SUPREME COURT OF THE UNITED STATES

No. 92–833

KEVIN ALBRIGHT, PETITIONER *v.* ROGER OLIVER, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[January 24, 1994]

CHIEF JUSTICE REHNQUIST announced the judgment of the Court and delivered an opinion, in which JUSTICE O'CONNOR, JUSTICE SCALIA, and JUSTICE GINSBURG joined.

A warrant was issued for petitioner's arrest by Illinois authorities, and upon learning of it he surrendered and was released on bail. The prosecution was later dismissed on the ground that the charge did not state an offense under Illinois law. Petitioner asks us to recognize a substantive right under the Due Process Clause of the Fourteenth Amendment to be free from criminal prosecution except upon probable cause. We decline to do so.

This case comes to us from a decision of the Court of Appeals for the Seventh Circuit affirming the grant of a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), and we must therefore accept the well-pleaded allegations of the complaint as true. Illinois authorities issued an arrest warrant for petitioner Kevin Albright, charging him on the basis of a previously filed criminal information with the sale of a substance which looked like an illegal drug. When he learned of the outstanding warrant, petitioner surrendered to respondent, Roger Oliver, a police detective employed by the city of Macomb, but denied his guilt of such an offense. He was released after posting bond, one of the

conditions of which was that he not leave the State without permission of the court.[1]

[1]Before the criminal information was filed, one Veda Moore, an undercover informant, had told Oliver that she bought cocaine from one John Albright, Jr., at a student hotel in Macomb. The “cocaine” turned out to be baking powder, however, and the grand jury indicted John Albright, Jr., for selling a “look-alike” substance. When Detective Oliver went to serve the arrest warrant, he discovered that John Albright, Jr., was a retired pharmacist in his sixties, and apparently realized he was on a false scent. After discovering that it could not have been the elderly Albright's son, John David, who was involved in the incident, Detective Oliver contacted Moore to see if the sale was actually made to petitioner Kevin Albright, a second son of John Albright, Jr. Moore confirmed that petitioner Kevin Albright made the sale.

At a preliminary hearing, respondent Oliver testified that petitioner sold the look-alike substance to Moore, and the court found probable cause to bind petitioner over for trial. At a later pretrial hearing, the court dismissed the criminal action against petitioner on the ground that the charge did not state an offense under Illinois law.

Albright then instituted this action under Rev. Stat. §1979, 42 U. S. C. §1983, against Detective Oliver in his individual and official capacity, alleging that Oliver deprived him of substantive due process under the Fourteenth Amendment—his "liberty interest"—to be free from criminal prosecution except upon probable cause.[2] The District Court granted respondent's motion to dismiss under Rule 12(b)(6) on the ground that the complaint did not state a claim under §1983.[3] The Court of Appeals for the Seventh Circuit affirmed, 975 F. 2d 343 (1992), relying on our decision in *Paul* v. *Davis*, 424 U. S. 693 (1976). The Court of Appeals held that prosecution without probable cause is a constitutional tort actionable under §1983 only if accompanied by incarceration or loss of employment or some other "palpable consequenc[e]." 975 F. 2d, at 346–347. The panel of the Seventh Circuit reasoned that "just as in the garden-variety public-officer defamation case that does not result in exclusion from an occupation, state tort remedies should be adequate and the heavy weaponry of constitutional litigation can be left at rest." *Id.*, at

[2]The complaint also named the City of Macomb as a defendant to the §1983 action, and charged a common-law malicious prosecution claim against Detective Oliver.

[3]The District Court also held that Detective Oliver was entitled to a defense of qualified immunity, and that the complaint failed to allege facts sufficient to support municipal liability against the city of Macomb. The District Court also dismissed without prejudice the common-law claim of malicious prosecution against Detective Oliver. These issues are not before this Court.

347.[4] We granted certiorari, 507 U. S. ___ (1993), and while we affirm the judgment below, we do so on different grounds. We hold that it is the Fourth Amendment, and not substantive due process, under which petitioner Albright's claims must be judged.

Section 1983 "is not itself a source of substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred." *Baker* v.

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[4]As noted by the Court of Appeals below, the extent to which a claim of malicious prosecution is actionable under §1983 is one "on which there is an embarrassing diversity of judicial opinion." 975 F. 2d, at 345, citing *Brummett* v. *Camble*, 946 F. 2d 1178, 1180, n. 2 (CA5 1991) (cataloging divergence of approaches by the Courts of Appeals). Most of the lower courts recognize some form of malicious prosecution action under §1983. The disagreement among the courts concerns whether malicious prosecutions, standing alone, can violate the Constitution. The most expansive approach is exemplified by the Third Circuit, which holds that the elements of a malicious prosecution action under §1983 are the same as the common-law tort of malicious prosecution. See, *e. g.*, *Lee* v. *Mihalich*, 847 F. 2d 66, 70 (CA3 1988) ("[T]he elements of liability for the constitutional tort of malicious prosecution under §1983 coincide with those of the common law tort"). See also, *Sanders* v. *English*, 950 F. 2d 1152, 1159 (CA5 1992) ("[O]ur circuit recognizes causes of action under §1983 for false arrest, illegal detention . . . and malicious prosecution" because these causes of action "implicate the constitutional `guarantees of the fourth and fourteenth amendments'. . ."); *Robinson* v. *Maruffi*, 895 F. 2d 649 (CA10 1990); *Strength* v. *Hubert*, 854 F. 2d 421, 426, and n. 5 (CA11 1988) (recognizing that "freedom from malicious prosecution is a federal right protected by §1983"). Other Circuits, however, require a showing of some injury or deprivation of a constitutional magnitude in addition to the traditional elements of common-law malicious prosecution. The exact standards announced by the courts escape easy classification. See, *e. g.*, *Torres* v. *Superintendent of Police of Puerto Rico*, 893 F. 2d 404, 409 (CA1 1990) (the challenged conduct must be "so egregious that it violated substantive or procedural due process rights under the Fourteenth Amendment"); *Usher* v. *Los Angeles*, 828 F. 2d 556, 561–562 (CA9 1987) ("[T]he general rule is

McCollan, 443 U. S. 137, 144, n. 3 (1979). The first step in any such claim is to identify the specific constitutional right allegedly infringed. *Graham* v. *Connor*, 490 U. S. 386, 394 (1989); and *Baker* v. *McCollan*, *supra*, at 140.

Petitioner's claim before this Court is a very limited one. He claims that the action of respondents infringed his substantive due process right to be free of prosecution without probable cause. He does not claim that Illinois denied him the procedural due process guaranteed by the Fourteenth Amendment. Nor does he claim a violation of his Fourth Amendment rights, notwithstanding the fact that his surrender to the State's show of authority constituted a seizure for purposes of the Fourth Amendment. *Terry* v. *Ohio*, 392 U. S. 1, 19 (1968); *Brower* v. *County of Inyo*, 489 U. S. 593, 596 (1989).[5]

We begin analysis of petitioner's claim by repeating our observation in *Collins* v. *Harker Heights*, 503 U. S.

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that a claim of malicious prosecution is not cognizable under 42 U. S. C. §1983 if process is available within the state judicial system to provide a remedy . . . [h]owever, `an exception exists to the general rule when a malicious prosecution is conducted with the intent to deprive a person of equal protection of the laws or is otherwise intended to subject a person to a denial of constitutional rights'"); *Coogan* v. *Wixom*, 820 F. 2d 170, 175 (CA6 1987) (in addition to elements of malicious prosecution under state law, plaintiff must show an egregious misuse of a legal proceeding resulting in a constitutional deprivation). In holding that malicious prosecution is not actionable under §1983 unless it is accompanied by incarceration, loss of protected status, or some other palpable consequence, the Seventh Circuit's decision below places it in this latter camp. In view of our disposition of this case, it is evident that substantive due process may not furnish the constitutional peg on which to hang such a "tort."

[5]Thus, Albright may have missed the statute of limitations for any claim he had based on an unconstitutional arrest or seizure. 975 F. 2d 343, 345 (CA7 1992). We express no opinion as to the timeliness of any such claim he might have.

___, ___ (1992) (slip op., at 9). "As a general matter, the Court has always been reluctant to expand the concept of substantive due process because the guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity. See, *e. g.*, *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. ___, ___ (1992) (slip op., at 5–6) (describing cases in which substantive due process rights have been recognized). Petitioner's claim to be free from prosecution except on the basis of probable cause is markedly different from those recognized in this group of cases.

Petitioner relies on our observations in cases such as *United States* v. *Salerno*, 481 U. S. 739, 746 (1987), and *Daniels* v. *Williams*, 474 U. S. 327, 331 (1986), that the Due Process Clause of the Fourteenth Amendment confers both substantive and procedural rights. This is undoubtedly true, but it sheds little light on the scope of substantive due process. Petitioner points in particular to language from *Hurtado* v. *California*, 110 U. S. 516, 527 (1884), later quoted in *Daniels*, *supra*, stating that the words "by the law of the land" from the Magna Carta were "`intended to secure the individual from the arbitrary exercise of the powers of government.'" This, too, may be freely conceded, but it does not follow that, in all of the various aspects of a criminal prosecution, the only inquiry mandated by the Constitution is whether, in the view of the Court, the governmental action in question was "arbitrary."

Hurtado held that the Due Process Clause did not make applicable to the States the Fifth Amendment's requirement that all prosecutions for an infamous crime be instituted by the indictment of a grand jury. In the more than 100 years which have elapsed since *Hurtado* was decided, the Court has concluded that a

number of the procedural protections contained in the Bill of Rights were made applicable to the States by the Fourteenth Amendment. See *Mapp* v. *Ohio*, 367 U. S. 643 (1961), overruling *Wolf* v. *Colorado*, 338 U. S. 25 (1949), and holding the Fourth Amendment's exclusionary rule applicable to the States; *Malloy* v. *Hogan*, 378 U. S. 1 (1964), overruling *Twining* v. *New Jersey*, 211 U. S. 78 (1908), and holding the Fifth Amendment's privilege against self-incrimination applicable to the States; *Benton* v. *Maryland*, 395 U. S. 784 (1969), overruling *Palko* v. *Connecticut*, 302 U. S. 319 (1937), and holding the Double Jeopardy Clause of the Fifth Amendment applicable to the States; *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), overruling *Betts* v. *Brady*, 316 U. S. 455 (1942), and holding that the Sixth Amendment's right to counsel was applicable to the States. See also *Klopfer* v. *North Carolina*, 386 U. S. 213 (1967) (Sixth Amendment speedy trial right applicable to the States); *Washington* v. *Texas*, 388 U. S. 14 (1967) (Sixth Amendment right to compulsory process applicable to the States); *Duncan* v. *Louisiana*, 391 U. S. 145 (1968) (Sixth Amendment right to jury trial applicable to the States).

This course of decision has substituted, in these areas of criminal procedure, the specific guarantees of the various provisions of the Bill of Rights embodied in the first 10 Amendments to the Constitution for the more generalized language contained in the earlier cases construing the Fourteenth Amendment. It was through these provisions of the Bill of Rights that their Framers sought to restrict the exercise of arbitrary authority by the Government in particular situations. Where a particular amendment "provides an explicit textual source of constitutional protection" against a particular sort of government behavior, "that Amendment, not the more generalized notion of `substantive due process,' must be the guide for

analyzing these claims." *Graham* v. *Connor*, 490 U. S., at 395.[6]

We think this principle is likewise applicable here. The Framers considered the matter of pretrial deprivations of liberty, and drafted the Fourth Amendment to address it. The Fourth Amendment provides:

"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."

We have in the past noted the Fourth Amendment's relevance to the deprivations of liberty that go hand in hand with criminal prosecutions. See *Gerstein* v. *Pugh*, 420 U. S. 103, 114 (1975) (holding that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to any extended restraint on liberty following an arrest). We have said that the accused is not "entitled to judicial oversight

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[6]Justice STEVENS' dissent faults us for ignoring, *inter alia*, our decision in *In re Winship*, 397 U. S. 358 (1970). *Winship* undoubtedly rejected the notion that all of the required incidents of a fundamentally fair trial were to be found in the provisions of the Bill of Rights, but it did so as a matter of procedural due process: "`This notion [that the government must prove the elements of a criminal case beyond a reasonable doubt]—basic in our law and rightly one of the boasts of a free society—is a requirement and a safeguard of due process of law in the historic, procedural content of "due process."'" *Id.*, at 362, quoting *Leland* v. *Oregon*, 343 U. S. 790, 802–803 (1952) (Frankfurter, J., dissenting).

Similarly, other cases relied on by the dissent, including *Mooney* v. *Holohan*, 294 U. S. 103 (1935), *Napue* v. *Illinois*, 360 U. S. 264 (1959), *Brady* v. *Maryland*, 373 U. S. 83 (1963), *Giglio* v. *United States*, 405 U. S. 150 (1972), and *United States* v. *Agurs*, 427 U. S. 97 (1976), were accurately described in the latter opinion as "dealing with the defendant's right to a fair trial mandated by the Due Process Clause of the Fifth Amendment to the Constitution." *Id.,* at 107.

or review of the decision to prosecute." *Id.*, at 118–119. See also *Beck* v. *Washington*, 369 U. S. 541, 545 (1962); *Lem Woon* v. *Oregon*, 229 U. S. 586 (1913). But here petitioner was not merely charged; he submitted himself to arrest.

We express no view as to whether petitioner's claim would succeed under the Fourth Amendment, since he has not presented that question in his petition for certiorari. We do hold that substantive due process, with its "scarce and open-ended" "guideposts," *Collins* v. *Harker Heights*, 503 U. S., at ___ (slip op., at 9), can afford him no relief.[7]

The judgment of the Court of Appeals is therefore

Affirmed.

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[7]Petitioner appears to have argued in the Court of Appeals some variant of a violation of his constitutional right to interstate travel because of the condition imposed upon him pursuant to his release on bond. But he has not presented any such question in his petition for certiorari, and has not briefed the issue here. We therefore do not consider it.