



Civil Rights Update

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Airbnb Room Sharing Results in Section 1983 Claim

The Court of Appeals for the Seventh Circuit recently held that police officers who entered and later inspected a Chicago-based Airbnb on two occasions did not violate the owner's Fourth Amendment right to be free from unreasonable searches and seizures. *Wonsey v. City of Chicago*, 940 F.3d 394 (7th Cir. 2019). The *Wonsey* decision has many important implications for civil rights attorneys who defend governmental entities and their actors in light of the issues that have recently surfaced as a result of sharing room rentals.

Facts

On June 4, 2016, an Airbnb guest was staying in Antoinette Wonsey's Chicago home and reported the disappearance of his personal belongings, including cash and a laptop, to police. *Wonsey*, 940 F.3d at 397. Sergeant Valentin responded to the call and was escorted into Wonsey's home by other individuals, where he was allowed to view Wonsey's security video footage. *Id.* While in the home, Valentin and another officer observed guests scattered throughout the first floor. The guests appeared to have been sleeping in the living areas rather than individual rooms. *Id.* Wonsey appeared and Valentin asked Wonsey for permission to see the theft victim's room. Wonsey refused and requested that the officers leave. *Id.* At no point during the encounter did the officers arrest Wonsey or conduct a search. *Id.*

Five days later, the City of Chicago's building department sent a team of inspectors, accompanied by five police officers, to inspect the Wonsey house for suspected overcrowding. *Id.* A man sitting on Wonsey's back porch voluntarily opened the gate for the city officials. *Id.* The inspectors met Wonsey, who willingly allowed them into her home. *Id.* at 397-98. The police waited outside during this inspection. *Id.* The inspectors recorded 32 code violations and concluded the house should be immediately evacuated. *Id.* The inspectors deemed the evacuation an emergency and asked the police to assist due to the dangerous conditions in the home. At that point, the officers entered the common areas of the house. Wonsey refused to leave the premises despite being asked to do so as part of the evacuation order. *Id.*

Wonsey filed suit against the City of Chicago and its police officers pursuant to 42 U.S.C. 1983 for the two encounters, claiming that the defendants' actions violated her Fourth Amendment right to be free from unreasonable searches and seizures. *Id.* at 398. The district court granted the defendants' summary judgment motion, reasoning that Wonsey gave consent to enter the home and failed to present any evidence to support a Fourth Amendment violation. Wonsey appealed and the Seventh Circuit affirmed. *Id.*

Discussion

The Seventh Circuit first analyzed the unlawful search and seizure claim arising out of the theft report. In doing so, the court observed that the Fourth Amendment “generally prohibits the warrantless entry of a person’s home to perform a search or seizure.” *Wonsey*, 940 F.3d at 399; *see also Brigham City v. Stewart*, 547 U.S. 398, 403 (2006); *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). However, the prohibition does not apply when voluntary consent has been obtained. *Wonsey*, 940 F.3d at 399; *Rodriguez*, 497 U.S. at 181. In a Section 1983 claim, “once the defendant presents evidence that the plaintiff consented to the search, the burden shifts to the plaintiff to establish the lack of consent to search.” *Wonsey*, 940 F.3d at 399; *Valance v. Wisel*, 110 F.3d 1269, 1279 (7th Cir. 1997).

In *Wonsey*, the defendants presented two pieces of evidence demonstrating *Wonsey*’s guests consented to their entrance. *Wonsey*, 940 F.3d at 399. First, *Wonsey*’s Airbnb guest provided the gate code to enter the patio to Officer Valentin to investigate the alleged theft. *Id.* Second, the security footage showed that when Valentin arrived at the front door, the two men who answered the door allowed Valentin inside. *Id.* After the defendants successfully established sufficient evidence to show consent, the burden shifted to *Wonsey* to show Officer Valentin never obtained consent or that the consent was invalid. *Id.* However, *Wonsey* failed to rebut the evidence and was therefore unable to show that Valentin’s entry constituted an unreasonable search. *Id.*

Wonsey’s unlawful seizure claim also failed. *Id.* The court recognized that a Fourth Amendment seizure occurs “when there is a governmental termination of freedom of movement through means intentionally applied.” *Id.* at 389-400 (citing *Swanigan v. City of Chicago*, 881 F.3d 577, 584 (7th Cir. 2018) (quoting *Scott v. Harris*, 550 U.S. 372, 381 (2007))). Here, *Wonsey* conceded that the officers left after she asked them to leave. *Wonsey*, 940 F.3d at 400. Based on those facts, and with no evidence to show that *Wonsey* “did not feel free to go about her business,” the court concluded that there was no genuine issue of material fact as to whether the officers “seized” her. *Id.*

The Seventh Circuit next analyzed the events that occurred during the inspection and evacuation and concluded that *Wonsey*’s search and seizure claims could not prevail based on qualified immunity. *Id.* at 400. The court noted that pursuant to the settled principles set forth by the United States Supreme Court, “qualified immunity attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Id.* (quoting *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019)). Simply put, “qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.” *Wonsey*, 940 F.3d at 400 (quoting *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015)). Under this standard, the court in the instant case focused on the objective legal reasonableness of an official’s acts. *Wonsey*, 940 F.3d at 400 (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982)).

In analyzing the qualified immunity argument, the court noted that *Wonsey* claimed that the officers “surrounded” her, but also acknowledged the officers entered her home “due to safety concerns.” *Wonsey*, 940 F.3d at 400-01. She did not dispute that the police relied on the inspectors’ representations about the safety concerns, that the police took the inspection findings seriously, or that the police acted with the intent to carry out the evacuation order. *Id.* at 401. Likewise, she did not allege the police searched any part of her home during the evacuation. *Id.* Because *Wonsey* did not state which facts that she believed amounted to a Fourth Amendment violation, the court presumed that the officers’ entry to help with the evacuation prompted the illegal search claim. *Id.* Regardless, the court held that a reasonable officer could have believed the entry was lawful given the circumstances, *i.e.*, the police entered *Wonsey*’s house at the request of inspectors who were lawfully present to help with an evacuation due to an immediate safety concern. *Id.* at 400-01.



Therefore, the court concluded that qualified immunity cloaked defendants' actions during the inspection and evacuation events which occurred on June 9, 2016. *Id.* at 401.

Conclusion

Governmental actors should be mindful when conducting a search or seizure on an individual who is renting a room in someone else's home. However, the Seventh Circuit's opinion in *Wonsey* demonstrates that the court will not endeavor to limit a public officer's ability to effectuate a proper search and seizure under the Fourth Amendment, particularly if it can be demonstrated that the officer obtained consent and was acting as a reasonable officer under the circumstances.

About the Authors

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