

Civil Rights Update

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Qualified Immunity Bars Claim Despite Lack of Probable Cause for Arrest

While qualified immunity is an affirmative defense, once it is raised plaintiffs have the burden to defeat it. Arresting officers are immunized even if probable cause is lacking for an arrest so long as the officer's belief that he had probable cause was objectively reasonable. In *Wheeler v. Lawson*, No. 07-1791, 2008 WL 3866950 (7th Cir. Aug. 21, 2008), the United States Court of Appeals for the Seventh Circuit reaffirmed the power and potency of the qualified immunity defense which immunizes officers who make a reasonable error in determining whether there is probable cause.

Factual Background

Detective Ronald Lawson of the Starke County Sheriff's Department arrested Michelle Wheeler ("Wheeler") for maintaining a common nuisance. The charge was subsequently dismissed. Wheeler filed an action under 42 U.S.C. §1983 alleging unlawful arrest. The district court concluded that Detective Lawson had probable cause under Indiana law and Wheeler thereafter appealed. The Seventh Circuit found that Detective Lawson did not have probable cause as a matter of law, yet was entitled to qualified immunity.

In April 2004, Wheeler resided in Knox, Indiana. She was separated from her husband, Darren Wheeler; but they continued to jointly own the property, including an attached two-car garage and a detached garage located 500-600 feet from the residence. Wheeler's arrest stemmed from a fire that occurred in the detached garage.

On the morning of April 6, Wheeler awoke to the sound of a loud explosion. She saw smoke coming from the detached garage and called 911. She then placed phone calls to Darren and her cousin, Mark Dillard, both of whom she knew had been in the garage that day.

Darren and Mark told Wheeler they were going to work on Mark's van. They worked in the garage from 10:00 a.m. until 8:00 p.m. at which point Darren left for the evening. Unbeknownst to Ms. Wheeler, Rusty Dillard (Mark's brother and Wheeler's cousin) joined Mark in the garage that night.

Detective Lawson arrived on the scene shortly after Wheeler's 911 call. He was informed that there was a body, later determined to be Rusty Dillard, in the garage and that a video surveillance system was set up for the garage area. Many items were found inside the garage including a furnace with battery casings and aluminum foil inside, two ruptured propane tanks, thirty cans of starter fluid, lithium batteries that had been broken apart, and a clear plastic bag with a substance later determined to be methamphetamine. A truck located in the driveway was searched and found to contain a full can of starter fluid. The truck had been driven by Rusty Dillard, and later autopsy tests performed on Rusty would reveal the presence of methamphetamine in his system.

Detective Lawson had only two brief discussions with Wheeler, immediately before and immediately after the fire was extinguished. Wheeler told Lawson she did not know the cause of the fire, she was not aware that

Rusty had been inside the garage, and she was not aware of any methamphetamine production taking place on her property. Lawson did not otherwise interview Wheeler about the fire, the methamphetamine, the remaining items found in the garage, whether she had any personal items in the garage, or about her use of the garage. Lawson spoke only briefly with Darren on the night of the incident and conducted no follow-up interviews. Lawson never spoke with Mark Dillard, who was the last person to see Rusty alive.

Wheeler was arrested for maintaining a common nuisance. The charge was dismissed and Wheeler filed an action against Detective Lawson individually and in his official capacity as a police officer. In affirming the district court's grant of summary judgment, the Seventh Circuit held that while Detective Lawson did not have probable cause, he was entitled to qualified immunity.

Seventh Circuit's Analysis of Probable Cause and Qualified Immunity

Essentially, the court found that the circumstances cited by Lawson did not create probable cause to believe that Ms. Wheeler knowingly or intentionally had maintained a common nuisance, an element required for the offense under the Indiana Code. In short, Detective Lawson did not have evidence tying Wheeler to the production of methamphetamine other than her familial bond to Rusty Dillard and the fact that she resided on the property. There was no evidence to suggest that Wheeler used the garage with any frequency or that the methamphetamine-related items had been arranged in a manner resembling a manufacturing setting before the date of the fire.

Having concluded that Detective Lawson did not have probable cause, the court discussed the doctrine of qualified immunity. Qualified immunity shields from liability public officials who perform discretionary duties, *Belcher v. Norton*, 497 F.3d 742, 749 (7th Cir. 2007), and thus protects police officers "who act in ways they reasonably believe to be lawful." *Anderson v. Creighton*, 483 U.S. 635, 638-639 (1987). The defense provides "ample room for mistaken judgment" and protects all but the "plainly incompetent and those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991). Qualified immunity protects those officers who make a reasonable error in determining whether there is probable cause to arrest an individual. *Anderson*, 483 U.S. at 643. The test for qualified immunity is two-fold: (1) whether the facts, taken in the light most favorable to the plaintiff, show that the defendant violated a constitutional right; and (2) whether that constitutional right was clearly established at the time of the alleged violation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

Qualified immunity is an affirmative defense. *Sparing v. Vill. of Olympia Fields*, 266 F.3d 684, 688 (7th Cir. 2001). However, once the defense is raised, it becomes the plaintiff's burden to defeat it. *Mannoia v. Farrow*, 476 F.3d 453, 457 (7th Cir. 2007). This can be difficult. Plaintiffs may defeat a qualified immunity defense by "point[ing] to a clearly analogous case establishing a right to be free from the specific conduct at issue" or by showing that "the conduct [at issue] is so egregious that no reasonable person could have believed that it would not violate clearly established rights." *Smith v. City of Chicago*, 242 F.3d 737, 742 (7th Cir. 2001).

In *Wheeler*, the court focused on the second prong of the *Saucier* test after its initial conclusion that the arrest was made without probable cause. Wheeler failed to point to any analogous case law that would have given fair warning to a reasonable officer in Lawson's position that his "conduct was unlawful in the situation he confronted." *Saucier*, 533 U.S. at 202. Rather, Wheeler contended that no officer would have believed, reasonably although mistakenly, that there was probable cause to arrest her. The court found the probable cause determination to be sufficiently close such that an officer reasonably could have believed probable cause existed, even if that belief was mistaken. A number of prior cases have similarly held that a reasonable mistake concerning probable cause will not preclude the application of qualified immunity. *See Anderson*, 483 U.S. at 641 (1987) ("[I]t is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present.") *Sornberger v. City of Knoxville, Ill.*, 434 F.3d 1006, 1014 (7th Cir. 2006) ("[W]e recognize that, even if probable cause is lacking with respect to an arrest, the arresting officer is entitled to immunity so long as his belief that he had probable cause was objectively reasonable."); *Kijonka v.*

Seitzinger, 363 F.3d 645, 648 (7th Cir. 2004) (noting that, after determining that probable cause does not exist, “[t]he question for us is whether there was any reasonable basis to suppose there was probable cause, as that is the test for qualified immunity.”)

The Seventh Circuit refused to conclude that a reasonable officer could not have believed that there was probable cause for arrest. The court cited the number of methamphetamine-related items found, the fact that Ms. Wheeler’s husband and cousin had spent the day in the garage, and the fact that the area was outfitted with a surveillance system as grounds for providing a reasonable, although ultimately mistaken, basis to believe that Wheeler was aware of the drug activity.

Conclusion

Qualified immunity continues to be an integral component in the successful defense and representation of police officers. *Wheeler* is a recent application of the doctrine and underscores the effectiveness of qualified immunity.

Despite the fact that qualified immunity is an affirmative defense, plaintiffs have the burden to defeat immunity once the defense is asserted. Defense counsel should raise the issue in its initial pleading and pursue it vigorously through a motion for summary judgment and at trial.

About the Authors

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