

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

WILLIAM C. BLOOMQUIST,     )  
  )  
                                  Plaintiff     )  
  )  
v.                                     ) Civil No. 03-276-P-S  
  )  
JUSTICE PAMELA ALBEE, et al., )  
  )  
                                  Defendants     )

**RECOMMENDED DECISION ON MOTION  
FOR FULL AND PARTIAL JUDGMENT ON THE PLEADINGS**

In this action William Bloomquist is suing a broad array of defendants over events that transpired in New Hampshire and Maine involving restraining orders obtained against him in New Hampshire and the search of his house and seizure of his firearms in Maine. Three defendants -- Cumberland County District Attorney Stephanie Anderson and Assistant District Attorneys Anne Berlind and William Barry - move for full (vis-à-vis Barry) and partial judgment on the pleadings. (Docket No. 66.) Three prior recommended decisions have addressed different groups of defendants. This particular recommended decision focuses only on these three prosecutorial defendants. Some remaining defendants have not yet filed any dispositive motions. No scheduling order has yet to issue in this case.

I now recommend that the Court grant judgment on the pleadings as to all three defendants on Counts 22, 35, 36, 39, 40, 41, and 43 because Bloomquist has indicated he does not pursue these defendants vis-à-vis these counts. I also recommend that the Court grant these three defendants judgment on the pleadings as to all of Bloomquist's official

capacity claims against them. With respect to Barry, I recommend that the Court grant him judgment on the pleadings as to all but Count 52. As to the remaining counts against Berlind and Anderson, I recommend that the court grant the motion for judgment on the pleadings as to Counts 18, 19, 20, 23, 24, 25 (search and seizure), Counts 26 (search and seizure) as to Anderson, 29 (due process and equal protection) Counts 15, 16, 32, 33 (counts relating to obtaining New Hampshire restraining orders), and Counts 48, 31, and 50 (defamation and false light) as to Berlind. I recommend that the Court deny the motion at to Counts 26 (search and seizure) as to Berlind, and Counts 48, 31, and 50 (defamation and false light) as to Anderson.

### ***Background***

In his complaint Bloomquist alleges that in November 2001 Bloomquist, a resident of Cumberland County, Maine, became involved in a domestic dispute with his wife. Bloomquist obtained a temporary protection from abuse order against his wife and she obtained one against him. Bloomquist had at his residence a large store of firearms and explosives. The Cumberland County Sheriff's Department requested assistance from the Bureau of Alcohol Tobacco and Firearms (BATF) to serve on Bloomquist his wife's temporary protection from abuse order and to assist her in retrieving her personal belongings from the couple's residence. On November 27, 2001, the Sheriff's Department seized from Bloomquist over 81 firearms and other weaponry.

The following day, November 28, 2001, the Cumberland County Sheriff's Department and Sheriff Mark Dion held a press conference, and issued a four-page press release "which was widely quoted in various newspapers, local television, and on the Internet." Dion exhibited Bloomquist's entire arms collection for the media to view,

record, and broadcast. Cumberland County District Attorney Stephanie Anderson also made statements to the press. Bloomquist's amended complaint does not specifically allege what either Dion or Anderson said.

### ***Discussion***

First off, to the extent that Counts 22, 35, 36, 39, 40, 41, and 43 implicate these three defendants, Bloomquist has made it clear in his responsive pleading that he does not want to maintain these claims against Barry, Berlind, and Anderson. Additionally, Bloomquist has not argued against the motion's assertion that he cannot maintain his federal and state official capacity claims against these three defendants and I conclude that Berlind, Anderson, and Barry are entitled to have these official capacity claims dismissed for the reasons argued in their motion. (See Mot. J. Pleadings at 6-8.)

### ***Complaint as against Barry***

The only allegation that pertains to Barry is that on June 6, 2002, Barry defamed Bloomquist by telling Bloomquist's attorney and (unspecified) others that Bloomquist was the subject of a sexual assault investigation. Barry, Bloomquist contends, falsely alleged that Patrice Gibbons was a victim of sexual assault by Bloomquist although Barry knew the allegations were false. This allegation aligns with Count 52 in which Bloomquist charges Barry with defaming Bloomquist when Barry knowingly and intentionally made false allegations to Bloomquist's attorney that Bloomquist "was a suspect in a local sexual assault."

Under Maine law, in order to establish a claim for defamation, Bloomquist must allege "(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the

publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Rice v. Alley, 2002 ME 43, ¶ 19, 791 A.2d 932, 936 (quoting Lester v. Powers, 596 A.2d 65, 69 (Me.1991)).

Barry is not entitled to judgment on the pleadings on this count. Bloomquist has stated a claim for defamation under Maine law. "A declaration alleging that the defendant falsely charged the plaintiff with the commission of a crime eo nomine is sufficient without setting out the words by which it is claimed the crime was charged." Niehoff v. Sahagian, 149 Me. 396, 409, 103 A.2d 211, 218 (Me.1954) (citing True v. Plumley, 36 Me. 466 (1853), Burbank v. Horn, 39 Me. 233 (1855), and Kimball v. Page, 96 Me. 487, 52 A. 1010 (1902)). I decline the defendants' invitation to adopt a "slightly" more expansive view of prosecutorial immunity than the United States Supreme Court did in Buckley v. Fitzsimmons, 509 U.S. 259, 273-79 (1993). However, because this is the only count that can be fairly said to state a claim against Barry, I also conclude that, to the extent that Bloomquist intended to press them against Barry, he is entitled to dismissal of all other counts against him<sup>1</sup>

### ***Search and Seizure Claims against Anderson and Berlind***

There are three counts that attempt to hold Anderson and Berlind accountable for unlawful search and/or seizure on November 27, 2001:

- Count 18: Anderson and Berlind participated in an unlawful search and seizure of property from Bloomquist's arms room.
- Count 19: Anderson and Berlind participated in an unlawful search of Bloomquist's two locked personal rooms.

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<sup>1</sup> The defendants assert that Bloomquist has not alleged that he filed a notice of claim under the Maine Tort Claims Act. They drop a footnote that indicates that he filed something purporting to be a notice of claim in May 2002, but that this preceded the June 6, 2002, accrual date of the defamation claim against Barry. Bloomquist retorts in his opposition that he has "fully and/or substantially" complied with the tort claim act. I cannot reach a conclusion on this dispute at this juncture where all I have in front of me is the amended complaint.

- Count 20: Anderson and Berlind unlawfully seized Bloomquist's arms from his hidden, locked arms room.

With respect to the factual allegations relevant to these counts, paragraphs 45, 46, 47, 48, 50, 51, and 52 of Bloomquist's amended complaint describe the search on November 27.<sup>2</sup>

It is clear that Bloomquist is not alleging that either Anderson or Berlind took any part in the November 27 search and seizure. Thus, Counts 18, 19, and 20 utterly fail to state a claim against these two defendants.

Berlind and Anderson are also tagged for unreasonable search and seizure vis-à-vis the New Hampshire court's temporary stalking order and final protection from abuse order. Four counts name them and others in this regard:

- Count 23: Berlind and Anderson unlawfully seized Bloomquist and ordered him to appear in the Northern Carroll County Courthouse due to a tainted New Hampshire protection from stalking temporary order.
- Count 24: Berlind and Anderson conspired with other defendants and unlawfully exerted a seizure of Bloomquist's "'arms' by the tainted New Hampshire Protection from Stalking Temporary Order."
- Count 25: Berlind and Anderson participated in an unreasonable seizure of Bloomquist according to the unreasonable terms of the tainted New Hampshire final protection from abuse order.
- Count 26: Berlind and Anderson participated in an unreasonable seizure of Bloomquist's property in causing his property to be seized per the unreasonable terms of the tainted New Hampshire final protection from abuse order.

The only factual allegations I could locate that relate to these legal claims are as follows.

On April 17, 2002, Berlind faxed a letter to the attorney in custody of Bloomquist's firearms and told him not to return Bloomquist's firearm collection to Bloomquist due to

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<sup>2</sup> There are two other paragraphs related to these events. Paragraph 122 states: On June 16, 2002, the Cumberland County Sheriff's Department intentionally destroyed numerous items from these seizures – items that were not contraband, evidence of crime, or subject to civil or criminal forfeiture. And Paragraph 123 provides: On July 10, 2002, a state district judge concluded that the search of Bloomquist's arms room and his boiler room were in contravention to his Fourth Amendment rights.

the existence of a New Hampshire Protection from Stalking Final Order vis-à-vis defendant Susan Benfield. (Compl. ¶ 115.)

While there is no allegation sufficient to state a claim as to Counts 23, 24, and 25 against Berlind or Anderson, I do believe that Bloomquist has stated a claim as to Count 26 as to Berlind only. See Manos v. Caira, 162 F.Supp.2d 979, 994 (N.D. Ill. 2001) (concluding that the continued retention of firearms that were initially seized for a proper reason states a Fourth Amendment claim).

### ***Due Process and Equal Protection Count***

Count 29 alleges that Anderson and Berlind conspired to deprive Bloomquist of his rights to due process and equal protection in implementing Cumberland County's policy or custom of providing less protection to male victims of domestic violence than female. Bloomquist believes that police view male victims as second class citizens; there is a cultural bias against male victims in which the police always believe female complainants but just "take a report" of male; there is more funding available for female victims than male; and it is more politically correct to protect females than males.

Anderson and Berlin argue that they are entitled to absolute immunity on this count because the conduct underlying the claim implicates an inherently prosecutorial decision. I agree with the defendants that the discussion in Bernard v. County of Suffolk, 356 F.3d 495, 502-05 (2d Cir. 2004) is persuasive; the court accorded absolute prosecutorial immunity even when the allegation was that the decision to charge is based on wrongful motives. See also Jones v. City of Boston, Civ. No. 03-12130-RGS, 2004 WL 1534206, \*3(D. Mass. 2004); id. ("The same immunity accorded to the prosecutor who is directly performing an adjudicatory function attaches to the supervisor who sets

general prosecutorial policies governing the actions of front-line prosecutors.").

However, I recommend that the Court dismiss the count for failure to state a claim against Berlind or Anderson. I read this count 29 as alleging only claims against the police and their efforts to protect male victims of domestic violence. I do not read this count as alleging that Berlind and Anderson selectively prosecuted Bloomquist because he was a male victim of domestic violence.

***Counts relating to the New Hampshire Stalking Order***

Count 16 of Bloomquist's complaint attempts to reach each and every defendant for unlawfully depriving Bloomquist of his Second Amendment rights when they conspired to obtain the New Hampshire stalking order. Count 32 alleges that Anderson and Berlind abused process in violation of the 14th Amendment when they falsified evidence and transmitted it to the New Hampshire court in order to obtain a tainted New Hampshire protection from stalking final order which, in turn, deprived Bloomquist of his Second Amendment right to keep and bear arms.<sup>3</sup> Count 33 is a Fourteenth Amendment claim against Anderson whom Bloomquist alleges disseminated fraudulent information to Defendant Herbert of the New Hampshire court knowing that it would secretly be used against Bloomquist in those court proceedings. And Count 15 charges that all defendants deprived him of his fundamental right to travel and assemble by taking part in obtaining that tainted New Hampshire protection from stalking final order against Bloomquist. In the whole of this factually detailed amended complaint I could locate no allegation that Berlind or Anderson played any part in obtaining the New Hampshire order and Bloomquist's response to the defendants' motion does not address their argument that

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<sup>3</sup> Because I conclude that these counts do not state a claim against these defendants I need not reach the question of whether a 42 U.S.C. §1983 Second Amendment claim can even be brought against state actors. See Nordyke v. King, 319 F.3d 1185, 1191 - 94 (9th Cir. 2003).

these counts do not implicate them<sup>4</sup> Therefore I recommend that the Court grant the motion as to Counts 15, 16, 32, and 33.

***Defamation and False Light/ Invasion of Privacy Counts against Anderson and Berlind***

Count 48 charges Anderson and Berlind with conspiring to defame Bloomquist by making knowingly false statements about him. The only factual allegation I could identify that pertains to this claim is contained in Paragraph 55. There, Bloomquist alleges that Anderson appeared on various television stations and knowingly and maliciously made defamatory remarks about Bloomquist, a former student-attorney-intern of Anderson's. The only elaboration Bloomquist provides is that he alleges that he was initially hired, then unlawfully fired, then rehired, and then fired due to the Maine Law School's refusal to certify him as a student attorney. Bloomquist does not allege a statement was made by Berlind.

There are also privacy related counts lodged against these defendants. Count 31 alleges that Anderson and Berlind violated Bloomquist's due process right when his privileged information was released by Anderson, in violation of a statute, to Defendant Hench who published it in the Portland Press Herald placing the stigma of a criminal conviction upon Bloomquist.<sup>5</sup> And, Count 50 faults Anderson for publicly disclosing Bloomquist's private matters.

The parameters of a defamation claim as set forth in Rice v. Alley, 2002 ME 43, ¶ 19, 791 A.2d at 936 were discussed above in the context of the defamation claim against

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<sup>4</sup> The only allegation linking Berlind to the New Hampshire order is that allegation mentioned above in which Bloomquist charges Berlind with misreading the legal effect of the New Hampshire order when she sought to prevent Bloomquist from getting his weapons back after the Maine charges were dropped.

<sup>5</sup> The defendants lump this count with the New Hampshire stalking order related counts so do not address it for what, I believe, it is.

Barry. The defendants have not addressed the question of whether or not Bloomquist can bring a Fourteenth Amendment claim on the basis of a violation of a nondisclosure statute. With respect to Count 50, the Maine Law Court has explained:

Liability for publicity placing a person in a false light is defined as follows:

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

restatement (Second) of Torts § 652E (1977). Publicity is defined as follows:

"Publicity," as it is used in this Section, differs from "publication," as that term is used in § 577 in connection with liability for defamation. "Publication," in that sense, is a word of art, which includes any communication by the defendant to a third person. "Publicity," on the other hand, means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.

restatement (Second) of Torts § 652D cmt. a (1977).

Cole v. Chandler, 2000 ME 104, ¶ 17, 752 A.2d 1189, 1197.

Contrary to the defendants' argument on this score, I believe that these counts -- along with paragraph 55 -- give the defendants fair notice of what the nature of the statements Bloomquist alleges were made concerning his private affairs. This is sufficient at the still early stages of the game. Compare Cole v. Chandler, 2000 ME 104, ¶ 17 752 A.2d at 1197 (analyzing a false light publicity claim on a summary judgment record); Picard v. Brennan, 307 A.2d 833 (Me. 1973) (reviewing a trial court's finding of facts on the question of slander made on the basis sharply contrasting evidence, requiring the making of credibility determinations). It is true, though, that these counts do not allege claims against Berlind and, going forward, should be limited to the statements

made by Anderson that were relied on by Hench in his reporting as this is all of which Bloomquist's amended complaint gives them fair notice.<sup>6</sup> With this proviso, I recommend that the Court grant the motion on Counts 31, 48, and 50 as to Berlind and deny it as to Anderson.<sup>7</sup>

***The remaining counts against Anderson and Berlind***

Finally, the defendants have expressly not moved for judgment on the pleadings as against Berlind and Anderson in their individual capacities as to Count 13, alleging that all defendants interfered with his federal firearm rights under 18 U.S.C. § 922; Count 14, alleging that Anderson and Berlind willingly and maliciously brought fourteen unwarranted criminal charges against Bloomquist -- thereby chilling his ability to advocate on behalf of pro-Second Amendment groups, to bring a lawsuit for his unlawful termination of employment, to bring a lawsuit to expose Anderson's cover-up of her staff's serious misconduct (selling cocaine and lying to the trial court); and Count 21, alleging that Anderson and Berlind violated his Fourth Amendment rights to be free from malicious prosecution when they brought criminal charges against Bloomquist without probable cause. Thus these counts will await another day for resolution.

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<sup>6</sup> In his reply to the objection to Bloomquist's motion to amend the amended complaint Bloomquist attached the offending article with the article written by David Hench which states: "In his second year of law school, Bloomquist was offered an internship with the Cumberland County District Attorney's office, but the offer was rescinded following a background check with the Bridgton Police Department. (Docket No.74, Attach. 17.) I denied Bloomquist's motion to amend the amended complaint. While I am in no way backtracking on that denial, I do think that the defendants have the fair notice of the need to answer these counts based on the current amended complaint.

<sup>7</sup> I note that these defendants have raised the statute of limitations bar as an affirmative defense in the answer. In passing on a motion by the media defendants I did conclude that some of Bloomquist's claims were barred as some of his like false light claims. This determination turned on the date of the alleged broadcast or publication. Although these defendants have not moved on this ground I do not consider the defense waived by failing to do so as Bloomquist's complaint was too conclusory to move on this ground in any coherent fashion.

### ***Conclusion***

As set forth above, I recommend that the Court **GRANT** judgment on the pleadings as to all three defendants on Counts 22, 35, 36, 39, 40, 41, and 43. I recommend that the Court **GRANT** Barry judgment on the pleadings as to all counts but one; I recommend that the Court **DENY** the motion as to Count 52. I recommend that the Court **GRANT** Anderson and Berling judgment on the pleadings as to Counts 18, 19, 20, 23, 24, 25 (search and seizure), 29 (due process and equal protection), and Counts 15, 16, 32, 33 (counts relating to obtaining a New Hampshire restraining orders). I recommend that the Court **GRANT** the motion on Counts 26 (search and seizure) as to Anderson Counts 48, 31, and on 50 (defamation and false light) as to Berling. I recommend that the Court **DENY** the motion as to Counts 26 (search and seizure) as to Berlin in her individual capacity and Counts 48, 31, and 50 (defamation and false light) as to Anderson in her individual capacity. Unchallenged here, Counts 13, 14, and 21 remain against Berling and Anderson in their individual capacity.

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

Dated October 7, 2004.

BLOOMQUIST v. ALBEE et al  
Assigned to: JUDGE GEORGE Z. SINGAL  
Referred to: MAG. JUDGE MARGARET J.  
KRAVCHUK  
Demand: \$  
Lead Docket: None  
Related Cases: None  
Case in other court: None  
Cause: 42:1983 Civil Rights Act

Date Filed: 12/01/03  
Jury Demand: None  
Nature of Suit: 440 Civil Rights:  
Other  
Jurisdiction: Federal Question

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