

Devenpeck v. Alford
(December 13, 2004) ___ U.S. ___

ISSUE

If an officer arrests a suspect for a crime without probable cause, is the arrest lawful if there was probable cause to arrest him for an unrelated crime?

FACTS

Alford installed “wig-wag” headlights on his car and drove around Washington’s Pierce County listening to police scanners. One night, he pulled behind a car to assist a motorist who had stopped on the shoulder. As he did so, he activated his flashing headlights. As he was helping the motorist change a flat, he noticed a Washington State Patrol car approaching so he “hurried back” to his car and drove off. When the motorist told the officer that Alford gave the impression that he was a “cop,” the officer went after him to investigate the possibility that he was impersonating an officer.

The officer eventually stopped Alford and, while speaking with him, saw two police scanners and a pair of handcuffs in his car. When asked about the flashing headlights, Alford claimed they were part of his car alarm system, but the officer figured this was a lie after noticing an on-off switch that, as he suspected, activated the wig-wags.

A sergeant who had arrived on the scene was questioning Alford about the police equipment in his car when he noticed that a tape recorder on the passenger seat was recording their conversation. Although both the officer and the sergeant suspected that Alford was impersonating an officer, the sergeant decided to arrest Alford for violating Washington’s Privacy Act which makes it unlawful to secretly record a private conversation. Alford told the sergeant that a Washington court had ruled it was not a violation of the Privacy Act to record conversations with officers, and he showed the sergeant a copy of the court’s opinion which Alford happened to be carrying in his glove box. The sergeant was unable to reach a prosecutor to conform this, so he transported Alford into the jail.

After a state court dismissed the charge against Alford, he sued the sergeant and others in federal court claiming he was arrested without probable cause. The jury determined that, while the sergeant did not have probable cause to arrest Alford under the Privacy Act, he did have probable cause to arrest him for impersonating an officer. Consequently, the jurors voted unanimously that the officers were entitled to qualified immunity and were, therefore, not liable.

DISCUSSION

The Ninth Circuit disagreed with the jury’s conclusion, ruling the officers were not entitled to qualified immunity because it was clear that Alford had not violated the Privacy Act. Although the officers may have had probable cause to arrest Alford for impersonating an officer, the Ninth Circuit ruled this did not change its determination because of the so-called “closely related” rule which it had devised for the occasion.

Under this rule, if an officer has probable cause to arrest a suspect for one crime but, for whatever reason, arrests him for a crime for which probable cause does not exist, the arrest is unconstitutional unless the two crimes are “closely related.” And because a violation of the Privacy Act is not “closely related” to the crime of impersonating an officer, the court ruled that the jury’s verdict was incorrect and that Alford was entitled to a new trial.

A unanimous United States Supreme Court rejected the Ninth Circuit’s new “rule,” reiterating that a suspect is lawfully arrested if there is probable cause to arrest him, even if he was notified that he was under arrest for some other crime. Said the Court,

“Those are lawfully arrested whom the facts known to the arresting officers give probable cause to arrest.”

The Court had some other problems with the Ninth Circuit’s “closely related” rule. First, there was no legal justification for it. Second, it could result in “arbitrary consequences” because the lawfulness of an arrest might depend on whether an officer who unquestionably had probable cause, happened to announce the “correct” crime. Third, it would have “perverse consequences” because it would encourage officers to either not notify suspects of the charge for which they were being arrested, or arrest them for everything they could think of.¹

Consequently, the Court disposed of the “closely related” rule, and remanded the case for a determination as to whether there was probable cause to arrest Alford for impersonating an officer.

¹ NOTE: The Court noted that officers are not required to notify a suspect of the crime for which he is being arrested. Said the Court, “While it is assuredly good police practice to inform a person of the reason for his arrest at the time he is taken into custody, we have never held that to be constitutionally required.”