

District of Columbia v. Wesby

(2018) __ U.S. __ [138 S.Ct. 577]

Issue

Did officers have probable cause to arrest 21 partygoers for unlawfully entering a vacant house?

Facts

At about 1 A.M., the District of Columbia’s Metropolitan Police Department received a complaint about loud music and “illegal activities” inside a vacant house. When officers arrived, several neighbors confirmed that the house should have been empty. As the officers approached the house, they heard loud music coming from inside. When one of the occupants opened door for the officers, they entered and “immediately observed that the inside of the house was in disarray and looked like a vacant property.” It also looked like there was some “debauchery” going on, as several women were giving lap dances, some were walking around in only bras and thongs (“with cash tucked into their garter belts”), and there were “multiple open condom wrappers.” As the officers entered, many of the occupants “scattered” and some were found hiding in various places. After rounding up all 21 occupants, the officers interviewed them all and “did not get a clear or consistent story.” For example, many of them said the gathering was a bachelor party, but none of them could identify the bachelor.

As things progressed, the officers learned that someone named “Peaches” was supposedly renting the house and had orchestrated the party. Peaches was not there so an officer phoned her and, during a conversation in which she was “nervous, agitated, and evasive,” she claimed she had rented the house from the owner. But when the officer asked her the owner’s name, she “became evasive and hung up.” The officers then phoned the owner who said that he had not given Peaches (or anyone else) permission to use the house for a party. At this point, the officers arrested all of the occupants for “unlawful entry.”

After the DA dropped the charges, 16 of the partygoers sued the police department, claiming they were arrested without probable cause. The District Court agreed and also ruled that the officers were not entitled to qualified immunity. The case then went to trial and the jury awarded the partygoers a total of \$680,000 in compensatory damages, and awarded their attorneys about \$320,000. The D.C. Circuit upheld the award, and the District of Columbia appealed to the Supreme Court.

Discussion

In a unanimous opinion, the Supreme Court reversed the District Court and the D.C. Circuit, ruling that the officers did, in fact, have probable cause to arrest the partygoers. The Court’s ruling was so obviously correct that it would serve no purpose to restate the facts upon which it was based. But we are reporting on this case because it gives us an opportunity to review two fundamental principles of probable cause that had somehow eluded the District Court and two of the three members on the D.C. Circuit’s panel. (The third judge, the one who got it right, was Janice Brown, formerly with the California Supreme Court.)

The first principle of probable cause is that, in determining whether it exists, the courts must consider the totality of circumstances, which essentially means that they

must not isolate each fact, belittle its importance or explain it away, and then conclude that probable cause did not exist because none of the individual facts were very incriminating. As the Supreme Court previously observed, “[W]e have said repeatedly that [the lower courts] must look at the totality of the circumstances of each case.”¹ And yet, the two judges on the *Wesby* panel did just the opposite when, for example, they concluded that partygoers’ reaction to seeing the officers (remember that some scattered and some hid) was “not sufficient standing alone” to create probable cause. But under the totality of circumstances rule, it doesn’t matter whether any circumstance “standing alone” would constitute probable cause. What counts is whether the totality of circumstances do. The two judges were also mistaken, said the Court, when they concluded there was no evidence “suggesting that the condition of the house, on its own, should have alerted the partygoers that they were unwelcome.” Thus the two judges not only ignored the totality rule, their conclusion that the partygoers reasonably believed that the partygoers were “welcome” is contrary to the fact that the house “was in disarray and looked like a vacant property.”

Second, the Supreme Court ruled that the judges “mistakenly believed” that they could “dismiss outright any circumstances that were ‘susceptible of innocent explanation.’” For example, they “brushed aside” the drinking and lap dances because they thought it was consistent with the partygoers’ explanation that they were having a bachelor party. This ruling not only violated the “totality” rule, it was wrong because, as the Supreme Court observed, the partygoers acknowledged that there was “no bachelor” at the bachelor party.

Consequently, the Court ruled that the officers had probable cause to arrest the occupants

Comment

The D.C. Circuit’s ruling in *Wesby* was especially disconcerting because it was the second case within the past few months that it issued an opinion that was so obviously wrong. In the other opinion, *In re Ezra Griffith*,² the court ruled that a warrant to search the defendant’s cell phone was not supported by probable cause because the affidavit did not contain an explanation as to why the officers believed that the defendant possessed a cell phone. And yet, the Supreme Court previously said that such an explanation was unnecessary because cell phones are now “such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.”³ POV

Date posted: March 14, 2018

¹ *United States v. Arvizu* (2002) 534 U.S. 266, 273.

² (D.C.Cir. 2017) __ F.3d __ [2017 WL 3568288].

³ *Riley v. California* (2014) __ U.S. __ [134 S.Ct. 2473, 2484].