

**A PROSECUTOR IS NOT A DETECTIVE:
PROSECUTORS WHO PERFORM
INVESTIGATORY FUNCTIONS TYPICALLY
PERFORMED BY POLICE ARE NOT ENTITLED
TO PROSECUTORIAL IMMUNITY
*HOOG-WATSON V. GUADALUPE COUNTY, TEX.,
NO. 08-50077, 2009 WL 4828742 (5TH CIR. DEC. 16,
2009)***

Highlight

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Hoog-Watson v. Guadalupe County involved a challenge to a summary judgment order entered against Suzanne Hoog-Watson.¹ Hoog-Watson had filed an action in Federal district court against multiple defendants, including Elizabeth Murray-Kolb, County Attorney for Guadalupe County, Texas.² Hoog-Watson kept several animals at her home.³ In 2005, some county officials grew suspicious that Hoog-Watson was unable to properly care for her animals.⁴ Under the impression that Hoog-Watson had entered a mental health facility and fearing serious injury to the animals as a result, four Guadalupe County officials, including Murray-Kolb, entered Hoog-Watson's property without a warrant and seized forty-seven dogs and cats.⁵ The officials secured a warrant the following day.⁶ Murray-Kolb subsequently brought animal cruelty charges against Hoog-Watson, but she dropped those charges after Hoog-Watson agreed to pay the county and submit to inspections.⁷ Hoog-Watson then filed suit against Murray-Kolb, alleging that the search and seizure of her property violated both Texas

¹ *Hoog-Watson v. Guadalupe County, Tex., No. 08-50077, 2009 WL 4828742, at *1 (5th Cir. Dec. 16, 2009).*

² *Id.* The other defendants were Guadalupe County, Texas, Guadalupe County's Attorney Investigator, Guadalupe County's Sheriff's Department Animal Control Supervisor, and two Guadalupe County Sheriff's Department Animal Control Officers. *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* In fact, Hoog-Watson had not entered a mental health facility. *Id.*

⁶ *Id.*

⁷ *See id.*

and Federal law.⁸ On grounds of collateral estoppel, the district court dismissed Hoog-Watson's federal claims against all defendants.⁹ The district court provided additional grounds for dismissal with respect to Murray-Kolb, holding that prosecutorial immunity also barred Hoog-Watson's federal claim against Murray-Kolb.¹⁰

In holding that collateral estoppel barred Hoog-Watson's federal claims against all defendants, the district court relied on the doctrine of *Heck v. Humphrey*.¹¹ In *Heck*, the United States Supreme Court held that claims under 42 U.S.C. § 1983 should be barred if a judgment favorable to the plaintiff would "necessarily imply the invalidity of his conviction or sentence[.]"¹² Because the doctrine of *Heck* only applies in suits implicating prior criminal proceedings, the Fifth Circuit considered whether Hoog-Watson had produced sufficient evidence to create a genuine question of fact concerning whether the animal cruelty proceeding initiated by Murray-Kolb was criminal or civil.¹³ Additionally, the Fifth Circuit considered whether prosecutorial immunity barred Hoog-Watson's claim against Murray-Kolb.¹⁴

To evaluate Hoog-Watson's challenge to the district court's collateral estoppel holding, the Fifth Circuit considered the facts in the light most favorable to Hoog-Watson.¹⁵ Citing evidence that the animal cruelty proceeding brought against Hoog-Watson took place in a court that did not possess jurisdiction to hear criminal animal cruelty proceedings, as well as evidence that the court had followed the civil code in the proceeding, the Fifth Circuit concluded that Hoog-Watson had raised a genuine question of fact as to the nature of the animal cruelty proceeding.¹⁶ Thus, summary judgment based on *Heck* was inappropriate.¹⁷

With regard to the issue of prosecutorial immunity, the Fifth Circuit concluded that a reasonable fact finder could believe that Murray-Kolb entered Hoog-Watson's property, participated in the decision to seize Hoog-Watson's animals, and actually helped remove

⁸ *Id.* The Texas claims were tort claims, and the federal claims were based on the alleged violation of 42 U.S.C. § 1983. *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *2; *Heck v. Humphrey*, 512 U.S. 477 (1994).

¹² *Id.* (quoting *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)).

¹³ *Id.* at *2, *3.

¹⁴ *Id.* at *5.

¹⁵ *Id.* at *1.

¹⁶ *Id.* at *4.

¹⁷ *Id.*

the animals from Hoog-Watson's property.¹⁸ Prosecutorial immunity does not extend to investigatory functions that have no relation to an advocate's preparation to initiate a prosecution.¹⁹ Because Murray-Kolb inspected the conditions at Hoog-Watson's property while trying to assemble evidence, she was acting more like a detective or police officer than a prosecutor.²⁰ Thus, Murray-Kolb was not entitled to prosecutorial immunity.²¹

Turning to the issue of whether Murray-Kolb was entitled to qualified immunity, the Fifth Circuit expressed no opinion.²² Because the district court granted summary judgment to Murray-Kolb based on *Heck*, as well as on prosecutorial immunity, it did not reach the issue of qualified immunity.²³ Murray-Kolb devoted little attention to qualified immunity on appeal, and thus the Fifth Circuit declined to decide the issue of qualified immunity.²⁴ Murray-Kolb remains free to raise qualified immunity on remand.²⁵

This decision does not set any new precedent, but it does illustrate the limited reach of prosecutorial immunity. There is a line between the actions the law expects a prosecutor to take and the actions the law expects an investigator or police officer to take. A prosecutor will be entitled to prosecutorial immunity so long as his actions involve the evaluation of evidence and interviewing of witnesses necessary to prepare for trial.²⁶ Prosecutorial immunity will not, however, shield a prosecutor's conduct that involves searching for the clues necessary to provide probable cause to arrest a suspect.²⁷ It is now clear that one way to assail a prosecutor's assertion of prosecutorial immunity is to demonstrate that the prosecutor acted in some investigatory fashion that is normally considered to be within the province of the police.²⁸

¹⁸ *Id.*

¹⁹ *Id.* (quoting *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993)).

²⁰ *Id.* at *6.

²¹ *Id.*

²² *Id.* at *7.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See id.* at *5.

²⁷ *See id.*

²⁸ *See id.* at *6.