

SCOTUS Opinion: Scope Of Duty By BLM Protest Organizer To Be Determined By State Courts

5 Nov 2020

During a Black Lives Matter demonstration in Louisiana protesting a recent police shooting, one of the officers was struck in the face by a chunk of rock causing serious injuries. No one could identify who threw the rock, so in *Mckesson v. Doe*, the officer sued the organizer of the protest on the theory that the demonstration was negligently staged to allow the assault. The district court dismissed the claim under the First Amendment. A 2-1 panel of the Fifth Circuit reversed, holding that, under Louisiana state law, a jury might find that the organizer negligently and foreseeably precipitated the assault by directing the protest onto a highway, blocking traffic, and deemed the First Amendment inapplicable as a defense. The Fifth Circuit en banc split 8-8 of the issue, leaving the reversal in place.

The Court, in a 7-1 per curiam opinion (Justice Barrett not participating), sent the case back, holding that the Fifth Circuit's ruling on the application of Louisiana law was "too uncertain" and should have been certified to the Louisiana Supreme Court for an answer as to the scope of the organizer's duty of care in organizing and leading a protest, and whether the officer had alleged a particular risk within the scope of that duty. The Court did not address the First Amendment issue, since the determination of the state law issues might resolve the case. Justice Thomas dissented without comment.

A link to the opinion is here: https://www.supremecourt.gov/opinions/20pdf/19-1108_8n5a.pdf

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TAGGED: scotus, Supreme Court, First Amendment, Mckesson v. Doe, Fifth Circuit, Louisiana state law