

**CASE NO. 1**  
**MINNESOTA COURT OF APPEALS**

**BIXBY v. THOMPSON**

**Parties:** Appellant – Anthony Thompson  
Respondent – Eric Bixby

**Issues:**

1. Whether Bixby’s tweets constitute defamation because they represented false statements.
2. Whether Bixby is protected from being sued as a journalist because Thompson is a “public person.”

**Facts:**

Eric Bixby was an independent investigative reporter in the Twin Cities who ran a blog called *The Seedy Cities Report* and operated a Twitter account using the handle @seedycities. In August of 2016, Bixby began investigating a local adult-entertainment club owner and millionaire, Anthony Thompson, who was rumored to be considering a run of one of Minnesota’s U.S. Senate seats which was expected to open up in 2018. Thompson set up an exploratory committee and formed a Political Action Committee (PAC) which began fundraising and collecting donations which could eventually be used to fund Thompson’s campaign if he decided to run.

Shortly after Bixby began investigating Thompson, a bartender at Thompson’s largest and most profitable nightclub, Eclipse, told Bixby that he thought Thompson was “washing” cash through his nightclubs to cover up illegal drug sales.<sup>1</sup>

Mr. Bixby began setting up more contacts at Thompson’s nightclubs. In October of 2016, Bixby received a tip from one of his contacts that Thompson was having “meetings” with “business leaders” at his nightclubs. Though these “business leaders” all headed up legitimate business in the Twin Cities, all were suspected drug kingpins in the metro area. However, Bixby had been unable to find any evidence substantiating the tip that Mr. Thompson himself was using his nightclubs for money laundering.

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<sup>1</sup> “Washing” cash is part of the process of money laundering. When money comes from illegal activities, it is “dirty.” It needs to be “clean” before it goes into banks because depositing large amounts of cash without a legitimate paper trail is highly suspicious. Money laundering is itself a crime, and it usually leads to the discovery of other underlying criminal activity because it is typically used as a cover-up.

Within days of receiving the money laundering tip, and without conducting additional research, Bixby tweeted that Thompson was having meetings with investors in Thompson's restaurants and nightclubs who were also suspected druglords. Due to character limitations on tweets, Bixby did not indicate that the tips came from an anonymous source. Bixby's tweets were phrased in such a way that indicated that he had witnessed the meetings and identified the individuals involved himself. Bixby tweeted the names of the businessmen and times at which these meetings had allegedly occurred. In addition to claims that the meetings actually occurred, Bixby tweeted statements like "I wonder where shady Thompson's campaign money is coming from. . ."

Bixby's Twitter following expanded rapidly in the days following these tweets. The Star Tribune published an article on Bixby's tweets and their effect on Thompson's potential Senate run. Donations to Thompson's PAC dwindled amid continuing speculation that Thompson was either involved in drug activity or collecting donations from known drug dealers. At the end of October 2016, Thompson's exploratory committee disbanded and issued a statement saying that Thompson would not seek public office.

Thompson sued Bixby for defamation. Thompson admitted having meetings with investors in his clubs at the dates and times claimed by Bixby in his tweets, but Thompson alleged that either the investors were not involved in drug activity or that he was unaware of their involvement with drug-related crime. The trial court judge dismissed Thompson's lawsuit because the evidence did not clearly show that Bixby's tweets were false. In his order dismissing the lawsuit, the trial court judge also said that, even if Bixby's tweets were misleading, Thompson was a "public person" he also needed to prove that Bixby had published the tweets with "actual malice."

Thompson appealed, arguing that Bixby's tweets were false, and that he was not actually a "public person" so he did not have to face the higher standard for defamation. Thompson's appeal is now before the Court of Appeals.

## **Issue 1 – Summary of the Issues and Legal Background**

Defamation is an exception to speech protected by the First Amendment, meaning that individuals are not protected if they communicate defamatory speech about another individual. In Minnesota, speech is defamatory if it (1) is "communicated" to others, (2) it contains false factual assertions, and (3) it intends to harm the individual's reputation and to lower the individual's reputation in the community. True statements, however insulting or harmful, are not defamation. Thus, truth is an absolute defense to a defamation claim. In a defamation action, the plaintiff (the person launching the lawsuit) has the burden to prove that statements are false.

Defamation law is concerned with **substantial truth**, not minor inaccuracies. A statement is substantially true if it would have the same effect on the mind of the reader or listener as whatever the harmed individual claims the truth is.

For the purposes of this case, here are some questions to think about:

- Which, if any, of Bixby’s tweets are provably false?
- Does it matter if none of Bixby’s tweets individually are false but, together, they imply a false conclusion?

Use the case summaries below to help answer these questions:

<i>Masson v. New Yorker Magazine</i> , United States Supreme Court (1991)	
<b>Facts</b>	A reporter from New Yorker Magazine interviewed a prominent professor, Masson, as well as some of his associates for a profile in the magazine. In the published interview, the reporter suggested that the professor called himself an “intellectual gigolo”—which suggested that the professor considered himself someone that would sacrifice integrity in his work for financial gain—and that he said he was the “greatest analyst who ever lived.” The reporter’s notes showed that the professor himself had not made these statements, but one of his graduate students did.
<b>Issue</b>	Whether the published article was false and therefore defamatory.
<b>Holding</b>	YES. Even though the statement itself was not false, falsely attributing it to the professor could lead a reasonable person to form a damaging opinion of the professor.
<b>Reasoning</b>	The fact that the statements were not, in fact, false was less important than the mistaken attribution. Because it was the fact that the article attributed these statements to the professor himself that was damaging and harmful, this was the falsity that mattered for the purposes of defamation.

<i>McKee v. Laurion</i> , Minnesota Supreme Court (2013)	
<b>Facts</b>	Plaintiff Dennis Laurion’s father, Kenneth, was admitted to a hospital after suffering a stroke. During his father’s treatment, Dennis interacted with a Dr. David McKee. Afterwards, he posted on a “rate your doctor” website, alleging, among other things, that Dr. McKee made offensive statements about the likelihood of Kenneth dying and that it didn’t matter that Kenneth’s hospital gown wasn’t adjusted to cover his entire body. These parts of his review included statements in quotation marks, making it seem to the reader that Dr. McKee had said these things exactly. Dennis concluded his review saying “Dr. McKee is a real tool!” Dr. McKee disputed that he had said the exact words that appeared in Dennis’s review, but admitted that he might have said something similar. He argued that his statements were taken out of context, and that the implication that he had been rude or dismissive was not accurate.
<b>Issue</b>	Whether any of Dennis’s statements are actionable as defamation.

<b>Holding</b>	NO. Dennis's statements represented substantial truth, even if Dennis misquoted Dr. McKee. Dennis's statement calling Dr. McKee a "tool" was pure opinion.
<b>Reasoning</b>	Minor differences such as phrasing and context between Dr. McKee's account of what he said and Dennis's review were "minor inaccuracies." Because Dennis's review conveyed the substantial truth of what happened during his father's hospital visit, they are not actionable as defamation. Furthermore, Dennis's statement Dr. McKee a "real tool" was "pure opinion." Pure opinion or "name calling" are not actionable as defamation because they do not include assertions of fact, which are more likely to do damage to a professional's reputation than one person's opinion.

<i>LeDoux v. Northwest Pub., Inc.</i> , Minnesota Court of Appeals (1994)	
<b>Facts</b>	Richard LeDoux was the was a supervisor in the Duluth Street and Traffic Control Maintenance department. Before LeDoux assumed the duties of supervisor, he built a home on a new street in Duluth with no other homes on it. The street was damaged and LeDoux suggested to his supervisor at the time that the city should repair the street. The supervisor approved the repairs. After LeDoux became supervisor, he had the authority to approve the operational decisions necessary to move repair projects forward, including the project on his street. He authorized those repairs. The Duluth News Tribune published an editorial titled "City crew repaves boss's road" and suggested that LeDoux was using his authority to funnel resources towards personal projects. The editorial criticized LeDoux and accused him of using public resources to pay for private projects, including rebuilding his home garage in addition to repairing the street. As a result, LeDoux was fired from his position as supervisor.
<b>Issue</b>	Whether the article published by the Duluth News Tribune was sufficiently "false" to constitute defamation.
<b>Holding</b>	YES. A reasonable person could find the editorial to imply that LeDoux engaged in criminal activity by stealing from the city.
<b>Reasoning</b>	Statements that LeDoux committed theft were factual in nature, not just statements of editorial opinion. The editorial seriously implied that LeDoux committed crimes and the statements in the editorial were not substantially accurate. After the article was published, evidence showed that individuals called LeDoux a thief and refused to speak to him. Therefore, the evidence shows that a reasonable person could conclude that the articles communicated that LeDoux had engaged in criminal activity when that was not substantially true.

## Issue 2 – Summary of the Issues and Legal Background

Public officials who want to sue for defamation have an uphill battle. Because the First Amendment values public discourse and debate, the law protects almost all statements made about matters of public concern regarding public figures or officials whether they are misleading or not. Therefore, public figure plaintiffs must prove that statements were made with “reckless or actual disregard for the truth” in order to pursue their claims.

For the purposes of this case, here are some questions to think about:

- Is Thompson a public figure? Did he voluntarily seek out the spotlight?
- Is Thompson a person of influence?

Use the case summaries below to help answer these questions:

<i>New York Times Co. v. Sullivan</i> , United States Supreme Court (1964)	
<b>Facts</b>	The New York Times published an editorial alleging that certain public officials in Alabama were unleashing a “wave of terror” on civil rights activists in the south. The editorial mentioned 64 officials by name, including L.B. Sullivan, the plaintiff, who was the Commissioner of Public Safety in Montgomery, Alabama. The editorial characterized certain events incorrectly and made the response from local officials seem more brutal than what had actually happened. The editorial also mischaracterized the local officials’ role in backlash to protesters, which was actually committed by private citizens.
<b>Issue</b>	Whether the newspaper’s editorial was actionable as defamation.
<b>Holding</b>	NO. Even though the editorial was misleading, public officials may not recover damages in private lawsuits for public statements that are critical of government.
<b>Reasoning</b>	The purpose of the First Amendment is to encourage free debate about government and government officials. Therefore, citizens must have an unconstrained right to criticize officials. If officials sue citizens for defamation, they must prove that the speech was made with “actual or reckless disregard for the truth.” It is not enough that they are simply misleading.

<i>Gertz v. Robert Welch, Inc.</i> , United States Supreme Court (1974)	
<b>Facts</b>	After a Chicago police officer killed their son, a family hired Emilio Gertz, a respected attorney, to sue the police department on their behalf. An independent paper, The American Opinion, published a series of articles on the murder and the criminal trial against the police officer, arguing that the case was part of a conspiracy to discredit and destabilize the police. An article on the attorney called him a Communist and inaccurately accused him of having a criminal record and being a member of organizations that tried to overthrow the government. The publication did not make any effort to verify the

<b>Facts (cont.)</b>	accuracy of the statements they published, yet claimed to have done extensive research. The attorney was the subject of significant media attention given the publicity surrounding the trial against the police officer and the boy he killed.
<b>Issue</b>	Whether the attorney was a public official or figure.
<b>Holding</b>	NO. Even though the attorney was temporarily in the public sphere, he did not voluntarily take on a role of significant public influence.
<b>Reasoning</b>	A person who decides to seek government office runs the risk of public criticism, including inaccurate criticism. The same is not true for private citizens. However, some private citizens assume public roles and represent themselves as persons of substantial public influence. The attorney here was merely doing his job, and though he was subject to media attention, this was not at his request or as a result of his voluntary choice.

<i>Valento v. Ulrich</i> , Minnesota Court of Appeals (1987)	
<b>Facts</b>	Don Valento was a candidate for re-election to the Minnesota House of Representatives in the November 1984 election. A citizen, Kathy Nehm, allowed his opponent, Jon Ulrich, to place a campaign sign in her yard. One morning, Kathy noticed that the sign had been defaced and there was damage to her yard which looked like a car had driven through it. Kathy wrote a letter to the editor saying that "dirty politics has no place in our community," implying that the Valento campaign had destroyed the sign and damaged Kathy's yard. There was no evidence that the campaign of Valento supporters had actually done this.
<b>Issue</b>	Whether Kathy's letter was defamatory.
<b>Holding</b>	NO. The First Amendment protects speech against public officials even if it is misleading or harmful.
<b>Reasoning</b>	Even though Valento was a candidate and not an actual representative, he was a public official at the time. He voluntarily entered the political sphere and opened himself up to character attacks. Even though Kathy's letter was misleading, it did not actually accuse the Valento campaign of destroying the sign and damaging her yard. Even if she did make that accusation, the First Amendment protects even misleading speech against public officials.