-Dismiss

CA 8, as technique for evading Stone, refused to honor (by collateral estoppel) a state ct. judg.

Resp. was convicted in Mo. state court of assault with intent to kill when police raided his home where Resp was reported to peddling heroin. Trial court refused to suppress evidence seized "in plain view" by officer who entered house as an exigency matter. Before completing seeking of relief in state cts., Resp filed 1983 claim seeking damages for alleged illegal search. DC dismissed, holding the 1983 claim was barred by collateral ~~est~~ estoppel ~~a state ct~~ — as state ct. had decided this issue. CA8 reversed holding that since Stone v Powell denied H/C access to fed. cts, Resp was entitled to have his claim heard by a Fed. ct.

PRELIMINARY MEMORANDUM

February 15, 1980 Conference
List 3, Sheet 3
No. 79-935

ALLEN, JACOBSMEYER et al.

v.

McCurry

Cert. to CA 8 (Lay, Heaney, McMillian)

Federal/Civil

Timely

SUMMARY: The petition poses the question whether CA 8 was correct in holding that ordinary principles of collateral estoppel are inapplicable to a state prisoner's § 1983 action for deprivation of Fourth Amendment rights where application of collateral estoppel would deny the prisoner access to a federal forum.

See Attached Supplemental Memorandum

FACTS: On April 9, 1977, six undercover police officers went to respondent's home on a tip that he was selling heroin. A gun battle ensued in which two officers were seriously wounded. Eventually, with his house encircled by police, repondent surrendered. Thereafter, police -- including one officer designated as a "seizing officer" -- entered the house presumably to determine whether additional persons remained inside or whether someone inside had been injured (the so-called "emergency justification"). They found drugs, drug paraphernalia, and other incriminating evidence.

Respondent was indicted on state charges of drug possession and assault with intent to kill. Prior to his trial he moved to suppress the evidence. His principal contention was that the presence of a "seizing officer" whose job it was to gather incriminating evidence demonstrated that the "emergency" justification for the search was a pretext. The state trial judge rejected this contention and held that all evidence found in "plain view" was admissible. The judge did, however, suppress evidence seized in a drawer and in an old tire out front of the house as not within the plain view exception. The case proceeded to trial and respondent was found guilty on the charges.

In due course (and prior to appealing his criminal conviction), respondent initiated this § 1983 action in federal court for damages based on the illegal search of his house and on an unconstitutional assault said to have occurred in the

course of his arrest. The District Court (Meredith, E.D. Missouri) granted summary judgment for the police officers (petitioners herein) on the ground of collateral estoppel. Respondent then appealed to CA 8.[1]

HOLDING BELOW: CA 8 acknowledged that the search and seizure claim was "essentially the same claim that was litigated in the suppression hearing." And it noted that seven circuit courts have ruled that principles of collateral estoppel generally apply in a § 1983 action where a claim was determined adversely to the § 1983 plaintiff in an underlying state criminal trial. Nonetheless, it refused to apply those principles to this 4th Amendment claim:

> [T]he unusual circumstance [here] is that since 1976 search and seizure claims, except in a few situations, can no longer be raised by state prisoners in federal habeas corpus actions. Thus, if collateral estoppel [were] to apply in § 1983 actions raising search and seizure claims, there would be no federal forum for the victim of a search and seizure which allegedly violates the federal constitution. ... [B]ecause of the special role of federal courts in protecting civil rights, it is our duty to consider fully, unencumbered by the doctrine of collateral estoppel, the § 1983 claim.

CA 8 then ruled that, as a matter of comity, the District Court should stay respondent's § 1983 action pending review by the

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[1]The assault claim was simply overlooked by the District Court in dismissing respondent's complaint. CA 8's opinion made clear that the District Court should give that claim "appropriate consideration" on remand.

Missouri appellate courts of respondent's criminal conviction.[2]

CONTENTIONS: Petitioners' contentions are as follows:

1. Petitioners contends that CA 8 has "subverted" Stone v. Powell.

2. Petitioners contend that the considerations underlying collateral estoppel -- conservation of judicial time, preservation of respect for the administration of justice, prevention of harassment -- are all present here. Moreover, petitioners argue that 28 U.S.C. § 1738 requires a federal court to give a state court judgment preclusive effect.[3]

3. The decision below is in conflict with Metros v. United States District Court, 441 F. 2d 313 (10th Cir. 1970), where CA 10 applied collateral estoppel principles to bar a § 1983 search and seizure claim fully litigated in an underlying state criminal conviction. (Respondent notes that Metros was decided prior to Stone v. Powell and therefore did not present the same question of whether a state defendant could be foreclosed from access to a federal forum.)

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[2] The Missouri Court of Appeals has since ruled that the trial court was correct in admitting evidence found in plain view. It held permissible the use of a "seizing officer" to gather evidence unexpectedly discovered in plain view during a legitimate intrusion occasioned by an emergency situation.

[3] That section provides that "[j]udicial proceedings ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such states ... from which they were taken." Petitioners report that the criminal conviction would work an estoppel under Missouri law. See LaRose v. Casey, 570 S.W. 2d 746 (Mo. App. 1978).

4. The decision is contrary to dicta in Preiser v. Rodriguez, 411 U.S. 475, 497 (1973), that "res judicata has been held to be fully applicable to a civil rights action brought under § 1983."

DISCUSSION: This may be a certworthy case. This Court has yet to address squarely the collateral estoppel question or the related question of the meaning of 28 U.S.C. § 1738. See Huffman v. Pursue, 420 U.S. 592, 606 & n. 18 (1975)("[e]ven assuming, arguendo, that litigants are entitled to a federal forum for the resolution of all federal issues ..."). Several commentators have urged that rules foreclosing relitigation should be inapplicable in § 1983 actions. See, e.g. Theis, Res Judicata in Civil Rights Cases, 70 NW U.L. Rev. 859, 868 (1976). Others have argued against collateral estoppel where the § 1983 plaintiff was an involuntary defendant in the prior state proceedings and unable, under Younger doctrine, to remove the case to federal court. See Developments in the Law - Section 1983, 90 Harv. L. Rev. 1133, 1330-1343. As CA 8 noted, the CAs by and large have rejected these views and applied collateral estoppel principles to § 1983 actions. However, as respondent notes, several courts have done so only after noting that habeas corpus provided an avenue to a federal forum. Thistlethwaite v. New York, 497 F. 2d 339, 343 (2d Cir. 1973); Rimmer v. Fayetteville Police Dept. 567 F. 2d 273, 276 (4th Cir. 1977); Brazzell v. Adams, 493 F. 2d 489, 490 (5th Cir. 1974). And more recently some lower court judges have

suggested that Stone v. Powell requires a reexamination -- and perhaps an abandonment -- of collateral estoppel principles in 4th Amendment cases. See Meadows v. Evans, 550 F. 2d 345, 346 (5th Cir. 1977) (Goldberg, J. concurring)("application of collateral estoppel to claims covered by Stone would raise additional troublesome questions"); Rimmer, supra at 276; Clark v. Lutcher, 436 F. Supp 1266, 1272 (M.D. Pa. 1977)(right to federal forum).

There are, however, some special factors which may counsel against review. First, the case could be mooted by a decision in the Missouri Supreme Court on direct appeal favorable to respondent; there is no indication in the briefs as to the status of that appeal. Second, the case must be remanded for further proceedings on the assault claim, see fn.1, and on that portion of the 4th Amendment claim related to the evidence seized in the drawer and in the tire which the state trial court suppressed.[4] Judicial economy may favor letting the entire case go back for trial. Finally, there is no direct conflict in the circuits; the contrary case (Metros) is a pre-Stone v. Powell decision.

There is a response.

1/21/79 Shechtman opn. in petn.

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[4] CA 8 missed this point, but plainly (as respondent points out) there can be no collateral estoppel as to that portion of the search that the state court found unconstitutional. Petitioners, of course, may still prove a good faith defense.

State prosecution. Confession not suppressed + Δ convicted. Aff'd on appeal. No petition for cert.

1. Δ sues in Fed Ct under 1983 claiming Police violated 5th Amend.

   (a) Assume no Fed H/C had been sought. Would collateral estoppel apply?