is clear that qualified immunity rather than absolute immunity should apply to Officer Merideth's conduct at issue here. First, it is of great societal importance that officers perform their arrest authority correctly so that society is not subject to random or arbitrary warrantless arrests. Second, arresting officers could likely be subject to frequent accusations of wrongful motives when performing their law enforcement duties. And third, under qualified immunity, relief would be available to Yi if he can show that Officer Merideth acted corruptly, maliciously, or in bad faith.

(3) Did the officer act corruptly, maliciously, or in bad faith?

Yi asserts that Officer Merideth is additionally not entitled to immunity because his conduct was corrupt, malicious, and/or in bad faith. It is evident that Officer Merideth did not do everything he could to ensure that the arrest of the Yis was appropriate. Officer Merideth did not witness the Yis' actions, so he knew he could not arrest the Yis on misdemeanor charges. Accordingly, Officer Merideth acknowledged that the only way to arrest the Yis was via citizen's arrest by Max Lamoureaux. However, Lamoureaux claimed that he did not know that he was arresting the Yis. Specifically, Lamoureaux testified that he "didn't know I was actually making the

¹³⁷ Aspen, 739 P.2d at 159-60.

arrest.”¹³⁸ Lamoureaux further stated, “I didn’t know that I had the sole discretion in arresting them.”¹³⁹ Lamoureaux also stated that he believed the police were arresting the Yis, and believed that he was merely signing a statement as to the events he witnessed.¹⁴⁰ In fact, Lamoureaux signed the statement approximately four hours after the incident occurred.¹⁴¹ Moreover, Officer Merideth testified that he does not recollect ever explaining citizen’s arrest to Lamoureaux, and does not remember explaining to the other officer that the arrest was a citizen’s arrest by Lamoureaux.¹⁴² The fact that Lamoureaux signed the citizen’s arrest form so long after the arrest is evidence that Officer Merideth knew he needed to justify the arrest, and attempted to cover up his failure to do so by utilizing Lamoureaux long after the arrest had taken place.

In light of the three-factor Aspen analysis, this Court should reverse the superior court’s summary judgment decision adopting qualified immunity as a ground for dismissing Yi’s state-law tort claims against Officer Merideth. Officer Merideth clearly violated Yi’s rights when he falsely arrested Yi and should not be entitled to immunity in view of his actions at the time and his subsequent cover-up.

B. Section 1983 Claim Against Officer Merideth.

Yi also asserts that the superior court erred when it held that Officer Merideth was immune from Yi’s claim that Officer Merideth’s actions violated 42 USC §1983. Yi

¹³⁸ Exc. 257.

¹³⁹ Exc. 257.

¹⁴⁰ Exc. 257.

¹⁴¹ Exc. 78-84.

¹⁴² Exc. 206, 219-220.

asserts that Officer Merideth violated his civil rights when, acting under color of state law, he subjected Yi to a warrantless arrest.

Under federal law governing constitutional claims brought under §1983, “a law enforcement officer is entitled to qualified immunity if, in light of clearly established law and the information available to the officer at the time, a reasonable officer could have believed the arrest was lawful.”¹⁴³ “The law is ‘clearly established’ if the contours of the right are sufficiently clear that a reasonable official would understand that his actions violate that right.”¹⁴⁴ The United States Supreme Court has held that officers must be granted immunity under this standard when they are reasonably mistaken as to the legality of their actions.¹⁴⁵ In other words, “[i]f the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate.”¹⁴⁶

It is undisputed that Officer Merideth knew he could not arrest the Yis without a warrant,¹⁴⁷ and that to arrest the Yis, a witness to the Yis' actions would have to perform a citizen's arrest. However, it is clear from the foregoing that Max Lamoureux's citizen's arrest is invalid. Officer Merideth thus did not have the authority to arrest the Yis and accordingly is not entitled to immunity under §1983.

¹⁴³ Crawford, 139 P.3d at 1255; see also Tr. at 18; Exc. 293.

¹⁴⁴ Id., 139 P.3d at 1255 (quoting Van Sandt v. Brown, 944 P.2d 449, 452 (Alaska 1997)) (internal quotation marks omitted).

¹⁴⁵ Saucier v. Katz, 533 U.S. 194, 206 (2001).

¹⁴⁶ Id. at 202.

¹⁴⁷ Exc. 206-207, 219.

In general, “a violation of state law does not lead to liability under §1983.”¹⁴⁸ Thus, a violation of AS 12.25.030 -- the Alaska arrest statute that limits warrantless misdemeanor arrests -- does not by itself establish a per se violation of the federal constitution. To defeat an officer’s claim of qualified immunity, the Yis must instead show that Officer Merideth’s warrantless arrest amounted to a violation of the Fourth Amendment under clearly established federal law governing that amendment’s meaning and scope.

The United States Supreme Court’s decision in Atwater v. City of Lago Vista,¹⁴⁹ controls the point. In Atwater, the claimant challenged the constitutionality of her arrest for violating a Texas law by failing to use a seatbelt to protect a child seated in the right front passenger seat Atwater’s car. Relying on “founding-era common-law rules,” Atwater urged the Supreme Court to hold that the Fourth Amendment’s prohibition against unreasonable seizures forbids peace officers from making warrantless misdemeanor arrests except in cases of “breach of peace” -- that is, offenses involving or tending toward violence.¹⁵⁰ The Supreme Court rejected this argument, holding that “[if] an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”¹⁵¹

¹⁴⁸ Campbell v. Burt, 141 F.3d 927, 930 (9th Cir. 1998) (citing Davis v. Scherer, 468 U.S. 183, 194 (1984) (“Officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision.”)).

¹⁴⁹ 532 U.S. 318 (2001).

¹⁵⁰ Id. at 326-27.

¹⁵¹ Id. at 354 (emphasis added).

In Prentzel, this Court determined that given Atwater's holding that the Fourth Amendment is not implicated when police make warrantless arrests for minor offenses, it follows that the police officer's failure to comply with AS 12.25.030 cannot by itself establish that the defendant's arrest violated the Fourth Amendment; instead, the test is that an officer must have probable cause to believe that an individual has committed an offense in the officer's presence.¹⁵² However, it is clear that not only did Officer Merideth fail to comply with AS 12.25.030, he also did not have probable cause to think the Yis were committing a crime because Officer Merideth did not witness the Yis' alleged actions.¹⁵³

Even if Officer Merideth's investigation after-the-fact could have established probable cause for the Yis' arrest, including the interviews of Max Lamoureaux and other witnesses, it is clear that at the pivotal moments of the investigation, Officer Merideth did not turn on the micro cassette recorder available on his person.¹⁵⁴ As the Fourth Circuit has observed:

To draw an adverse inference from the absence, loss or destruction of evidence, it would have to appear that the evidence would have been relevant to an issue at trial and otherwise would naturally have been introduced into evidence. Even the mere failure, without more, to produce evidence that naturally would have elucidated a fact at issue permits an inference that the party fears to produce the evidence; and this fear is some

¹⁵² Prentzel, 169 P.3d at 588-89. It follows that for the purposes of determining whether Officer Meredith falsely arrested Yi, the Alaska Constitution provides at least as great, if not greater, safeguards against false arrest. See Woods & Rohde, Inc., 565 P.2d at 148-49.

¹⁵³ See Prentzel, 169 P.3d at 588-89.

¹⁵⁴ Exc. 204.

evidence that the circumstance or document or witness, if brought, would have exposed facts unfavorable to the party.¹⁵⁵

Accordingly, the Court must infer at a minimum that the absent recording would be favorable to Yi.¹⁵⁶ This is especially so in the summary-judgment posture of this case, where all reasonable inferences must be drawn in Yi's favor.¹⁵⁷

IV. The Trial Court Erred When It Held That The City Of Fairbanks Was Entitled To Immunity.

A. Section 1983 Claims Against The City Of Fairbanks

1. Fourth Amendment Claims

Yi asserts that the City should have been held liable under §1983 for Yi's false arrest and for the deprivation of Yi's property, including the leased premises and his personal property, among which was cash, on the premises.

A municipality is a "person" subject to liability under §1983.¹⁵⁸ A municipality cannot, however, be held liable under §1983 on a theory of vicarious liability; it can only be held liable when it was the wrongdoer.¹⁵⁹ The United States Supreme Court has explained:

Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable

¹⁵⁵ Vodusek v. Bayliner Marine Corp., 71 F.3d 148, 156 (4th Cir. 1995) (quotation, citation, and brackets omitted).

¹⁵⁶ See Thorne v. Dept. of Public Safety, 774 P.2d 1326, 1330-31 (Alaska 1989); see also Stephan v. State, 711 P.2d 1156, 1159-63 (Alaska 1985) (discussing the duty of the police to record questioning of persons).

¹⁵⁷ See Crawford, 139 P.3d at 1253.

¹⁵⁸ Hildebrandt v. City of Fairbanks, 957 P.2d 974, 976 (Alaska 1998) (citing Monell v. Dept. of Soc. Servs. of City of N.Y., 436 U.S. 658, 690-91 (1978)).

¹⁵⁹ Id. (citing Collins v. City of Harker Heights, Tex., 503 U.S. 115, 122 (1992)).

solely because it employs a tortfeasor -- or, in other words, a municipality cannot be held liable under §1983 on a respondeat superior theory.¹⁶⁰

In other words, a municipality may be directly responsible under §1983 when an employee executes a governmental policy or custom that inflicts constitutional injury.¹⁶¹ A municipality may also face liability under §1983 for “constitutional violations resulting from its failure to train municipal employees.”¹⁶² The United States Supreme Court, however, has carefully circumscribed municipalities’ potential liability; not all possibly injurious failures to train will give rise to liability under §1983.¹⁶³ The Court has stated:

[I]f a city employee violates another’s constitutional rights, the city may be liable if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation. In particular, we held that the inadequate training of police officers could be characterized as the cause of the constitutional tort if -- and only if -- the failure to train amounted to “deliberate indifference” to the rights of persons with whom the police come into contact.¹⁶⁴

Thus, a successful §1983 claim for municipal liability for failure to train has several key elements: A plaintiff must show that his or her constitutional rights have been violated; the municipality must have had a policy that constitutes deliberate indifference to the plaintiff’s constitutional rights; and the policy must have been the cause of the constitutional violation.¹⁶⁵

The evidence establishes that Yi suffered a constitutional deprivation when Fairbanks Police Officer Merideth falsely arrested him. The City has a policy and/or

¹⁶⁰ Monell, 436 U.S. at 691.

¹⁶¹ Id. at 694.

¹⁶² City of Canton, Ohio v. Harris, 489 U.S. 378, 380 (1989).

¹⁶³ Collins, 503 U.S. at 123.

¹⁶⁴ Id. at 123-24.

¹⁶⁵ See Canton, 489 U.S. at 389-90.

custom of taking people into custody on the basis of a citizen's arrest when the facts support a finding that the crime complained of was committed in the presence of the citizen making the arrest and when the facts support a finding that there is probable cause to believe that the crime was committed by the person accused.¹⁶⁶ In other words, the City "has a policy of following the laws of the State of Alaska."¹⁶⁷ However, on the morning of December 19, 2004, this policy was not followed. The failure to train, or the inadequate training of Officer Merideth by the City of Fairbanks, amounted to "deliberate indifference" to the right of the Yis to be free from warrantless misdemeanor arrests. Officer Merideth knew he could not arrest the Yis without a warrant, so he disguised the arrest as a citizen arrest by Lamoureaux. More thorough training on appropriately following the laws of the State of Alaska should have been provided to Fairbanks police officers by the City of Fairbanks.

Moreover, it appears that Officer Merideth was in fact executing an unconstitutional policy or custom of the City of Fairbanks. Officer Merideth himself testified that he was following established City policy and procedure,¹⁶⁸ and the City did not dispute that testimony but instead merely asserted that Officer Merideth's actions were a proper citizen's arrest.¹⁶⁹

2. Due Process Claims

In addition, the evidence establishes that Yong Yi suffered a constitutional deprivation of property when the City of Fairbanks denied him and his agents and

¹⁶⁶ Exc. 61.

¹⁶⁷ Id.

¹⁶⁸ Exc. 206-207.

¹⁶⁹ Exc. 60-61, 109-110.

employees access to the bar and restaurant at the time of arrest to secure personal property, including cash.

In their Opposition to the City's Motion for Summary Judgment, Yi relied on King v. Massarweh,¹⁷⁰ to support his property deprivation claim. The facts in King are similar to the facts in the present case in that the landlord called police officers to the tenants' apartments, entered, arrested the tenants, and personal property was seized.¹⁷¹ Additionally, the landlord changed the locks on the tenants' property.¹⁷² The Ninth Circuit overturned the trial court's summary judgment dismissing the police officers and instead found them liable under §1983. The conduct of the police officers appeared to have been random and unauthorized, contrary to established state procedures, and in response to the landlord's call.¹⁷³

Likewise, in this case, the City of Fairbanks acted contrary to established State procedures regarding civil standbys. The dispatcher was very clear as to what that policy was: Harris Yang, or his agents, would have to produce to the police, a court order of eviction and a writ of assistance before an officer could be available for a civil standby.¹⁷⁴ However, Officer Merideth clearly testified that he lacked familiarity with the policy other than he was supposed to keep the peace.¹⁷⁵ Apparently, Officer Merideth's actions were consistent with City policy; however, as mentioned in the foregoing, the City has a policy of following the laws of the State of Alaska, and he should have followed State

¹⁷⁰ King v. Massarweh, 782 F.2d 825 (9th Cir. 1986).

¹⁷¹ Id. at 826.

¹⁷² Id.

¹⁷³ Id. at 827.

¹⁷⁴ Exc. 64-66.

¹⁷⁵ Exc. 200-201.

civil standby procedures. In this case, the City's failure to train Officer Merideth in the proper civil standby procedures resulted in the unconstitutional deprivation of Yong Yi's property rights.

Accordingly, the City is liable to Yi under §1983 for Yi's false arrest by Officer Merideth and for the deprivation of Yi's property rights.

B. The City's Liability Under Respondeat Superior

In its motion for summary judgment, the City of Fairbanks asserted that respondeat superior was not a permissible theory for holding a local governmental body liable for constitutional violations of its employees.¹⁷⁶ However, because Officer Merideth also committed a tort against Yi, in addition to the officer's §1983 violation, the City of Fairbanks is liable to Yi because Officer Merideth's tortious acts were within the scope of his employment with the City.

The legal principles governing the question whether the City is liable in this case are straightforward. A master is liable for the torts of a servant committed while the servant is acting in the scope of his employment.¹⁷⁷ This liability covers both negligent and intentional torts.¹⁷⁸ The basis for charging a master with his servant's torts is the concept that a business should pay for the losses that it causes.¹⁷⁹ The foundation for the City's liability is "the desire to include in the costs of operation inevitable losses to third

¹⁷⁶ Exc. 60.

¹⁷⁷ Williams v. Alyeska Pipeline Serv. Co., 650 P.2d 343, 349 (Alaska 1982) (citing Kastner v. Toombs, 611 P.2d 62, 63 (Alaska 1980)).

¹⁷⁸ Id. (citing Restatement (Second) of Agency §245 (1958)).

¹⁷⁹ Id. at 349

persons incident to carrying on an enterprise, and thus distribute the burden among those benefitted by the enterprise."¹⁸⁰

Of course not every tort of a person who also happens to be an employee is chargeable to his employer: "The acts of the employee need be so connected to his employment as to justify requiring that the employer bear that loss . . . Employees' acts sufficiently connected with the enterprise are in effect considered as deeds of the enterprise itself."¹⁸¹ The determination as to when an employee's tort will be attributed to the employer depends primarily on the facts and circumstances of each case.¹⁸²

With these principles in mind we turn to the question of whether Officer Merideth's acts were sufficiently associated with the City to justify imposing liability on the City, that is, whether his tortious acts were committed within the scope of his employment as a City police officer. As a police officer for the City of Fairbanks, Officer Merideth did not have the authority to arrest anyone for misdemeanors committed outside of his presence without a warrant. Officer Merideth arrested the Yis without a warrant during Officer Merideth's working hours, and Officer Merideth was motivated, at least in part, to serve the purposes of the Fairbanks Police Department. Because Officer Merideth committed the tort of false arrest against the Yis within the scope of his employment with the City, the City should be held vicariously liable for Officer Merideth's conduct.¹⁸³

¹⁸⁰ Id. at 349 (quoting Kastner, 611 P.2d at 63); see also Fruit v. Schreiner, 502 P.2d 133, 141 (Alaska 1972).

¹⁸¹ Fruit, 502 P.2d at 141.

¹⁸² Williams, 650 P.2d at 349.

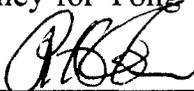
¹⁸³ See State v. Will, 807 P.2d 467, 471 (Alaska 1991).

CONCLUSION

For the reasons stated, the Court should reverse the superior court's granting of Officer Merideth's and the City of Fairbanks' Motion for Summary Judgment and should instead hold that Officer Merideth and the City are liable for falsely arresting Yong Yi and for violating Yi's constitutional rights. Yong Yi respectfully prays that the Court so order.

RESPECTFULLY SUBMITTED this 15th day of December, 2010.

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