IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3844

DANNY HARRIS, DONNA STAUTS,
and SANDRA SMITH

Plaintiffs-Appellees,

versus

PATRICK J. CANULETTE, in his
official capacity as Sheriff of St.
Tammany Parish, RANDY CAIRE, DONALD
SHARP, RANDY SMITH, AND CHARLES
WATSON

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 91-2578B)

(July 6, 1993)

BEFORE SMITH, DUHÉ, and WIENER, Circuit Judges.

PER CURIAM:*

Defendants-Appellants Patrick J. Canulette, Randy Caire, Donald Sharp, Randy Smith, and Charles Watson appeal the district court's denial of their motion for summary judgment on grounds of qualified immunity. As we find no reversible error, we affirm.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

FACTS AND PROCEEDINGS

In the early morning hours of July 14, 1990, Anita Brownfield attempted to commit armed robbery against Richard White in the bathroom of a rest station on the I-10 near Slidell, Louisiana. White overpowered Brownfield and held her until deputies of the St. Tammany Parish Sheriff's Office, which White had telephoned, arrived and placed Brownfield under arrest. White gave the deputies a statement, identified Brownfield, and informed Officer Caire that Brownfield's male accomplice had escaped.

In her taped statement to the police, Brownfield admitted the attempted armed robbery, and identified her accomplice as a juvenile named Brian. The police persisted in their interrogation, urging Brownfield to give additional information. Brownfield subsequently implicated Harris, Stauts, and Smith in the crime[1] and apparently directed police to the plaintiffs' residence.[2] On the basis of Brownfield's information, Caire, with shift Lieutenant Sharp and six to fifteen other deputies,[3] drove to the plaintiffs' residence at 5:00 a.m. No law enforcement personnel attempted to obtain a warrant, although Caire acknowledged that at least two

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[1] In her deposition, Brownfield claims that she named the three plaintiffs because Caire intimidated and threatened her during the interrogation.

[2] According to Caire, Brownfield physically directed him to the plaintiffs' residence prior to giving her taped statement. Brownfield claims not to remember doing so.

[3] The parties differ widely as to how many officers participated.

magistrates were available.

At the Plaintiffs' residence, the police knocked, identified themselves, and waited several minutes without receiving an answer from the darkened house. Caire and Sharp then kicked the door open, entered the house, and arrested Harris, Stauts, and Smith, all of whom were asleep. The officers conducted a thorough search of the residence, discovering and seizing marijuana, guns, jewelry, and other personal property.

Plaintiffs were incarcerated in the St. Tammany Parish jail. Harris was held for twenty-three days, Stouts for twenty-one days, and Smith for sixty-five days. Harris alleges that two deputies intentionally left his cell door open, allowing two men to enter and sexually assault him. Brownfield subsequently recanted her statement accusing the plaintiffs, and they were never prosecuted. Plaintiffs initiated a § 1983 action against Canulette in his official capacity as Sheriff, Caire as the arresting officer, and deputies Sharp, Smith, and Watson.

Defendants filed a motion for summary judgment, insisting that the arrest of the plaintiffs cannot be unlawful because probable cause existed for the arrest. The district court rejected this argument, reasoning that there were genuine issues of material fact regarding the credibility and reliability of Brownfield as an informant. The court noted that Brownfield had never before provided information to the police, that there was no corroboration of her information, that the information was not against her penal interest, and that she had indicated her unwillingness to testify

to the information. In addition, the court found a genuine dispute as to whether there were "exigent circumstances" sufficient to justify a warrantless arrest inside the plaintiffs' house.

II

ANALYSIS

On appeal, Defendants challenge the district court's denial of their motion for summary judgment on grounds of qualified immunity. Defendants challenge both bases of the district court's decision that genuine issues of material fact exist regarding either probable cause or exigent circumstances. As we dispose of this case on the basis of the unlawful warrantless search, unsupported by exigent circumstances, we need not address the issue of probable cause. For even assuming, for purposes of this appeal only, that the police had probable cause, they still cannot prevail.

In reviewing the denial of a summary judgment motion based on qualified immunity, we follow the two-step analysis set forth in Siegert v. Gilley:[4] (1) is there an allegation of a clearly established right; and (2) if so, could the public official's action reasonably have been thought consistent with the constitutional right.[5]

There is no question that the constitutional right in questionSQthe freedom from warrantless searches and seizures within the homesQis clearly established. The Supreme Court has long

[4] 111 S.Ct. 1789, 1793 (1991).

[5] Id. at 1793; see Enlow v. Tishomingo County, 962 F.2d 501, 508 (5th Cir. 1992).

recognized that "`the basic principle of Fourth Amendment Law' [is] that searches and seizures inside a home without a warrant are presumptively unreasonable"[6] so that a "search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of `exigent circumstances.'"[7]

Defendants insist that "the arrest of the plaintiffs was based upon probable cause, and cannot therefore give rise to a cause of action for federal civil rights liability."[8] This is a patently wrong statement of the law, one that deliberately ignores the Supreme Court's pronouncements to the contrary. It is hornbook law that, absent exigent circumstances, police must obtain a warrant issued by a judicial officer before they may arrest a person in his home. Probable cause is required to support the issuance of a

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[6] Payton v. New York, 445 U.S. 573, 586 (1980).

[7] Coolidge v. New Hampshire, 403 U.S. 443, 474-75 (1971).

[8] In support of this contention, Defendants cite Fields v. South Houston, 922 F.2d 1183 (5th Cir. 1991). In that case, however, the court held that probable cause was sufficient to arrest a suspect in his pickup truck for a misdemeanor because the Constitution does not require a warrant for a misdemeanor not occurring in the presence of the officer. Unfortunately, however, Defendants fail to graspSQor choose to ignoreSQthe overwhelming importance the Supreme Court has placed on requiring a warrant or exigent circumstances in effecting a search or seizure in a person's home. In short, no fair reading of Fields supports the proposition that an arresting officer may enter a person's home without a warrant for purposes of a search or seizure and then avoid liability for such a violation by crying "probable cause." Fields is unequivocally self-limited to misdemeanor arrests, and to incidents outside the home ("a federal civil rights action will not lie for a warrantless misdemeanor arrest in violation of state law.") Id. at 1189.

warrant; in and of itself, however, probable cause is never sufficient to justify a warrantless search or seizure within the home.

Alternatively, Defendants argue, albeit from weakness, that there were exigent circumstances present that justified the warrantless arrest of the plaintiffs in their home. The facts that defendant proffer as constituting "exigent circumstances" are (1) that Caire did not know the suspects; (2) that Caire thought they were armed (based, apparently, on nothing more than the nature of Brownfield's crime); (3) that Caire feared that the suspects might flee or commit another robbery; and (4) that the Plaintiffs were aware that one of their associates had been arrested.

In stark contrast to those inconsequential facts are the types of findings required in the test recently described by the Supreme Court in Minnesota v. Olson as "essentially the correct standard in determining whether the exigent circumstances existed."[9] Under the Olson test, reviewing courts must look for (1) the existence of hot pursuit; (2) the probability of imminent destruction of evidence; (3) the need to prevent a suspect's imminent escape; or (4) the risk of danger to the police or other citizens near the house. In applying this test, we have held that "mere presence of weapons or destructible evidence does not alone create exigent circumstances."[10]

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[9] 495 U.S. 91, 100 (1990).

[10] United States v. Capote-Capote, 946 F.2d 1100, 1102 (5th Cir. 1991).

When the Defendants' "circumstances" are examined, only one even facially resembles the factors set forth by the Court in Olson: the belief that the suspects might flee. And here, that circumstance amounts to nothing more than rank speculation when viewed in the context of the undisputed facts that the Plaintiffs were asleep in a darkened residence at 5:00 a.m.SQhours after Brownfield's crime and hours before sunrise. If, under these facts, the police had truly been concerned that the Plaintiffs might flee, the officers need only have surrounded the house and waited the short time required to obtain a search warrant.

The remaining circumstances fall so short of exigent as to merit no further discussion. Were we to accept the premise that, without more, exigent circumstances exist any time that a police officer is simply not familiar with the suspects, or merely speculates that they might flee or destroy evidence or repeat the crime, we would in effect eviscerate the Fourth Amendment's warrant requirement for searches and seizures within the home. We hold that, even assuming the version of the facts to be as related by the officers, they do not rise to the level of exigent circumstances as a matter of law.

The second question we must consider in reviewing the denial of a summary judgment motion based on qualified immunity is whether a reasonable officer could have believed that the acts complained of were consistent with the constitutional right asserted. Under Anderson v. Creighton,[11] a court faced with such a motion must

[11] 483 U.S. 635 (1987).

consider the often fact-specific "question whether a reasonable officer could have believed [the] warrantless search to be lawful, in light of clearly established law and the information the searching officers possessed."[12] The district court concluded that a genuine issue of material fact existed as to this question, rendering premature summary judgment in favor of the Defendants on qualified immunity grounds. Given the clarity of the law on searches and seizures in the home, it is far from clear that Caire and the other deputies acted reasonably from an objective viewpoint in conducting a warrantless search. Consequently, we agree with the district court that summary judgment in favor of Defendants is unwarranted. We express no view, however, as to the ultimate merits of this case.

For the foregoing reasons, the district court's denial of Defendants' motion for summary judgment based on qualified immunity is

AFFIRMED.

[12] Id. at 641.