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# **ONE MINUTE BRIEF**

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**NUMBER:** 2018-01    **DATE:** 01-22-18    **BY:** Devallis Rutledge    **TOPIC:** Arrest on Disputed Facts

**ISSUE:** If police confront two versions of events, one suspicious and one pointing to innocence, may they base a lawful arrest on the suspicious facts?

It's often the case that victims and witnesses give police one version of what happened, while suspects and their witnesses tell a different, exculpatory story. Is the mere fact that suspects advance an innocent explanation for their actions enough to defeat a finding of probable cause for arrest?

- DC police were called to a late-night, noisy party at a residence. Inside what appeared to be a vacant house, 21 partygoers were playing loud music, drinking, smoking marijuana, having lap dances, and apparently engaging in group sex. Some ran and hid when police entered. They gave varying and implausible explanations for being there, but some of them asserted they had been invited by a woman who claimed to be renting the house, but who wasn't there at the time.

On the other hand, neighbors said the house was vacant, and the owner, reached by phone, said no one had a right to be inside. The 21 were arrested for "unlawful entry" and charged with "disorderly conduct," but the charges were dismissed.

Sixteen of the arrestees sued the 5 officers for false arrest. The officers' motions for summary judgment based on qualified immunity were denied, and a subsequent jury award and attorney's fees against the officers amounted to almost \$1 million. The DC Circuit Court of Appeals affirmed, on the basis that each of the suspicious factors could have had an innocent explanation, and the officers had no basis for believing the property owner over the partygoers, negating any "intent to enter against the will of the lawful owner," an element of the DC offense of unlawful entry. The US Supreme Court has unanimously reversed.

- First, the court pointed out that although the Court of Appeals focused only on the arrest offense, PC to arrest may be based on **any offense** supported by the evidence—even if there was no PC to arrest for the crime police identified. *“Because probable cause is an objective standard, an arrest is lawful if the officer had probable cause to arrest for any offense, not just the offense cited at the time of arrest or booking.”* *District of Columbia v. Wesby* (2018) 583 US \_\_\_, No. 15-1485, slip opn. at 4, fn. 2. (See 1MBs 2005-04 and 2013-08, citing multiple cases to this effect.)

- Next, the court held that the DC police **did have** PC to arrest for unlawful entry, because as the court has said many times, *“probable cause does not require officers to rule out a suspect’s innocent explanation for suspicious facts. ... And here, the totality of the circumstances gave the officers plenty of reasons to doubt the partygoers’ protestations of innocence.”* *Id.*, slip opn. at 12. (See 1MB 2010-11, citing multiple cases.)

- Finally, the court ruled that even if there had been no PC to arrest, the officers would still have been entitled to qualified immunity from suit, because there is no *“body of relevant case law”* clearly establishing that an arrest under these circumstances would have been unlawful.

**BOTTOM LINE: Where one account of events establishes probable cause to arrest, the fact that suspects and their supporters offer innocent explanations does not necessarily negate PC to arrest.**

(Emphases added in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.