

SUPREME COURT LIVE

December 5, 2011
Lathrop High School

ORAL ARGUMENT CASE SUMMARY

Yong H. Yi, Appellant, v.

Harris S. Yang, Sharon Yang, Max Arthur Lamoureaux, Y & I Corporation,
Officer Lawrence Peyton Merideth, and the City of Fairbanks, Appellees.

Supreme Court No. S-13427

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ATTORNEYS

- *Attorney for the Appellant, Yong H. Yi:*

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- *Attorneys for Appellees, Lawrence Payton Merideth & City of Fairbanks:*

Paul J. Ewers, City Attorney, City of Fairbanks, Fairbanks

QUESTIONS PRESENTED ON APPEAL

Did the trial court err in dismissing Yi's claims for **false arrest/imprisonment** and **civil rights violations** against Officer Merideth and the City of Fairbanks?

1. Was **summary judgment** appropriate on the issue of whether Officer Merideth is entitled to official **qualified immunity**?
 - a. Do "genuine issues of material fact" exist on Yi's claim that Officer Merideth arrested him in violation state law, thus committing the tort of **false arrest/imprisonment**?
 - b. Do "genuine issues of material fact" exist on Yi's claim that Officer Merideth's conduct deprived him of his rights under the Fourth Amendment to the U.S. Constitution to be free from **unreasonable searches and seizures**?
 - c. Do "genuine issues of material fact" exist on Yi's claim that Officer Merideth knew that his arrests of the Yis were invalid, thus defeating the officer's claim for **qualified immunity**, which is

available only to officers who reasonably believe that their conduct is lawful?

2. Was **summary judgment** appropriate on the issue of whether the City of Fairbanks was entitled to official immunity?

MAJOR AUTHORITIES TO CONSIDER

U.S. Constitution

- **Amendment IV.** Unreasonable Searches & Seizures.

U. S. Statutes

- **42 USC §1983.** Civil action for deprivation of rights.

Alaska Statutes

- **AS 09.65.070.** Suits against incorporated units of local government.
- **AS 12.25.010.** Persons authorized to arrest.
- **AS 12.25.030.** Grounds for arrest by private person or peace officer without warrant.
- **AS 12.25.160.** Arrest defined.

Alaska Supreme Court Case Law

- ***Moxie v. State***, 662 P.2d 990 (Alaska App. 1983).
- ***Waskey v. Municipality of Anchorage***, 909 P.2d 342, 345 (Alaska 1996).

Other Authorities

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

SUMMARY OF THE CASE

Y & I Corporation, principally owned by Harris S. and Sharon Yang, owned and operated the Klondike Inn and Klondike Inn Restaurant and Bar in Fairbanks. On September 10, 2004, they leased the Restaurant and Bar portion of the business to Yong H. Yi. The lease agreement authorized Yi to operate the Klondike's food and alcohol business under the existing liquor license, which was in Harris Yang's name. The Yongs continued to operate the Klondike Inn portion of the business, which was across the street from the restaurant and bar.

Almost immediately, the relationship between Yi and the Yongs began to deteriorate. By October, the Yongs claimed Yi had breached the lease by not paying for the food and alcohol inventory, and they threatened to shut down the restaurant. Harris Yang allegedly entered the restaurant and yelled at customers

and employees during the lunch hour, then assaulted Kenny Yi, Yong Yi's brother. By November, both parties learned that it was unlawful for Yi to operate the Klondike's bar without his own liquor license. Several weeks of correspondence and meetings between the parties failed to secure a transfer of the liquor license to Yi, and tensions escalated. Harris Yang allegedly came into the restaurant again, yelling and assaulting Kenny Yi. The disagreements eventually led the Yi family to file a lawsuit in early December 2004 against the Yangs and Y & I Corporation, alleging breach of contract, fraud, and other claims related to their business dealings.

The events relevant to this appeal occurred soon after the lawsuit was filed, on the morning of December 19, 2004. Harris Yang sought to evict Yi from the Klondike Restaurant and Bar by sending two associates to post an eviction notice, remove the liquor license, and post closed signs in the windows. He also hired a locksmith to change the locks. One of the associates, Max Lamoureux, was seen leaving the premises by Hyong Yi, wife of Yong Yi, who did not recognize Lamoureux and assumed he was trying to break into the restaurant. Hyong Yi called Yong Yi, Kenny Yi, and another relative to alert them to the situation. The Yi brothers soon arrived on the scene and Lamoureux was pointed out to them as he walked toward a white truck that was parked at the inn across the street from the restaurant and bar. The Yi brothers tried to stop Lamoureux from leaving by jumping into and in front of the white truck he was driving. Kenny Yi used a broom stick to break the back windows and jab at Lamoureux and his passenger; Yong Yi threw a heavy object at the truck, shattering the front windows. A woman identified as Hyong Yi, Yong Yi's wife, drove a silver mini-van in front of the truck, then ran the van into the side of the truck in an effort to stop it. Some witnesses describe Lamoureux as continuing to drive away, trying to run the Yis over.

At about 9:30 AM, the Fairbanks Police Department received a series of 911 calls from the scene, and four officers were dispatched to respond. Officer Lawrence Peyton Merideth interviewed Max Lamoureux and several witnesses from the Klondike Inn, then observed the shattered windows of Lamoureux's pick-up truck. Lamoureux identified Yong Yi and Kenny Yi as the men who had shattered the windows and attacked him. Officer Merideth then walked over to Yong Yi and Kenny Yi, who were across the street near the restaurant and bar, and informed them that they were under arrest. They were handcuffed, placed in patrol cars, and taken to Fairbanks Correctional Center.

On December 19, Max Lamoureux signed "Citizen's Arrest Report(s)" for Yong Yi and Kenny Yi, charging them with the offenses of Assault IV and Criminal Mischief IV, both misdemeanors. The time notations on the reports were "1312" (1:12 PM) and "1320" (1:20 PM), respectively—about four hours after the arrests.

PROCEEDINGS BELOW

After the events of December 19, 2004, the Yis amended their lawsuit to, among other changes, add claims against Officer Merideth and the City of Fairbanks. They alleged that the arrests of Yong Yi and Kenny Yi were “false arrests” under state law and deprived them of their civil rights under federal law. In February 2007, Merideth and the City filed a Motion for Summary Judgment, asking that the claims against them be dismissed based on official immunity. In April 2008, the superior court granted their Motion for Summary Judgment. The issues in this appeal center on whether it was proper for the trial court to dismiss the claims against Officer Merideth and the City of Fairbanks.¹

LEGAL ISSUES GENERALLY

(1) Summary Judgment

In most circumstances, parties to a lawsuit have the right to trial by a jury of their peers on the factual disputes in their case. Jurors hear the testimony of witnesses and other evidence presented and render a decision on what they believe occurred. However, sometimes a lawsuit can be resolved without a trial—through an outcome known as “summary judgment.” To be granted summary judgment, the party seeking it (the “movant”) must demonstrate that there are no “genuine issues of material fact” in the case, and that it can be resolved as a matter of law. Because granting summary judgment prevents the non-moving party from having their day in court on the factual issues, the trial court must “view all facts and draw all reasonable inferences in the light most favorable to the party against whom judgment was entered.”²

Yi’s Position. Yi is entitled to a jury trial because “genuine issues of material fact” exist on each of his major claims, which are described in detail below. Such factual questions are for the jury to weigh and decide, and the trial court erred by substituting its judgment of the facts for the jury’s role. The jury, not the judge, should weigh the credibility of parties and witnesses. The jury, not the judge, should consider the totality of the evidence and decide what likely happened. By granting summary judgment and dismissing his case, the judge has deprived him of his day in court before a jury of his peers.

¹ The lawsuit went to trial on remaining claims in July 2008. The jury made a number of decisions that are set forth in the trial court’s Findings of Fact and Conclusions of Law dated December 8, 2008. (Exc. 279-281) These include findings that the Yangs owe Yong Yi \$78,564.33 for money paid under the lease, improvements to the premises, and money and personal property at the premises that was not returned to them. They also include findings that Harris Yang had assaulted Kenny Yi; that the Yis efforts to restrain Max LaMooureux were not reasonable, even though they reasonably believed he had damaged their property; and that Max LaMooureux reasonably believed that he had been assaulted by Yong Yi and Kenny Yi. (Exc. 280-281) None of these findings are challenged on appeal.

² *Crawford v. Kemp*, 139 P.3d 1249, 1253 (Alaska 2006).

Merideth & City’s Position. Officer Merideth and the City should not be required to go to the expense and effort of a trial because they are entitled to official immunity and there are no “genuine issues of material fact” on the issues relevant to their immunity claims. Yi offers a conflicting version of the circumstances of the arrest, but no credible evidence to refute the criteria for immunity. Even taken in the light most favorable to Yi, the evidence does not show conduct by Merideth or the City that is outside the scope of their authority or that plainly disregards the laws and responsibilities by which they are bound. Summary judgment on the immunity question—which effectively dismisses them from the case—is appropriate.

(1)(a) False Arrest/Imprisonment (State Law Tort Claim)

Alaska Statute (AS) 12.25.030 authorizes “a private person or a peace officer without a warrant (to) arrest a person for a crime...committed or attempted *in the presence of the person making the arrest.*” The requirement that the person making an arrest be present when the offense occurs applies to misdemeanor offenses only. In more serious felony cases, an arrest may be made based on a “reasonable cause to believe” that the person arrested committed a felony crime.³ “Arrest” is defined as “taking a person into custody in order that the person may be held to answer for the commission of a crime.” AS 12.25.160. Under the doctrine of “delegated citizen’s arrest,” a private person may delegate to a peace officer the task of taking actual physical custody of the accused.

Yi’s position. In Yi’s view, the evidence clearly establishes that Officer Merideth made the arrests at the scene, and that he had no authority to make the arrests because he had no warrant and had not witnessed any of the offenses for which the arrests were made. Furthermore, no valid “citizen’s arrest” was made by Max Lamoureux. A “citizen’s arrest” must occur without unnecessary delay, the citizen’s intent to make the arrest must be clear, and the citizen must engage in substantial action to further the arrest before a person is taken into custody. Lamoureux took no action at the scene to make a “citizen’s arrest,” and his completion of the “Citizen’s Arrest Reports” four hours later shows *unnecessary delay*. Also, Lamoureux’s statements to Officer Merideth and help identifying the Yi brothers as the men who attacked him do not turn an invalid police arrest into a valid citizen’s arrest. Statements and identifications given to police by victims or witnesses at a crime scene do not, by themselves, demonstrate the necessary *intent to arrest* or *substantial action to further the arrest*.

³ For more serious felony crimes, an arrest may be made even if the offense is not committed in the presence of the person making the arrest. Instead, the person making the arrest must have reasonable cause to believe the person being arrested committed the felony offense. AS 12.25.030(a)(2) & (3).

Max Lamoureaux stated that he thought the officer, not himself, made the arrest, and the officer made no reference to a citizen's arrest at the scene in his own description of the day's events. Both Yong Yi and Kenny Yi witnessed Officer Merideth making the arrest, and another officer on the scene told them that Merideth was "the arresting officer." In Yi's view, the time notations on the "Citizen's Arrest Reports" signed by Lamoureaux suggest that they were completed after the fact to justify an invalid police arrest that had already occurred.

Based on the invalid arrest, Yi asserts that Officer Merideth committed the tort of "false arrest" under Alaska law. The elements of the tort of "false arrest" are (1) a restraint upon a person's freedom (2) made without proper legal authority.⁴ The court should rule that he was unlawfully arrested and allow him to seek damages for the harm he suffered as a result.

City's position. The City argues that Max Lamoureaux, not Officer Merideth, made the arrests at the scene. Lamoureaux had the authority to make a "citizen's arrest" because the offenses were committed in his presence. Furthermore, his citizen's arrest was timely. Officer Merideth stated that the form would have been signed "either before or at the same time that they were being taken into custody," and Lamoureaux confirmed that it was signed within "an hour or two" of the police arriving on the scene. According to the City, this record shows that the "citizen's arrest" forms were completed contemporaneously with the arrests, not after the fact as Yi suggests. Yi's reliance on the time notation on the "Citizen's Arrest Reports" to suggest that four hours lapsed between the time custody was taken and the time the "Citizen's Arrest Reports" were signed is unfounded, given the statements of Officer Merideth and LaMoureaux that directly contradict Yi's version of events.

In the City's view, Lamoureaux showed the necessary intent to arrest. Although LaMoureaux could not remember actually making the arrest, and thought the officer had done so, his conduct and later statements should be interpreted as demonstrating an intent to arrest the Yis. Under case law, a citizen need not use "magic words" to show an intent to make an arrest; instead, an arrest "may be implied from the citizen's act of summoning an officer, reporting the offense, and pointing out the suspect." And while Officer Merideth couldn't remember specifically speaking with Lamoureaux about making a citizen's arrest, he had handled "many dozens and dozens of citizen's arrest(s) in (his) career," and he would have "presented him the form and explained it to him."

⁴ *Waskey v. Municipality of Anchorage*, 909 P.2d 342, 345 (Alaska 1996).

Finally, Lamoureaux was not required to take the Yis into custody himself in order to show “substantial action” to further the arrest. Under the doctrine of “delegated citizen’s arrest,” he was entitled to avoid further risk of harm to himself by delegating this task to officers on the scene. The fact that the officers, not Lamoureaux, placed handcuffs on the Yis and told them they were under arrest was consistent with the “delegated citizen’s arrest” doctrine.

In the City’s view, Yi’s tort claim for false arrest must fail because his arrest was validly made. As a citizen who witnessed a crime, Max Lamoureaux was entitled to make a “citizen’s arrest,” and he did so appropriately.

(1)(b) Unreasonable Search & Seizure (Civil Rights Claim)

The elements of a civil rights claim under 42 U.S.C. 1983 are: (1) conduct by a person acting under color of state law (2) that deprives a person of a right under the U.S. Constitution.⁵

Yi’s Position. Yi argues that Officer Merideth’s invalid arrest violated his civil rights. He asserts that he had a right to be free from unreasonable searches and seizures under the Fourth Amendment to the U.S. Constitution and that Officer Merideth deprived him of this right by arresting him without a warrant in a situation where a warrantless arrest could not be justified.

City’s Position. The City maintains that Lamoureaux made a valid citizen’s arrest. Even if no valid citizen’s arrest occurred, Officer Merideth had grounds to arrest Yi. First, Officer Merideth had probable cause to arrest Yi for felony assault,⁶ even though Yi was arrested for only misdemeanor assault. Second, the Yis admitted their conduct, which created an exception to the requirement that an officer witness an offense directly.⁷ There is “nothing unreasonable in an arrest made upon the basis of the individual’s own statement.” Given the seriousness of Yi’s offense and his admission of his conduct, Officer Merideth could have validly arrested him without harm to his 4th Amendment rights, and thus no constitutional violation occurred.

(1)(c) Qualified Immunity for Officer Merideth.

Alaska statutes bar actions for damages against a municipality or its agents, officers, or employees, if the action is based on “the exercise or performance or

⁵ *Crawford v. Kelly*, 139 P.3d at 1255, n. 10.

⁶ AS 11.41.220(a)(1)(A) defines felony assault as “recklessly placing another person in fear of imminent serious physical injury by means of a dangerous instrument.”

⁷ *State v. Morse*, 252 A.2d 723, 725 (N.J. 1969).

the failure to exercise or perform a discretionary function or duty...whether or not the discretion involved is abused.” AS 09.65.070(d)(2). The Alaska Supreme Court applies a 3-part test for determining official immunity from a state tort claim: (1) whether the doctrine of official immunity applies to the government official’s conduct; (2) if so, whether it is “absolute” or “qualified,” and (3) if it is only qualified, whether the officer acted corruptly, maliciously, or in bad faith.⁸ To meet the first element of this test—whether official immunity applies—officials claiming immunity must show that the conduct complained of was within the scope of their authority.⁹ A separate evaluation must be made for an immunity claim under 42 USC 1983. In these cases, immunity is available only when “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.”¹⁰

Yi’s position. Officer Merideth is not entitled to immunity under either state or federal law. He does not qualify for immunity from a state tort claim because his discretionary act—arresting Yi—was done outside the scope of his authority. The arrest violated a fundamental and well-known principle of state law: an officer must witness a misdemeanor crime in order to make a warrantless misdemeanor arrest. The officer’s actions were not authorized and do not satisfy the state’s criteria for official immunity from a tort action.

Under federal civil rights law, Officer Merideth is not entitled to immunity because no reasonable officer could have believed that his arrest of Yi was lawful. He did not have a warrant for Yi’s arrest and had not seen a crime committed. His actions violated a well-established constitutional principle under the 4th Amendment: that warrantless arrests are unlawful except in narrow circumstances that were not satisfied in this case. Accordingly, the officer should not be immune from Yi’s 1983 claim.

City’s Position. Officer Merideth is entitled to qualified immunity because it was reasonable for him to believe that Lamoureaux’s citizen’s arrest was valid. Further, it was reasonable for him to act on Lamoureaux’s citizen arrest and take Yi into custody, handcuff him, and transport him to jail. Contrary to Yi’s arguments, the issue of immunity doesn’t center on whether Officer Merideth made a valid police arrest; it centers instead on whether Merideth reasonably believed a valid citizen’s arrest had been made. The record supports Merideth’s belief that the citizen’s arrest was lawful. The criteria for immunity are thus satisfied under both state tort law and federal civil rights law.

(2) Official Immunity for the City of Fairbanks

⁸ *Aspen Exploration Corp. v. Sheffield*, 739 P.2d 150 (Alaska 1987).

⁹ *Alpine Industries, Inc. v. Feyk*, 22 P.3d 445, 447-48 (Alaska 2001).

¹⁰ *Van Sandt v. Brown*, 944 P.2d 449, 452 (Alaska 1997).

A municipality can be liable under 42 U.S.C. §1983 if its official policies cause a constitutional injury. Inadequate training of police officers can rise to the level of a constitutional tort only if the failure to train shows a “deliberate indifference” to the rights of members of the public with whom the officer will interact.¹¹

Yi’s Position. The City should not be immune from suit because its failure to adequately train Officer Merideth contributed to his constitutional injuries. Its failure to train in proper arrest procedures led to the violation of his rights under the 4th Amendment and its failure to train in proper procedures for protecting private property violated his due process rights under the 14th Amendment. As a consequence, Yi lost not only his liberty, but significant personal property that he was forced to leave behind in the Klondike Restaurant and Bar.

City’s Position. Yi offers no evidence that the City had an official policy of allowing invalid arrests or that it failed to adequately train its police officers on proper arrest procedures. He also offers no evidence that the City failed to train on appropriate police conduct when confronted with private property disputes. Instead, Yi argues that Officer Merideth knew his arrest of Yi was invalid, which directly contradicts the notion that the City was responsible. Furthermore, neither Officer Merideth nor the City had a duty to intervene in the private property dispute between the Yis and Yangs, which was more appropriately resolved through the court action that was underway.

QUESTIONS FOR STUDENTS TO CONSIDER

1. Why do you think Alaska law bars a police officer from making a misdemeanor arrest unless he or she has witnessed the offense for which the arrest is made? What are the advantages of this law? What are the disadvantages? Do you think the law reflects good public policy? Why or why not? If not, what law would you adopt instead?
2. The parties to this appeal disagree over whether a valid “citizen’s arrest” was made. Do you agree that citizens should have the right to arrest fellow citizens when they witness them committing crimes? What are the advantages of allowing citizen’s arrests? What are the disadvantages? From the *Excerpts of Record*, read the statements of witnesses at the scene, and the affidavits of the parties involved. Based on your review of the record, do you think a valid citizen’s arrest was made? Why or why not? Do you think the validity of the citizen’s arrest should affect the outcome of this case? Why or why not?

¹¹ *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 123-124 (1992).

3. In your view, what is the purpose of allowing public officials and public entities to claim immunity in certain circumstances? What are the advantages of official immunity? What are the disadvantages? Do you think affording official immunity is a good public policy? Do you agree with the trial court's decision to find Officer Merideth and the City of Fairbanks immune from Yi's lawsuit? Why or why not?
4. Not every issue raised in a case is relevant or "material" to its ultimate outcome. Summary judgment is appropriate only if there are no "genuine issues of *material fact*"—or, in other words, no genuine disputes about the facts that are material to a decision in the case. Do you think summary judgment was properly granted in this case? If so, describe the issues you think are material to the decision in this case, and why you believe there are no genuine disputes of fact with respect to these issues. If not, describe the issues that in your view are material to a decision in this case, and why you think genuine disputes of fact remain with respect to these issues.
5. In a government based on the rule of law, citizens are expected to seek enforcement of laws from the justice system when conflicts arise, not rely on "self-help." In this case, were self-help measures taken by the parties? If so, describe. How might the parties have responded differently under the rule of law?
6. What do you think is Yi's strongest argument on appeal? What do you think is his weakest argument? Explain.
7. What do you think is strongest argument for Officer Merideth and the City? What do you think is their weakest argument? Explain.
8. If you were a justice on the Alaska Supreme Court, how would you decide this case? Explain.