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Nieves v. Bartlett

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The Arctic Man Avengers

By Brian Beasley,
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I learned this week about an event that takes place annually in a remote location of Alaska.[1] According to the official website, this "week long party in the snow" combines "ski races and snowmobiles, crazy slednecks,[2] lots of adrenaline, [and] an insanely good time." The page goes on to say that it "promises a whole lot of fun, fueled by the good things in life like spring snow, nonstop laughs, lots of booze, and parties ALL night long." An article written for *The Guardian* describes "adrenaline junkies and day drinkers gathered with snowmobiles, RVs, gasoline-fueled bonfires, overloaded four-wheelers, and kegs of homebrew buried in the snow" and *SB Nation* calls it "a weeklong, booze and fossil-fueled Sledneck Revival bookended around the world's craziest ski race." They call this festival "Arctic Man."[3]

If Arctic Man sounds fun, consider this as well. The event brings in about 13,000 people to an area nestled in the Hoodoo Mountains.[4] Officers from across the state of Alaska are flown in to provide additional support and spend their time responding to snowmobile crashes, breaking up fights, and trying to enforce the legal drinking age. Even during the busiest periods of the event, only six to eight officers are working at a time. Considering all this, it might come as no surprise that the 2014 Arctic Man gave rise to a case that made it all the way to the U.S. Supreme Court. After all, as the Court states in its opinion, "snowmobiles, alcohol, and freezing temperatures do not always mix well."

Nieves v. Bartlett[5] is a case that involves an Arctic Man attendee named Russell Bartlett and the two police officers who ended up arresting him for disorderly conduct and resisting arrest. Bartlett later sued the two police officers in a 1983 civil rights action alleging that they arrested him in retaliation for him exercising his First Amendment right of free speech. As is often the case, the parties to the lawsuit tell two different versions of the story.

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[1] Visualize the state of Alaska in your mind (or look at it on a map or globe, I don't care about the details). See that trail of islands that extends out to the south and west like a comet tail? Just about smack dab in the middle of that tail is the remote location we're talking about.

[2] The South has "rednecks" and now I've learned that the Arctic has "slednecks." I've also learned that there was a reality show on MTV for one season in 2014 called Slednecks about a group of young people in rural Wasilla, Alaska. Really sorry I missed that.

[3] I think "Arctic-Man" would be a great superhero name. Unfortunately, there are already lots of heroes and villains with "cold-based" powers. You've probably heard of hero "Iceman" from Marvel and villain "Mr. Freeze" from DC Comics, but Marvel also has a "Jack Frost," "Blizzard," "Frostbite," and "Iceberg," and DC has "Polar Boy," "Ice Maiden," "Ice," a couple of "Icicles," "Captain Cold," and "Killer Frost." And let's not leave out Pixar's "Frozone" (The Incredibles) and that singing Ice Queen "Elsa" from "Frozen." (As a footnote to the footnote, the amount of research I conduct for these articles must astound you.)

[4] I love the word "hoodoo," of course. I have always used the word as a synonym for "tricked" or "bamboozled," as in "I just got hoodoo'ed." However, "hoodoo" is really the term for a folk magic that mixes various African and Native American magical traditions not to be confused with Louisiana Voodoo.

[5] No. 17-1174, 587 U.S. ___, (May 28, 2019).

The Police Version

According to Sergeant Nieves and Trooper Weight, the encounter started when Nieves was asking some partiers to move their beer keg inside their RV at around 1:30 a.m. on the last night of Arctic Man because some minors had been getting alcohol from it. While Nieves was having this conversation, Bartlett began yelling at the RV owners that they should not speak to the police. Nieves then approached Bartlett to explain the situation but Bartlett was highly intoxicated and yelled at him to leave, so Nieves did.

Minutes later, Bartlett also inserted himself into a conversation Trooper Weight was having with a minor to determine whether he and his underage friends had been drinking. Bartlett approached in an aggressive manner, stood between the trooper and the minor and yelled with slurred speech that the minor should not speak with the officer. Bartlett then stepped close to the trooper in a "combative way," so Weight pushed him back. Nieves saw this and rushed over to make an arrest. Bartlett was slow to comply with the officers' commands and was forced to the ground to effectuate the arrest. Bartlett was taken to a "holding tent," charged with disorderly conduct and resisting arrest, and released a few hours later. No one was injured in the incident.

The Bartlett Version

Bartlett's version of events was that he was not drunk at the time and did not yell at Nieves initially, but instead Nieves became aggressive with him when Bartlett refused to speak to him. He also denied being aggressive with Trooper Weight, but only stood close to him so that he would be heard over the loud background music. His delay in complying with the officers' commands during the arrest was due to him not wishing to aggravate a pre-existing back injury. Bartlett stated that after he was handcuffed, Sergeant Nieves said, "Bet you wish you would have talked to me now."

The State eventually dismissed the criminal charges and Bartlett sued the officers for violating his First Amendment rights by arresting him in retaliation for his speech – specifically for refusing to speak with Nieves earlier and intervening in Trooper Weight's discussion with the minor. The Federal District Court granted summary judgment[6] to the officers but the Ninth Circuit Court of Appeals overruled them and held that even if probable cause existed for the arrest, Bartlett could prevail in the lawsuit if he was able to show that (1) the officers' conduct would "chill[7] a person of ordinary firmness from future First Amendment activity," and (2) he could present evidence that would allow him to prove that the officers' decision to arrest was made because of their desire to chill his speech. The Ninth Circuit ruled that Bartlett had met that standard and the case should be allowed to proceed to trial.

The officers then appealed to the U.S. Supreme Court, who decided to take the case to determine whether the fact that the officers had probable cause to arrest Bartlett was enough to automatically defeat his claim that the arrest was in retaliation for the exercise of First Amendment speech. The Court noted that determining the reason behind an arrest was particularly difficult when objective probable cause exists because it could possibly be based on that probable cause or the officer's malice. In many cases, protected speech is a "legitimate consideration" for officers to take into account when deciding to arrest. Here, Bartlett's tone and the content of his speech was a factor in the arrest just as much as his posture and intoxication. If lawsuits were allowed to continue based on allegations of the particular officer's mental intent, this would impose on officers "overwhelming litigation risks" in which a stray comment by the officer might envelop him or her in "years of litigation." This unwillingness to try

[6] "Summary Judgment" is entered in favor of a party in a civil case when the facts are not in dispute or where any factual dispute would not change the outcome under the law. This is a way of disposing of the case before having to have a trial on the matter. In this case, the court entered summary judgment because they ruled that even if the facts were exactly as Bartlett described, the law prevented him from prevailing since there was probable cause for the arrest.

[7] "Chill" here is a legal term which refers to situations where protected speech or conduct is deterred or discouraged from happening because of the fear of penalization or retaliation. You might see something referred to as having a "chilling effect" on speech. In fact, I think we may have found Arctic-Man's superpower!

and read an officer's mind is consistent with other areas of Fourth Amendment law as well, such as the allowing of "pretextual stops."[8]

Based on this reasoning, the Court held that plaintiffs like Bartlett must prove as an element of their claim that probable cause for the arrest did not exist. Since Bartlett could not show that in this case, the Court found that summary judgment for both officers was appropriate. However, the Court did leave open one exception to this rule.

Even if probable cause existed for the arrest, a lawsuit for retaliatory arrest may continue if the plaintiff can show that he or she was arrested when other similarly situated individuals not engaged in the same sort of protected speech were generally not arrested. The Court used jaywalking as an example. If a vocal critic of the police were arrested for jaywalking when that crime was otherwise not typically enforced at all or not typically enforced by arrest, the fact that probable cause for the arrest existed should not defeat a claim of retaliation.

The Court seems to say that in most cases, the right to free speech ends once probable cause exists for an arrest. However, officers should never make any arrest to retaliate against a particular person or teach someone a lesson. Arrests made under such circumstances that tend to appear retaliatory, especially for minor crimes, will only lead to trouble. And speaking of trouble, the Court did leave one important question unresolved. Is Arctic-Man a superhero or a super villain?

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.

[8] Pretextual stops are traffic stops made by an officer based on reasonable suspicion of a legitimate traffic violation (such as an expired license tag) when the officer is perhaps really performing the stop because he or she believes a more serious crime (such as drug possession) might be present. So long as there is reasonable suspicion of a traffic violation, the court does not concern itself with the officer's subjective intent and therefore, these types of stops are constitutionally okay. Whren v. U.S., 517 U.S. 806 (1996).