Recent Case Report

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Huff v. City of Burbank

(9th Cir. 2011) __ F.3d __ [2011 WL 71472]

Issue

Did exigent circumstances justify a warrantless entry into the home of a teenager who was reportedly planning to "shoot up" his school?

Facts

The principal of a Catholic high school in Burbank notified the police that she had heard reports that one of her students was planning to bring a gun to school and start shooting. The responding officers met with the principal, Sister Milner, who said she had learned of a "rumor" that a student named Vincent Huff was going to "shoot up" the school, and that the threat was supposedly contained in a letter which she had not seen.

The officers questioned Sister Milner about the report and learned that Vincent had been absent from school for the past two days; that, as the result of the rumor, some parents were keeping their children at home; and that she was "concerned about the threat and the safety of her students." The officers also learned (apparently from two students they also interviewed) that Vincent had been a victim of bullying. Based on this information and Sister Milner's request that they investigate the matter, the officers went to Vincent's home to interview him.

When they knocked on the door and announced they were police officers, no one responded. An officer then phoned the residence (and could hear the phone ringing) but, again, no one answered. The officer then placed a call to the cell phone of Vincent's mother, Maria Huff. She answered the phone, but when he explained that he was a police officer and that he wanted to talk with her about Vincent, she hung up.

About two minutes later, Maria Huff and Vincent walked outside and stood on the front steps. When one of the officers explained that they wanted to "talk about some threats at the school," Vincent responded, "I can't believe you're here for that." Another officer asked Maria Huff if they could go inside to talk about the matter, but she said no. The officer then asked her if there were any guns in the house, at which point she "turned and ran" into the house, followed by Vincent—and two officers.

When one of the officers was asked at trial why he entered the house, he testified it was "because of, again, the threat that he was going to blow up or shoot up the school. I wanted to make sure neither one of them could access any weapons from inside the house, and that's where they normally get the weapons from is from either their parents or relatives or friends." After entering, the officers remained in the living room for five to ten minutes. The court did not say what happened during this time except that the officers did not search anything, and that they left after satisfying themselves that the rumor was not true.

The Huff family later sued the officers and the city in federal court (seeking money damages), claiming that the officers' act of entering their living room without a warrant constituted a violation of the Fourth Amendment. Following a bench trial, the district court ruled that the officers' entry was justified by exigent circumstances. The Huffs appealed to the Ninth Circuit.

Discussion

A warrantless entry into a home is permitted under the exigent circumstances exception to the warrant requirement if it was objectively reasonable;[1] and it is objectively reasonable if the need for the action outweighed its intrusiveness. [2] But because a warrantless entry is such a serious intrusion, the Ninth Circuit and other courts have ruled that it cannot normally be upheld on the basis of exigent circumstances unless the officers had *probable cause* to believe it was necessary to defuse an imminent threat to life or property.[3] The question, then, was whether the facts known to the officers when they entered constituted probable cause.

The court in *Huff* ruled that probable cause did not exist for two reasons. First, none of the circumstances that it considered relevant demonstrated a sufficient threat. Second, an officer testified that he did not think that probable cause existed. Having also ruled that the two officers who entered the residence were not entitled to qualified immunity (because it was clearly established that probable cause was required), the court ruled that the case should proceed to trial.

Comment

There are several things about this opinion that demonstrate confusion by the court over the facts of the case and the applicable law. For starters, it appears the court did not understand the district court's ruling on the matter. On two occasions it explicitly acknowledged the district court had ruled that exigent circumstances had, in fact, existed; viz., "[a]fter holding a two-day bench trial, the district court held that exigent circumstances permitted the police's warrantless entry into the Huff residence," and later, "the district court found that exigent circumstances justified the warrantless entry" into the house. And yet, the court began its analysis by saying "[i]t is not clear whether the district court actually found that there were exigent circumstances . . . "

More troublesome, the court misrepresented a crucial piece of evidence, saying that Mrs. Huff, when asked if there were any guns in the house, merely "responded that she would go get her husband. [She] then turned around and went into the house." But in reality, she turned and "ran" into the house. As the dissenting judge pointed out, "[T]he district court found that when asked whether there were guns in the house, rather than responding, Mrs. Huff turned and *ran* into the house." And, as one of the officers

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[1] See *Brigham City* v. *Stuart* (2006) 547 U.S. 398, 404 [a police action is reasonable "as long as the circumstances, viewed objectively, justify the action"]; *U.S.* v. *Snipe* (9th Cir. 2008) 518 F.3d 947, 952 [the issue is whether "law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm"].

[2] See *Illinois* v. *McArthur* (2001) 531 U.S. 326, 331 ["[W]e balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable."]; *Illinois* v. *Lidster* (2004) 540 U.S. 419, 426 ["[I]n judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."].

[3] See *Murdock* v. *Stout* (9th Cir. 1995) 54 F.3d 1437, 1441 ["Although exigent circumstances relieve the police officer of the obligation of obtaining a warrant, they do not relieve an officer of the need to have probable cause to enter the house."]; *U.S.* v. *Alaimalo* (9th Cir. 2002) 313 F.3d 1188, 1193 ["Even when exigent circumstances exist, police officers must have probable cause to support a warrantless entry into a home."]; *U.S.* v. *Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1444, fn.5 ["Exigent circumstances justify a warrantless entry into a home only where there is also probable cause to enter the residence."].

testified, it was this unusual and highly suspicious action that precipitated the decision to enter.

In addition to distorting the facts, the majority failed to apply the correct legal standard in determining whether probable cause existed. The Supreme Court has repeatedly instructed the lower courts that they must consider the totality of relevant circumstances in making this determination,[4] and that they must not isolate the facts upon which the officers relied, belittle the importance of these facts or try to explain them away, and then announce that probable cause did not exist because none of the abstract facts were sufficiently incriminating.[5] And yet, this is exactly what the majority did.

For example, the fact that the Huffs did not answer their door or phone was casually dismissed by the court as follows: "That the Huffs did not answer their door or telephone may be 'unusual,' but it did not create exigent circumstances." But no one was contending that these circumstances "created" exigent circumstances. Instead, they were among the many facts that the officers could rightly consider in making that determination. The majority then compounded its error when it said, "The district court was incorrect in finding that Maria Huff's failure to inquire about the reason for the officer's visit, or her reluctance to speak with the officers and answer questions, were exigent circumstances." But the district court *did not rule* that these facts "were exigent circumstances." It merely ruled—as required by the Supreme Court—that they were facts that the officers could rightly consider.

Not only did the court ignore the Supreme Court's totality standard, it also ruled that probable cause did not exist because the officers testified that they did not think it did. And yet, an officer's belief that he had—or did not have—probable cause is absolutely irrelevant.[6] As the Fourth Circuit pointed out in a related context, "The Supreme Court's definition of probable cause asks not whether the arresting officer reasonably believed that the arrestee had committed a crime, but whether the evidence was sufficient to support such a reasonable belief."[7]

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[4] See, for example, *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 136 ["The totality of the circumstances, as always, must dictate the result."]; *United States* v. *Arvizu* (2002) 534 U.S. 266, 273 ["[W]e have said repeatedly that [the lower courts] must look at the totality of the circumstances of each case"]; *United States* v. *Sokolow* (1989) 490 U.S. 1, 9 ["Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion."].

[5] See *Massachusetts* v. *Upton* (1984) 466 U.S. 727, 732 [trial court erred when it made its probable causes determination by "judging bits and pieces of information in isolation"]; *Maryland* v. *Pringle* (2003) 540 U.S. 366, 372, fn.2 ["The [district] court's consideration of the money in isolation, rather than as a factor in the totality of the circumstances, is mistaken in light of our precedents."].

[6] See *Maryland* v. *Macon* (1985) 472 U.S. 463, 470-1 ["Whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time, and not on the officer's actual state of mind at the time the challenged action was taken."]; *Brigham City* v. *Stuart* (2006) 547 U.S. 398, 404 ["An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind"]: *People* v. *Adams* (1985) 175 Cal.App.3d 855, 863 ["Courts have never hesitated to overrule an officer's determination he had probable cause to arrest. We see no reason why a court cannot find probable cause, based on facts known to the officer, despite the officer's judgment none existed."].

[7] *U.S.* v. *Han* (4th Cir. 1996) 74 F.3d 537, 541.

Because the majority neglected to properly consider the totality of circumstances, we will do so. Here are the circumstances upon which the officers' entry was based:

(1) Although the threat to "shoot up" the school was unconfirmed, Sister Milner, who was apparently acquainted with Vincent, said she was "concerned about the threat and the safety of her students."
(2) The officers were aware that Vincent had been the victim of bullying. (See Report of the Columbine Review Commission ("The Relationship Between Bullying and School Violence").
(3) As the result of the rumor, some parents were keeping their children away from school, a rather drastic response unless the parents had reason to believe it was more than a vague or malicious rumor.
(4) Vincent had not attended school for the past two days; it appears his absence was unexplained.
(5) Although the Huffs were home when the officers arrived, they did not answer their door when the officers knocked and announced they were police officers.
(6) The Huffs did not answer the phone in their home when the officers called.
(7) When Maria Huff answered her cell phone and was informed that the officers wanted to talk with her, she hung up.
(8) After Maria Huff exited the house and learned that the officers wanted to talk about threats at the school, she "did not inquire about the reason for their visit or express concern that they were investigating her son."[8]
(9) The officers could have reasonably inferred that Vincent Huff had inadvertently acknowledged that there was some factual basis for the rumor when, after an officer informed him of the threat, he responded, "I can't believe you're here for that."
(10) When asked if there were any guns in the house, Maria Huff "turned and ran" inside.

Keeping in mind that with each additional suspicious circumstance—with each "coincidence of information"[9]—the chances of having probable cause increase exponentially,[10] it is apparent that the Ninth Circuit erred when it held that the officers did not have probable cause to enter the house for their safety and the safety of others. Even more inexcusably, the court ignored the seriousness of an investigation into a report that a student may have been planning to commit mass murder of his schoolmates, and it expressed absolutely no sympathy for the plight of Sister Milner and the officers who were trying to resolve this potentially explosive matter while keeping everyone safe.

But while the tactics and methodology of the Ninth Circuit were, to say the least, shabby, the actions of Mr. and Mrs. Huff were contemptible. This entire sordid affair was triggered by their immature and irresponsible response to the officers' legitimate inquiry. And then, as if to display their loutishness to the general public, they sued the officers

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[8] **NOTE**: This quote is from the transcript of the district court judge's ruling.
[9] *Ker* v. *California* (1963) 374 U.S. 23, 36.
[10] See *People* v. *Soun* (1995) 34 Cal.App.4th 1499, 1523 ["The coincidence with descriptions of the assailants, and the use of a car which was, at least, 'a very likely candidate for further investigation,' was sufficient to justify the detention."]; *People* v. *Hillery* (1967) 65 Cal.2d 795, 804 ["The probability of the independent concurrence of these factors in the absence of the guilt of defendant was slim enough to render suspicion of defendant reasonable and probable."]; *U.S.* v. *Abdus-Price* (D.C. Cir. 2008) 518 F.3d 926, 930 [a "confluence" of factors].

and the City of Burbank, hoping to make some easy money. The whole thing is just disgusting. POV