



U.S. SUPREME COURT GRANTS APPEAL IN ARREST LAWSUIT

January 2017

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In *Wesby v. District of Columbia*,¹ the United States Court of Appeals for the D.C. Circuit examined the conduct of police officers who responded to a loud party, made entry, and ultimately arrested the party participants. A woman who had not yet signed a lease on the apartment and therefore had not authority to hold the party invited the partygoers. At the direction of a sergeant the attendees were arrested for unlawful entry and disorderly conduct. The arrestees sued the officers alleging that the officers lacked probable cause to make the arrests since the arrestees did not know the woman lacked the authority to hold the party. The D.C. Circuit held that the Federal District Court's ruling, granting summary judgment in favor of the arrestees, thereby finding that the officers violated clearly established law with these arrests, was proper. The United States Supreme Court has now granted certiorari.

The D.C. Circuit outlined the facts as follows:

In the early morning hours of March 16, 2008, the MPD dispatched officers to investigate a complaint of illegal activities taking place at a house in Washington, *D.C.* The officers heard loud music as they approached the house and, upon entering, saw people acting in a way they viewed as consistent "with activity being conducted in strip clubs for profit"—several scantily clad women with money tucked into garter belts, in addition to "spectators . . . drinking alcoholic beverages and holding [U.S.] currency in their hands." Some of the guests scattered into other rooms when the police arrived. The parties dispute how fully the house was "furnished," but the police observed at least some folding chairs, a mattress, and working electricity and plumbing.

One of the Defendants-Appellants, Officer Anthony Campanale, took photographs of the scene and, along with other officers, interviewed everyone present to find out what they were doing

¹ *Wesby v. District of Columbia*, 765 3d. 13 (D.C. Cir. 2014), Re-Hearing Denied en banc *Wesby v. District of Columbia*, 816 F.3d 96 (D.C. Cir. 2016), Cert. Granted *District of Columbia v. Wesby*, 2017 U.S. LEXIS 788 (January 19, 2017).

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at the house. The partygoers gave conflicting responses, with some saying they were there for a birthday party and others that the occasion was a bachelor party. Someone told Officer Campanale that a woman referred to as "Peaches" had given them permission to be in the house; others said that they had been invited to the party by another guest. Peaches was not at the house. Nobody who was present claimed to live there or could identify who owned the house.

Another Defendant-Appellant, Officer Andre Parker, spoke to a woman who told him that Peaches "was renting the house from the grandson of the owner who had recently passed away and that [the grandson] had given permission for all individuals to be in the house." The woman then used her cell phone to call Peaches. Officer Parker spoke to Peaches, who refused to return to the house because she said she would be arrested if she did. When Officer Parker asked who gave her permission to be at the house, Peaches told Officer Parker that he could "confirm it with the grandson." Officer Parker then used the same phone to call the apparent owner, identified in the record only as Mr. Hughes, who told Officer Parker that he was trying to work out a lease arrangement with Peaches but had yet to do so. Hughes also told Officer Parker that the people in the house did not have his permission to be there that evening.

Sergeant Andre Suber, an MPD supervisor who was acting as the watch commander that night, arrived on the scene after the officers had begun their investigation. The officers briefed Sergeant Suber, including telling him about Parker's conversations with Peaches and Hughes. Sergeant Suber also spoke to Peaches directly by phone. According to Sergeant Suber, Peaches told him that "she was possibly renting the house from the owner who was fixing the house up for her" and that she "gave the people who were inside the place, told them they could have the bachelor party." As the police continued to talk to Peaches, she acknowledged that she did not have permission to use the house. On that basis—and notwithstanding the undisputed statements of both the guests and Peaches that she had given them permission to be at the house—Sergeant Suber ordered the officers to arrest everyone for unlawful entry.

After the police arrested and transported the partygoers to the police station, Sergeant Suber and the lieutenant taking over as watch commander discussed the appropriate charges for the Plaintiffs. According to Sergeant Suber, the lieutenant decided to change the charge to disorderly conduct after speaking with a representative from the *District of Columbia* Attorney General's office. Sergeant Suber disagreed, but the lieutenant overruled him. The officers who had been at the house, including Sergeant Suber, each testified that they had neither seen nor heard anything to justify a disorderly conduct charge.

Sixteen of the arrestees sued five officers for false arrest under *42 U.S.C. § 1983*, the officers and the *District* for false arrest under common law, and the *District* for negligent supervision. On cross-motions for partial summary judgment as to liability, the *district* court granted the parties' motions in part and denied both motions on some issues. The court ruled in favor of the Plaintiffs on their claims of false arrest against Officers Parker and Campanale in their individual capacities, and on the common law false arrest and negligent supervision claims against the *District*. Defendants appeal these liability determinations.

The D.C. Circuit agreed with the District Court that the officers lacked probable cause to arrest the persons attending the party, because the officers had spoken to the host, Peaches, who indicated that she had invited persons to the party and the partygoers were unaware that Peaches had no authority to do so and therefore lacked any culpable mental state for an unlawful entry. The court noted that the officers had also spoken to the owner of the house who confirmed that he was in negotiations with Peaches for a lease. Finally, the court noted that the persons who were arrested reported that they had been invited to attend this party.

The officers argued that while the information from Peaches may be a defense in a criminal trial but it would not undercut probable cause since the officers had an acknowledgment from Peaches that she lacked authority and the owner indicated that none of the occupants had permission to be at the residence.

The court held that Peaches invitation to the persons arrested undercut an element of the unlawful entry, specifically that the arrestees had not intentionally entered against the will of the owners. The court wrote that all of the evidence supported the fact that the arrestees were invited, and there was no evidence to indicate that they knew Peaches did not have authority to invite anyone into the house.

With respect to the unlawful entry charge, the court concluded:

In sum, when faced with the facts and circumstances presented in this case—and, in particular, without any evidence that the Plaintiffs knew or should have known they were in the house against the will of the owner or lawful occupant—a reasonable officer could not have believed there was probable cause to arrest the Plaintiffs for unlawful entry.

The court also found that there was no probable cause to arrest the partygoers for disorderly conduct. In doing so, the court simply indicated that the disorderly conduct statute required:

"shout[] or make[] a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons," either with the intent "to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby."

In its analysis, the court noted that the plaintiff pointed out that the arresting officers did not believe there was probable cause for the disorderly conduct charge. The court noted that what a particular officer subjectively believes is irrelevant to the probable cause analysis and a court must instead determine if some objectively reasonable officer would believe that probable cause existed.

The court then concluded that there was no evidence to support a conclusion that the partygoers created the type of disturbance under the disorderly conduct statute and thus there was no probable cause to arrest the partygoers.

The United States Supreme Court has issued a writ of certiorari in this case and will consider the following issues:

Issues:

(1) Whether police officers who found late-night partiers inside a vacant home belonging to someone else had probable cause to arrest the partiers for trespassing under the Fourth Amendment, and in particular whether, when the owner of a vacant home informs police that he has not authorized entry, an officer assessing probable cause to arrest those inside for trespassing may discredit the suspects' questionable claims of an innocent mental state; and

(2) whether, even if there was no probable cause to arrest the apparent trespassers, the officers were entitled to qualified immunity because the law was not clearly established in this regard.

We can expect an opinion/decision and an analysis of the proper method of determining what factors an officer must consider in his/her determination of probable cause if the Court decides the 1st issue.

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