



**THE UNITED STATES SUPREME COURT  
GRANTS SUMMARY JUDGMENT AND  
QUALIFIED IMMUNITY TO D.C. OFFICERS  
IN FALSE ARREST CASE**

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**Unprovoked Flight, Furtive Action and Unprovoked Flight, as well as Nervous and Evasive Behavior are all factors in the Totality of Circumstances**

**The case of Peaches and the Party**

In *District of Columbia v. Wesby*,<sup>1</sup> the United States Supreme Court considered a lawsuit filed by 16 individuals against 5 District of Columbia Police officers in which the United States Court of Appeals for the D.C. Circuit denied granting the officers summary judgment and qualified immunity. It is noted that following an initial denial of the officers' motions in the trial court a jury awarded \$680,000 to the 16 people arrested and with attorneys' fees the loss to D.C. was nearly a million dollars.

The Supreme Court outlined the facts and actions of the officers as follows:

Around 1 a.m. on March 16, 2008, the District's Metropolitan Police Department received a complaint about loud music and illegal activities at a house in Northeast D. C. The caller, a former neighborhood commissioner, told police that the house had been vacant for several months. When officers arrived at the scene, several neighbors confirmed that the house should have been empty. The officers approached the house and, consistent with the complaint, heard loud music playing inside.

After the officers knocked on the front door, they saw a man look out the window and then run upstairs. One of the partygoers opened the door, and the officers entered. They immediately observed that the inside of the house "was in disarray" and looked like "a vacant property." The officers smelled marijuana and saw beer bottles and cups of liquor on the floor. In fact, the floor was so dirty that one of the partygoers refused to sit on it

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<sup>1</sup> *District of Columbia v. Wesby*, 2018 U.S. LEXIS 760

while being questioned. Although the house had working electricity and plumbing, it had no furniture downstairs other than a few padded metal chairs. The only other signs of habitation were blinds on the windows, food in the refrigerator, and toiletries in the bathroom.

In the living room, the officers found a makeshift strip club. Several women were wearing only bras and thongs, with cash tucked into their garter belts. The women were giving lap dances while other partygoers watched. Most of the onlookers were holding cash and cups of alcohol. After seeing the uniformed officers, many partygoers scattered into other parts of the house.

The officers found more debauchery upstairs. A naked woman and several men were in the bedroom. A bare mattress—the only one in the house—was on the floor, along with some lit candles and multiple open condom wrappers. A used condom was on the windowsill. The officers found one partygoer hiding in an upstairs closet, and another who had shut himself in the bathroom and refused to come out.

The officers found a total of 21 people in the house. After interviewing all 21, the officers did not get a clear or consistent story. Many partygoers said they were there for a bachelor party, but no one could identify the bachelor. Each of the partygoers claimed that someone had invited them to the house, but no one could say who. Two of the women working the party said that a woman named “Peaches” or “Tasty” was renting the house and had given them permission to be there. One of the women explained that the previous owner had recently passed away, and Peaches had just started renting the house from the grandson who inherited it. But the house had no boxes or moving supplies. She did not know Peaches’ real name. And Peaches was not there.

An officer asked the woman to call Peaches on her phone so he could talk to her. Peaches answered and explained that she had just left the party to go to the store. When the officer asked her to return, Peaches refused because she was afraid of being arrested. The sergeant supervising the investigation also spoke with Peaches. At first, Peaches claimed to be renting the house from the owner, who was fixing it up for her. She also said that she had given the attendees permission to have the party. When the sergeant again asked her who had given her permission to use the house, Peaches became evasive and hung up. The sergeant called her back, and she began yelling and insisting that she had permission before hanging up a second time. The officers eventually got Peaches on the phone again, and she admitted that she did not have permission to use the house.

The officers then contacted the owner. He told them that he had been trying to negotiate a lease with Peaches, but they had not reached an agreement. He confirmed that he had not given Peaches (or anyone else) permission to be in the house—let alone permission to use it for a bachelor party. At that point, the officers arrested the 21 partygoers for unlawful entry. See *D. C. Code §22-3302* (2008). The police transported the partygoers

to the police station, where the lieutenant decided to charge them with disorderly conduct. See §22-1321. The partygoers were released, and the charges were eventually dropped.

Sixteen of the twenty-one people arrested filed a lawsuit against the arresting officers for false arrest arguing that based on the facts known to the officers, there was no probable cause to arrest the partygoers.

The Supreme Court noted that the United States Court of Appeals for the D.C. Circuit “determined that it was ‘perfectly clear’ that a person with ‘a good purpose and bona fide belief of her right to enter’ lacks the necessary intent for unlawful entry. In other words, the officers needed ‘some evidence’ the partygoers ‘knew or should have known they were entering against the will of the lawful owner.’ And here, the panel majority asserted, the officers must ‘have known that uncontroverted evidence of an invitation to enter the premises would [eliminate] probable cause for unlawful entry.’”

On appeal the United States Supreme Court considered two questions, first, did the officers have probable cause to arrest the partygoers. Second, even if the officers did not have probable cause, were they entitled to qualified immunity, because it would not be clear to an objectively reasonable officer that probable cause was lacking.

The Court started out by citing several principles regarding the determination of probable cause:

1. A court will examine the events leading up to the arrest, and then decide whether these historical facts viewed from the standpoint of some objectively reasonable officer amounted to probable cause.
2. Probable cause is determined not by taking each fact in isolation, but instead is a combination of all the known facts as the totality of circumstances.
3. Probable cause is a fluid concept that is not readily or even usefully reduced to a neat set of legal rules.
4. Probable cause requires only a probability or substantial chance of criminal activity, not an actual sowing of activity.
5. Probable cause is not a high bar.

The Court noted that there was no question in the case that the partygoers had entered the house against the will of the owner, but noted that the partygoers maintained that the officers knew or should have known that there was no reason to believe that the partygoers knew that their presence in the house was against the will of the owner.

The Court held that considering “the totality of circumstances, the officers made an ‘entirely reasonable inference’ that the partygoers were knowingly taking advantage of a vacant house for their late-night party.”

I note that in conducting training I like to compare the facts and circumstances that make up probable cause to drops of water being put into a measuring cup until it hits the probable cause line on the side

of the cup. While not using my measuring cup illustration, the Court pointed out several facts and circumstances, which if taken each in isolation would mean nothing, but when placed together added up to probable cause.

1. Condition of the house

- a. Multiple neighbors indicating it was vacant for months
- b. No furniture other than a few padded metal chairs and a single mattress on the floor in one room.
- c. Few signs of anyone actually living in the house.
- d. The signs that someone could be living there i.e. working utilities, blinds on the windows, some toiletries in the bathroom, some food in the refrigerator, “were not inconsistent with the house being unoccupied.
- e. Although one partygoer told officers that Peaches had recently moved in, the officers noted their doubts on this information as there were no boxes or moving supplies in sight.

2. Partygoer’s conduct:

- a. Loud music/party still going at 1 a.m.
- b. Smell of Marijuana
- c. Beer bottles and cups of liquor on floor that was so dirty partygoer refused to sit.
- d. Makeshift strip club in living room with strippers in bras and thongs with cash tucked into garter belts while giving lap dances.
- e. A group of men with one naked woman on the single bare mattress in a second floor bedroom along with multiple unopened condoms and a used condom.

3. Partygoers’ reactions to arrival of officers:

- a. Many scattered upon seeing the officers.
- b. Two hid, one in a closet and the other in a bathroom.

4. Partygoers’ answers to questions:

- a. When asked who have given permission to be in the house, the partygoers gave vague and implausible answers.
- b. Partygoers could not say who invited them.
- c. Two, who were working the party identified “Peaches” but none of the partygoers mentioned Peaches

- d. Some partygoers indicated that the event was a bachelor party but could not identify the soon to be groom. The court noted that officers may have disbelieved this response in light of the fact that very rarely is a bachelor party thrown without a bachelor.
5. The Court noted that the lower court had relied heavily on Peaches, via phone telling the officer that she had invited the partygoers. The Supreme Court noted that when officers spoke to Peaches she was nervous, agitated, and evasive and that while initially indicating she had permission to use the house, she eventually acknowledged that she had no such permission.

The Court noted:

Taken together, the condition of the house and the conduct of the partygoers allowed the officers to make several “common-sense conclusions about human behavior.” Most homeowners do not live in near-barren houses. And most homeowners do not invite people over to use their living room as a strip club, to have sex in their bedroom, to smoke marijuana inside, and to leave their floors filthy. The officers could thus infer that the partygoers knew their party was not authorized... A reasonable officer could infer that the partygoers’ scattering and hiding was an indication that they knew they were not supposed to be there... The partygoers’ answers to the officers’ questions also suggested a guilty state of mind.”

The Court concluded that when all of the above cited facts were taken as a whole, rather than looking at each fact in isolation, “a reasonable officer could conclude that there was probable cause to believe the partygoers knew they did not have permission to be in the house.”

The Court noted that the lower court had made two mistakes in their analysis of probable cause:

“First, the panel majority viewed each fact ‘in isolation, rather than as a factor in the totality of circumstances.’ Using my analogy, instead of looking at all the liquid in the measuring cup mixed together, the lower court took each drop of water (fact or circumstance) out of the glass and looked at standing by itself.

The Court asserted:

The “totality of the circumstances” requires courts to consider “the whole picture.” Our precedents recognize that the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation. The panel majority took them one by one. For example, it dismissed the fact that the partygoers “scattered or hid when the police entered the house” because that fact was “not sufficient *standing alone* to create probable cause.” (emphasis added). Similarly, it found “nothing in the record suggesting that the condition of the house, *on its own*, should have alerted the [partygoers] that they were unwelcome.” *Ibid.* (emphasis added). The totality-of-the-circumstances test “precludes this sort of divide-and-conquer analysis.”

The second mistake cited by the Court was “the panel majority mistakenly believed that it should

dismiss outright any circumstance that was ‘susceptible if innocent explanation.’”

For example, the panel majority brushed aside the drinking and the lap dances as “consistent with” the partygoers’ explanation that they were having a bachelor party. And it similarly dismissed the condition of the house as “entirely consistent with” Peaches being a “new tenant.” But probable cause does not require officers to rule out a suspect’s innocent explanation for suspicious facts. As we have explained, “the relevant inquiry is not whether particular conduct is ‘innocent’ or ‘guilty,’ but the degree of suspicion that attaches to particular types of noncriminal acts.” Thus, the panel majority should have asked whether a reasonable officer could conclude—considering all of the surrounding circumstances, including the plausibility of the explanation itself—that there was a “substantial chance of criminal activity.”

In conclusion, the Court determined that the officers had probable cause to make the arrest and thus the officers should have been granted summary judgment.

The Court went on to render a decision on the issue of qualified immunity noting that it was doing so because the lower court erred in its conclusion on both the merits and qualified immunity.

The Court pointed out that officers are entitled to qualified immunity unless

1. They violated a federal statutory or constitutional right AND
2. The unlawfulness of their conduct was clearly established at the time the officer acted.

The Court noted that “Clearly Established means that, at the time of the officer’s conduct, the law was sufficiently clear that every reasonable official would understand that what he was doing is unlawful.” The Court said that this demanding standard protects all but the plainly incompetent or those who knowingly violate the law.

The Court pointed out:

“The clearly established standard also requires that the legal principle clearly prohibit the officer’s conduct in the particular circumstance before him. The rule’s contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted... This requires a high degree of specificity... We have repeatedly stressed that courts must not define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced.”

The Court noted that there could be cases where the officer’s conduct so clearly violates the law that you do not need a similar case for qualified immunity to be denied.

The Court concluded that based on the facts that occurred here, the officers were entitled to qualified immunity even if the officers lacked actual probable cause because it would have been reasonable for an officer to conclude that probable cause existed.

## Points to Consider:

- **Officers should document all fact and circumstances that led them to infer that there was probable cause of criminal activity even those innocent factors that when mixed into the totality of circumstances support the officers' conclusions**
- **Probable cause is not a high bar. Officers must be aware that when questioned by attorneys on individual factors in isolation the officer should always premise their answer on the fact that the officer did not consider that fact or circumstance in isolation but instead put all the facts in the measuring cup and then looked at the whole mix rather than one ingredient.**
- **Attorneys should be aware that the qualified immunity analysis requires plaintiffs to come up with a more specific or similar fact pattern on which the law is clearly established rather than some general proposition of law.**

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