

Federal appeals court: DA had absolute immunity

Marquis refused to work with Seaside officer

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A federal appeals court ruled Thursday, Nov. 3, that Clatsop County District Attorney Josh Marquis had absolute immunity when he declined to work with a Seaside Police detective who had challenged him.

Marquis refused to use Steven Barnett, a veteran officer, as a witness or work with him on prosecutions because of doubts about his credibility.

Barnett alleged that Marquis retaliated against him for his criticism of the district attorney in a guest column in The Daily Astorian during Barnett's unsuccessful campaign for sheriff in 2012.

Barnett claimed in a federal lawsuit that Marquis vio-

lated his free speech and due process rights. A U.S. District Court judge ruled in 2014 that Marquis had absolute immunity against the suit because he was acting in his role as prosecutor in the judicial phase of the criminal process. Barnett appealed.

A three-judge panel of the 9th U.S. Circuit Court of Appeals in Portland upheld the district court in a ruling issued Thursday.

"A prosecutor's decisions about witness credibility and the presentation of evidence are intimately associated with the judicial phase of prosecution and are therefore protected by absolute immunity," the judges held.

Inexact science

The appeals court acknowledged that determining whether conduct is prosecutorial in nature, rather than



District Attorney Josh Marquis had absolute immunity when he froze out a Seaside Police detective who had criticized him, a federal appeals court ruled.

administrative, is an inexact science.

Prosecutorial conduct can include actions taken outside the courtroom and before trial, the judges wrote, and do not need to be related to a particular trial.

Absolute immunity applies



Steven Barnett, who retired from the Seaside Police this year, claimed the district attorney violated his free speech and due process rights by refusing to work with him after a critical newspaper column.

regardless of the accuracy of a prosecutor's conclusions about a witness, the judges wrote, and even if the judgment is unfair or driven by personal hostility.

Prosecutors and other government officials receive absolute immunity from liability so they can carry out their official duties without fear of constant legal threats.

"The decision by the Clatsop County District Attorney's Office to cease using Barnett as a witness falls squarely within the type of prosecutorial conduct that is protected by absolute immunity," the judges held. "Whether that decision was made directly in response to Barnett's article criticizing Marquis is immaterial."

'High ethical standard'

Marquis, who was represented by the state Attorney General's Office, said he is "pleased that it appears to be over with."

"I think it simply goes to the fact that we demand, and

for the most part receive, a very high ethical standard among the law enforcement in Clatsop County," the district attorney said.

"And that's the way it will continue."

Barnett, who retired from the Seaside Police this year, is disappointed his claims of civil rights violations have not been heard by the courts. Both the district court and the appeals court focused on the question of absolute immunity, not the underlying issues of free speech and due process.

Barnett has the option of asking the full 9th Circuit to hear his case or appealing to the U.S. Supreme Court.

"I get the law. I understand the law," Barnett said. "But nobody — nobody — is above the law, including our DA, who is using the shield of immunity."

SEASIDE POLICE LOG

Oct. 21
9:36 a.m., 600 block S. Downing: A concerned citizen requested police conduct a welfare check on a visibly distraught and possibly intoxicated woman who had an altercation with her boyfriend. Police determined the woman was well enough to remove herself to another location.

9:54 a.m., 1100 block N. Roosevelt: Caller requests a welfare check regarding an individual passed out on a bench. Subject was gone before police arrival.

11:43 a.m., N. Prom: A Chihuahua tied up in the laundry of a hotel causing a problem was impounded and later determined to be one of two Chihuahuas reported lost. The owner retrieved the dog from the pound the next day, promising to soon get a dog license.

9:11 p.m., 500 block S. Edgewood: Police respond to a report of a man tearing up an apartment. Subject was gone prior to police arrival.

Oct. 22
5:20 p.m., Safeway and Highway 101: Caller reports a man walking on the road carrying a knife attached to the end of a long stick. Police are unable to locate.

11:52 p.m., 2400 block Highway 101: Caller reports a red-nosed female pit bull followed them home. The dog is taken to a kennel.

Oct. 23
3:03 p.m., Avenue B and S. Holladay: A man and a woman having an argument deemed to be verbal in nature only were warned by police to quiet down or be charged with disorderly conduct.

10:24 p.m., 400 block S. Roosevelt: A theft in the third degree occurred; the person charged with theft was arrested.

Oct. 24
3:32 a.m., First Avenue: A caller reported suspicious activity around a vehicle outside their

person who had the hood up on the car was the car's owner.

7:56 p.m., 2200 block N. Roosevelt: Police offer a courtesy ride to a person who had run out of gas while driving.

Oct. 25
5:52 p.m., 1100 block S. Jackson: An Assault in the Fourth degree was reported. No further information was given.

6:29 p.m., 2400 block Ocean Vista Drive: A burglary was reported, as well as theft, and possession of heroin.

9:14 p.m., Highway 101 and Broadway: Caller reports a woman who approached her car at the traffic signal behaving in an aggressive manner. She also demanded a ride. Police are unable to locate anyone in the area fitting that description.

Oct. 26
5:37 p.m., S. Wahanna: Caller reports a man seemingly too intoxicated to ride his bike; police contacting the individual

said he suffers from multiple medical issues and advised him to walk his bike, not ride it.

6:15 p.m., Highway 101 and the Helicopter Pad: Police respond to a report of a woman standing in the road attempting to flag down a ride. The woman made it to the police department and then on to the bus stop.

7:46 p.m., 300 block S. Franklin: A woman who said her ex was following her was given a police escort home for her protection.

Oct. 27
7:56 a.m., McCormick Garden Road: Seaside police assist Gearhart police with a disturbance.

9:11 a.m., Tillamook Head Road: Police respond to a report of a deer stuck in a fence. Prior to police arrival, the deer was released.

12:20 p.m., 7th and Prom: Police arrive in response to a reported drug deal in progress;

subject grabbed backpacks out of a car and disappeared before police could find them.

10:48 p.m., the beach: Police respond to a report of a disturbance; it is determined it is was "people having fun" and preparing to go into the ocean.

Oct. 28
7:21 a.m., 800 block 1st: An on-going domestic situation between a man and his wife resulted in the man receiving a restraining order.

10:39 a.m., S. Holladay: Approximately 15 gallons of gas were reported as being taken from a company vehicle overnight. No suspects are known. Police advise the case has been suspended.

Oct. 30
9:56 a.m., Holladay Drive and the Estuary: Caller reports people cutting wood in an unauthorized area. Police advise suspects they need permission from the forestry service and tell them to stop.

4:08 p.m., 1100 block S. Roosevelt: Police assist a woman who was left stranded in Seaside with two children. The woman is non-English speaking. Police assist her getting transportation back to Portland.

7:43 p.m., 2100 block Lewis & Clark Road: A dog bite victim is transported to Seaside Hospital.

9:10 p.m., Oceanway: Caller requests police assistance, urging wife to return home from church. The caller called back to say she was safely home.

Oct. 31
12:13 a.m., 1100 block N. Roosevelt: Police are alerted to a man talking to himself and banging on the window of a closed store at the Outlet Mall. Police arriving tell him he is permanently trespassed from the area.

9:56 a.m., Seaside Police Station: A sex offender came in to register.

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