

KASSA V. FULTON COUNTY: ELEVENTH CIRCUIT HOLDS
AS A MATTER OF FIRST IMPRESSION THAT A
PROSECUTOR’S FAILURE TO WITHDRAW MATERIAL
WITNESS WARRANT IS NOT COVERED BY ABSOLUTE
IMMUNITY

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In *Kassa v. Fulton County*, the United States Court of Appeals for the Eleventh Circuit reversed and remanded a district court decision that dismissed a 42 U.S.C. § 1983 action on the grounds of prosecutorial immunity.¹ As a matter of first impression, the Eleventh Circuit addressed whether absolute prosecutorial immunity insulates a state prosecutor from litigation after the prosecutor’s failure to cancel a material witness warrant resulted in a witness’s arrest and detainment.²

Kidanemariam Kassa was a victim of an attempted robbery in downtown Atlanta, Georgia.³ The Fulton County District Attorney’s Office indicted a defendant for the crime, and the case was set for trial.⁴ However, the district court continued the case because Kassa, a material witness, was having medical issues.⁵ Later, Assistant District Attorney Antionette Stephenson obtained a material witness warrant for Kassa because she feared that Kassa would not appear to testify at the trial.⁶ The warrant was never executed, however, because Kassa voluntarily testified.⁷ In fact, Kassa remained oblivious that the warrant ever existed.⁸ Months later, an officer responding to a motor vehicle accident arrested Kassa due to the active warrant.⁹ Kassa spent six days in jail.¹⁰

Following his release, Kassa filed suit under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Georgia, claiming “Denial of Due Process, Malicious Prosecution[, and] Illegal

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¹ *Kassa v. Fulton County*, 40 F.4th 1289, 1290 (11th Cir. 2022).

² *See id.* at 1290, 1293.

³ *Id.* at 1290.

⁴ *Id.* at 1290–91.

⁵ *Id.* at 1291.

⁶ *Id.*

⁷ *Kassa*, 40 F.4th at 1291.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Seizure” due to “Stephenson’s failure to take appropriate action to cancel the warrant.”¹¹ The district court granted Stephenson’s motion to dismiss, holding that Stephenson was entitled to absolute prosecutorial immunity.¹² Kassa then timely appealed on the grounds that “prosecutorial immunity does not extend to Stephenson’s failure to inform the judge that the warrant needed to be recalled.”¹³

On appeal, the Eleventh Circuit reversed the district court’s decision.¹⁴ Under United States Supreme Court precedent, a prosecutor is entitled to absolute immunity for activities “intimately associated with the judicial phase of the criminal process.”¹⁵ The Supreme Court explained that this immunity “prevented ‘harassment by unfounded litigation’ which could ‘cause a deflection of the prosecutor’s energies from his public duties’ and limit the prosecutors ‘independence of judgment.’”¹⁶

To determine whether the prosecutorial immunity doctrine applies, the Eleventh Circuit employs a “functional approach,” which is a “fact-specific inquiry that looks to the nature of the *function* performed, not the identity of the actor who performed it.”¹⁷ Under this approach, a prosecutor is entitled to immunity for any action taken to prepare the case and advocate for the state.¹⁸ The doctrine, if appropriately applied, allows prosecutors to function to the full extent required by their job, enabling them to protect society without the worry of “unfounded litigation” hindering their performance.¹⁹

Determining whether the failure to cancel a material witness warrant was covered by prosecutorial immunity was an issue of first impression before the Eleventh Circuit.²⁰ Thus, the court discussed an opinion by the Third Circuit, which addressed this issue fourteen years prior.²¹ Adopting the Third Circuit’s analysis, the Eleventh Circuit concluded that a prosecutor does not engage in activities preparing for

¹¹ *Id.*

¹² *See id.*

¹³ *Kassa*, 40 F.4th at 1291–92.

¹⁴ *Id.* at 1295.

¹⁵ *Id.* at 1292 (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)).

¹⁶ *Id.* (quoting *Imbler*, 424 U.S. at 423).

¹⁷ *Id.* (emphasis added) (internal quotation marks omitted) (quoting *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993)).

¹⁸ *See id.* at 1293.

¹⁹ *Kassa*, 40 F.4th at 1294.

²⁰ *Id.* at 1293.

²¹ *Id.* (citing *Odd v. Malone*, 538 F.3d 202, 215–17 (3d Cir. 2008)). In *Odd*, a prosecutor failed to cancel a material witness warrant. *Odd*, 538 F.3d at 205. The witness was later arrested and held in custody for fifty-eight days before being released. *Id.* at 206.

a case or advocating for the state by notifying the judge that the warrant was no longer needed.²²

Specifically, the Eleventh Circuit explained that informing a judge to recall a warrant for a third-party witness does not involve the “exercise of professional judgment or legal skill.”²³ Moreover, Kassa’s arrest occurred *after* the judicial proceedings relevant to the warrant; thus, Stephenson’s failure had “nothing to do with conducting a prosecution for the state.”²⁴ Echoing the Third Circuit’s language, the Eleventh Circuit called Kassa’s case a “relatively clear example of a situation in which the prosecutor’s role as an advocate for the state had concluded.”²⁵

Consequently, Stephenson was not entitled to prosecutorial immunity.²⁶ Notably, the Eleventh Circuit limited its holding to only such a situation in which the judicial process has concluded, stating: “[O]ur opinion says nothing about whether a prosecutor is entitled to absolute immunity for *seeking* a material witness warrant in connection with an *ongoing* judicial proceeding.”²⁷

The Eleventh Circuit’s decision in *Kassa* places an important limitation on the absolute prosecutorial immunity doctrine. By evaluating the nature of the prosecutor’s *action* rather than the prosecutor’s *office*, the court fixed the boundary that appropriately confines prosecutorial immunity.²⁸ In essence, the prosecutorial immunity doctrine is limited to protecting prosecutors during an ongoing judicial phase or process.²⁹ Thus, when the judicial phase is complete, the doctrine does not continue to immunize a prosecutor from litigation simply because of his or her position.³⁰ This precedent prohibits attempts to degrade citizens’

²² See *Kassa*, 40 F.4th at 1293–94.

²³ *Id.* at 1294.

²⁴ *Id.* (internal quotation marks omitted) (citing *Odd*, 538 F.3d at 215).

²⁵ *Id.* (internal quotation marks omitted) (quoting *Odd*, 538 F.3d at 215). The Eleventh Circuit also stated that “[a]llowing witnesses detained after trial to sue prosecutors for their inaction in canceling warrants is unlikely to result in a ‘flood’ of new litigation against prosecutors.” *Id.* (citing *Odd*, 538 F.3d at 216).

²⁶ *Id.* The Eleventh Circuit dismissed Stephenson’s argument that “*Odd* conflict[ed] with the Supreme Court’s decision in *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009). *Kassa*, 40 F.4th at 1294. Stephenson argued that, under *Van de Kamp*, prosecutorial immunity extended to a prosecutor’s “administrative” activities. *Id.* The Eleventh Circuit found Stephenson’s argument unpersuasive because, despite the “administrative nature” of the prosecutor’s actions in *Odd*, the Third Circuit applied the “functional approach” utilized by the Supreme Court. *Id.* The function of the activity at issue in *Odd*, as well as the present case, was not “intimately associated with the judicial phase of litigation.” *Id.* Therefore, the Eleventh concluded that the two decisions did not conflict. *Id.*

²⁷ *Kassa*, 40 F.4th at 1295.

²⁸ See *id.* at 1292–94.

²⁹ See *id.* at 1295.

³⁰ See *id.*

constitutional right to due process by hiding behind an immunity doctrine that is meant to assist our judicial officials in protecting society without fear of repercussions.