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7th Circuit Extends *Bivens* Civil Rights Actions to *Brady* Violations

This week we once more find ourselves discussing an opinion from the highly influential Seventh Circuit Court of Appeals. This week our discussion turns on the recent decision in *Engel v. Buchan* and its application of the Supreme Court cases *Brady v. Maryland* and the seemingly interminably named *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*. The significance of the *Engel v. Buchan* decision is that it provided a circumstance in which the court saw fit to “extend[] *Bivens* to [a] new context[]” despite the Supreme Court’s cautions against readily extending *Bivens*. Specifically, the court held that “[a] *Bivens* cause of action is available for violations of *Brady*.”

In order to make sense of this decision and its impact it is necessary to delve into the facts of the case. Before delving into the facts, it is important to note that since this was an appeal from the denial of a Rule 12(b)(6) motion to dismiss, the “facts” are not the ones developed by evidentiary findings but rather through the well-pleaded factual allegations in the plaintiff’s complaint. The facts of the case mirror the facts of two prior decisions arising from the same case – *Manning v. Miller* and *Manning v. United States* – which twice found its way to the court of appeals creating two opinions designated as *Manning I* and *Manning II* respectively.

I. Facts

In the *Manning* cases, “Steven Manning, a former Chicago police officer and FBI informant” brought suit against the same Robert Buchan stemming from the same event.

In 1986 Manning ceased working as an informant for the FBI and thereafter came under investigation for a number of serious crimes, including the 1984 kidnapping of two drug dealers in Kansas City, Missouri, and two murders in Illinois. Buchan, then an FBI agent based in Chicago, was in charge of the probe. He was assisted by Robert Quid, then a police officer for the Village of Buffalo Grove, Illinois, where one of the murders was committed. During the course of the Manning investigation, Buchan and Quid approached Engel, who was a friend of Manning’s. Engel alleges that the two officers threatened to implicate him in the kidnapping if he did not cooperate in their investigation of Manning. Engel denied involvement in the kidnapping and said he knew nothing that would help the murder investigation.

Rebuffed, Buchan and Quid made good on their threat to implicate Engel in the kidnapping. They built a false case against Engel and caused him to be arrested and charged in Missouri state court with two counts of kidnapping and related crimes. Manning, too, was arrested and charged in the Missouri kidnapping; he was also charged in Illinois state court for the 1990 murder of James Pellegrino. Manning was convicted on the Missouri kidnapping charges and received a lengthy prison sentence. Engel was tried separately in 1991 and was convicted on all counts and sentenced to 90 years in prison. Two years later Manning stood trial in Illinois for the Pellegrino murder. He was convicted and sentenced to death.

In 1998 the Illinois Supreme Court reversed Manning’s murder conviction. His Missouri kidnapping convictions were also overturned on federal habeas review in 2002. Manning then sued Buchan, Quid, and others in federal court in the Northern District of Illinois asserting constitutional claims under *Bivens* and 42 U.S.C. § 1983 and several common-law claims under the Federal Tort Claims Act (“FTCA”) and state law. Gary Miller, an FBI agent who worked with Buchan on the Manning case, was among the defendants. As relevant here, Manning alleged that Buchan, Miller, and Quid framed him by using highly suggestive lineups, inducing a jailhouse informant to testify falsely

against him, knowingly submitting false reports that Manning had confessed, and destroying or tampering with physical evidence.

After initially winning at trial,

“Manning then suffered a sharp reversal of fortune in his civil-rights case. After judgment was entered on the *Bivens* claim against Buchan and Miller, the FTCA claim against the United States was tried to the court. The district court ruled against Manning on the merits of this claim and then vacated the prior judgment against Buchan and Miller in the light of the FTCA’s judgment bar.”

In 2007, Engel filed a habeas petition in Missouri state court to attempt to have his conviction vacated. Though, initially unsuccessful, Engel found vindication through the Missouri Supreme Court, which held “that the State had violated *Brady* by failing to disclose that one of its key witnesses, a drug dealer named Anthony Mammolito, had been paid to testify.” The state declined to retry Engel and after 19 years of incarceration he found himself a free man in 2010.

After gaining his freedom, Engel brought this suit. After filing his amended complaint against Buchan, Quid, and the Village of Buffalo Grove asserting a *Bivens* claim against Buchan for violation of *Brady* and for claims under § 1983, RICO, the FTCA, intentional infliction of emotional distress, and malicious prosecution against all three defendants. Buchan sought to dismiss the *Bivens* claims arguing that a *Bivens* claim was not available for *Brady* violations and that Buchan was qualifiedly immune. The trial court denied the motion and Buchan appealed.

II. Discussion of the Law

In addressing whether a *Bivens* claim could arise from *Brady* violations, the court looked to the *Bivens* case.

In *Bivens* the Supreme Court recognized an implied cause of action for damages against federal officers to redress a constitutional violation—there, an alleged violation of the Fourth Amendment by federal law-enforcement agents in connection with a warrantless search and seizure. The Court did so notwithstanding the absence of a statutory right of action, finding “no special factors counseling hesitation in the absence of affirmative action by Congress,” and no express statement from Congress that relief should not be available under the circumstances. The decision rested on a general premise that “where

federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.”

The court then went on to note that the Supreme Court twice expanded *Bivens* to new contexts. First, the Supreme Court permitted a *Bivens* action “for discrimination in public employment in violation of the Fifth Amendment.” Second, the Supreme Court extended it to a “claim against federal prison officials for Eighth Amendment violations.”

The court noted that the Supreme Court has not expanded *Bivens* actions since 1980. The court then turned to the 2007 Supreme Court decision *Wilkie v. Robbins*, which created a two-step analysis to determine “whether to authorize an implied right of action for damages against a federal official for a constitutional violation[.]” The two-step inquiry asks: (1) “whether any alternative, existing process for protecting the interest amounts to a convincing reason for the Judicial Branch to refrain from providing a new and freestanding remedy in damages;” and (2) “whether ‘special factors’ counseled against recognizing an implied right of action.”

The court used this two-step analysis from *Wilkie* in resolving the question before it. In addressing the first step, the court found that it is not necessary that an available remedy be a perfect replacement so as to provide “complete relief” it must only be sufficient to “provide roughly similar incentives for potential defendants to comply with [the constitutional requirements] while also providing roughly similar compensation to victims[.]”

In resolving the first step the court looked at the *Brady* obligations. The “Brady Rule” requires a prosecutor to disclose potential exculpatory evidence to the defendant. The court recognized that “the *Brady* obligation is not a mere prophylactic designed to protect a constitutional right, it is itself a component of the due process owed to criminal defendants under the Constitution.” The court recognized that the violation of this obligation is itself the constitutional violation. The court also found that though habeas corpus relief is not an adequate alternative to a *Bivens* action as a “habeas writ is akin to an injunction; it cannot provide a retrospective compensatory remedy.” Thus, the court was unable to “conclude that alternative compensatory process exists to remedy violations of the *Brady* right, much less that the alternatives amount to a ‘convincing reason’ not to authorize a *Bivens* remedy.”

The court then proceeded to step two – “whether any special factors counsel[] hesitation before authorizing a new kind of federal litigation.” Buchan did not

identify any such factor nor was the court able to find any such factor. Thus, the court found that *Bivens* actions encompass violations of the *Brady* right. Further, finding that the complaint contained sufficient factual allegations to state a claim for breach of a clearly defined then existing constitutional right, the court found that Buchan could not, at this stage, avail himself of qualified immunity.

An important footnote to this outcome is that Mr. Engel passed away prior to the court's decision. Though the case may stand to benefit his estate a great deal financially and may be able to help countless others in the future, he will never know the reward of his labor in questing for justice.

Join us again next time for further discussion of developments in the law.

Sources

- *Engel v. Buchan*, ___ F.3d ___, No. 11-1734 (7th Cir. March 5, 2013).
- *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).
- *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).
- *Wilkie v. Robbins*, 551 U.S. 537, 127 S. Ct. 2588, 168 L. Ed. 2d 389 (2007).
- *Manning v. Miller (Manning I)*, 355 F.3d 1028 (7th Cir. 2004).
- *Manning v. United States (Manning II)*, 546 F.3d 430 (7th Cir. 2008), *cert. denied*, 130 S.Ct. 552 (2009).
- *People v. Manning*, 695 N.E.2d 423 (Ill. 1998).
- *Manning v. Bowersox*, 310 F.3d 571 (8th Cir. 2002).
- *State ex rel. Engel v. Dormire*, 304 S.W.3d 120 (Mo. 2010).
- 42 U.S.C. § 1983.
- 28 U.S.C. Chapter 171 – Federal Tort Claims Act.
- 18 U.S.C. Chapter 96 – Racketeer Influenced and Corrupt Organizations Act (RICO).

- Federal Rule of Civil Procedure 12(b)(6).

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