



The Seventh Circuit explains and relies upon the collective knowledge doctrine in determining that the police had probable cause to arrest the Defendant



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In *United States v. Howard*, ___ F.3d ___, 2018 WL 1040865 (7th Cir. Feb. 26, 2018), the United States Court of Appeals for the Seventh Circuit was asked to review whether law enforcement officers possessed probable cause to arrest Defendant Devon Howard in connection with the robbery of a Verizon Wireless store. Howard moved to suppress the evidence linking him to the crime, but the District Court rejected Howard's argument and found that the police had probable cause to arrest Howard. In addition, the District Court held that Howard's motion to suppress was denied because the evidence would have been inevitably discovered regardless of the lack of probable cause. The relevant facts on appeal are as follows.

On April 4, 2014, a Verizon store located in Hartford, Wisconsin, was robbed. Hartford Police Department ("HPD") Sergeant Timothy Hayes conducted the investigation. Sgt. Hayes spoke with two eyewitnesses: Eric Safranski, a Verizon employee, and Marshall Retler, a customer. According to the witnesses, the robber, later identified as Londell King, entered through the rear of the store, threw a black duffle bag on the ground, and demanded cell phones. When his demands were not immediately met, King pulled out a pistol. After Safranski provided cell phones from the store's inventory, the robber ran out the back door of the store. Both witnesses noticed a suspicious Mercedes in the Verizon store's parking lot in the moments preceding and following the robbery. However, neither witness could say for certain whether the robber arrived at the store in the Mercedes.

Based on his experience, training, and the eyewitness' testimony about the Mercedes' actions (the witnesses said that the Mercedes had two individuals in the car, that they appeared to be keeping lookout, and that the Mercedes left at a high rate of speed immediately after the robbery and could not have picked up the robber), Sgt. Hayes concluded that the vehicle wanted to draw attention to itself and was used as a decoy to get law enforcement and witnesses to follow it while the individual who actually did the robbery was able to basically run out and get away in another vehicle. Therefore, Sgt. Hayes believed that the two individuals in the Mercedes were involved as an accessory to the robbery.

Safranski provided Sgt. Hayes with the Mercedes' license plate number, and Retler told Sgt. Hayes that the Mercedes had tape on the driver's side front bumper. Sgt. Hayes relayed that information to HPD dispatch which put out a notice that the Mercedes was involved in "an armed robbery in progress." Soon thereafter, a police officer from a neighboring village saw the Mercedes who, after advising HPD, stopped the vehicle at HPD's request.

The driver of the Mercedes was Naqur Bean; the passenger was Defendant Devon Howard. The occupants did not match Sgt. Hayes's description of the suspected robber, and the police found no evidence in the Mercedes suggesting any involvement in the robbery. However, because Sgt. Hayes believed that the Mercedes acted as a decoy, he ordered Bean and Howard to be arrested and driven to HPD headquarters.

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At headquarters, the police separately interrogated both suspects. Bean initially declined to speak. Howard, at first, denied any participation in the robbery, but he later admitted his involvement over the course of a five-hour interrogation. Howard told the police that Bean drove him to the store because he did not have a valid driver's license. Howard also identified King as the robber. After Howard confessed, he spoke with Bean for ten-to-fifteen seconds. At that point, Bean was willing to speak with police, and she implicated herself and Howard by stating that they acted as lookouts. After Howard and Bean's statements, the police arrested King. King confirmed that Howard and Bean assisted with the Verizon robbery, and King also said that they were involved with prior robberies. The next day, police officers executed a search warrant of Howard's home and found evidence linking him to other cell phone store robberies. Thereafter, Howard admitted that he had sold stolen cell phones on the internet.

On April 22, 2014, Howard and King were indicted for unlawfully taking and attempting to take wireless phones in interstate commerce by means of actual and threatened force, violence, and fear of injury in violation of 18 U.S.C. §§ 1951 and 1952. They were also charged with using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c). On May 12, Howard moved to suppress the evidence linking him to the robberies, including "police obtained statements, cellular telephone data, and other physical evidence," arguing that it was obtained as a result of an unlawful warrantless arrest without probable cause.

The District Court denied Howard's motion. After conducting an evidentiary hearing, the District Court determined that the police had probable cause to arrest Howard because "the officers had sufficient reasonable trustworthy information to cause a prudent person to believe that Howard and Bean were aiding and abetting the armed robbery." Alternatively, the District Court held that, even if the arrest was improper, the evidence would have been inevitably discovered. Howard, then, pled guilty to the crimes charged and timely appealed the denial of his motion to suppress.

The Seventh Circuit began its consideration of Howard's appeal by noting that a police officer may make a warrantless arrest consistent with the Fourth Amendment if there is probable cause to believe that a crime has been committed. Police officers possess probable cause to arrest an individual when the facts and circumstances within their knowledge and of which they have reasonably trustworthy information are sufficient to warrant a prudent person in believing that the suspect has committed an offense. Whether an officer possesses probable cause is viewed from the facts as they would have appeared to a reasonable person in the position of the arresting officer.

In making a probable cause determination, a police officer may draw inferences based on his own experience as well as relying upon information provided by a credible eyewitness. Under the "collective knowledge doctrine," the police officers who actually make the arrest need not personally know all of the facts that constitute probable cause if they reasonably are acting at the direction of another officer or police agency. The arrest is proper so long as the knowledge of the officer directing the arrest, or the collective knowledge of the agency he works for, is sufficient to constitute probable cause.

In this case, the Seventh Circuit agreed with the District Court that the officers had probable cause to arrest Howard because, under the totality of the circumstance, a reasonably prudent officer would believe that the occupants of the Mercedes were acting in conjunction with the armed robber as a decoy or in some other aiding and abetting manner. The Seventh Circuit acknowledged that mere proximity to suspected criminal activity does not, without more, generate probable cause. Instead, in order to find probable cause based on association with persons engaging in criminal activity, some additional circumstances from which it is reasonable to infer participation in a criminal enterprise must be shown.

Here, the Seventh Circuit explained that, while it was true that the police did not know that the occupants of the Mercedes were involved in the robbery, the circumstances were such that an officer could reasonably infer their participation. Specifically, the Mercedes committed three separate suspicious acts. First, it sat in the parking lot in front of the store for an unnatural period of time prior to the robbery. Second, it drove to the back of the store just before the robber entered the store's rear door. And third, after the robbery, as the robber ran past the Mercedes, it "zoomed [away] at a high rate of speed." The Seventh Circuit opined that, standing alone, any one of those facts may not give rise to probable cause. But together, they provide ample support for the officers' belief that the Mercedes was likely involved in the robbery as a look-out or decoy.

In short, the Seventh Circuit held that, contrary to Howard's argument, this was not "a classic 'hunch' case." Rather, based on the totality of the Mercedes' conduct and the collective knowledge of the officers, Sgt. Hayes reasonably concluded there was a substantial chance the Mercedes and its occupants assisted in carrying out a crime. Accordingly, the Seventh Circuit agreed with the District Court that the police possessed probable cause to make a warrantless arrest of Howard and found that the District Court properly denied Howard's motion to suppress. Because the Seventh Circuit concluded that the police officers had probable cause to arrest Howard without a warrant, the Seventh Circuit stated that it did not need to address whether the evidence should be suppressed pursuant to the inevitable discovery doctrine.