Recent Case Report

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U.S. v. Alexander

(7th Cir. 2009) __ F.3d __ [2009 WL 2151312]

Issues

(1) Did the defendant have standing to challenge the search of a car in which a handgun was found? (2) Did a vehicle repossessor have apparent authority to consent to the search? (3) Did officers obtain voluntary consent to search the defendant's apartment?

Facts

The manager of an apartment complex in Madison, Wisconsin received an anonymous call from a person who said that Lazzerick Alexander was staying with the tenant in unit number one, and that he was cooking and selling crack cocaine from the apartment. He also said that Alexander kept a gun hidden under the hood of his car, a Buick Riviera. The caller then provided a fairly detailed description of Alexander and his car. The manager phoned the police.

Coincidentally, one of the officers who was informed of the call had been planning to arrest Alexander on a parole violation. Even more coincidentally, just before heading out to do so, he heard over the police radio that other officers were being dispatched to that same apartment complex to stand by while a Buick Riviera was repossessed. The officer phoned the repossessor who said that, according to his information, the man who had been driving the car was living in apartment number one.

When the officer arrived at the scene, he saw the Riviera and noticed that Alexander was sitting in the passenger's seat. So he arrested him. He then asked Alexander if he owned the car but he repeatedly denied it, claiming it belonged to the man who was driving it, or his girlfriend, "or whatever." At about this time, the repossessor arrived on the scene. After he took possession of the car, the officer asked if he would consent to a search of it, and he said sure. As expected, the officer found a gun hidden in the engine compartment.

Meanwhile, other officers were knocking on the door of apartment number one. A woman named Vaniece answered the door and confirmed that Alexander lived there. The officers told Vaniece that Alexander was reportedly cooking and selling crack cocaine out of the apartment, and they asked for consent to search but she refused. As the officers were walking out the door, a drug-detecting K-9 who was waiting outside alerted to the threshold. At that point, the officers reentered and told Vaniece that they were going to secure the premises while they sought a search warrant. One of the officers then drove back to the police station and started writing the warrant.

While waiting, Vaniece decided to phone her mother. She apparently explained the situation, and her mother apparently told her to stop covering for Alexander. In any event, when Vaniece hung up, she told the officers to go ahead and search. During the search, the officers found another handgun.

When Alexander's motion to suppress the handguns was denied, he pled guilty to possession of a firearm by a felon.

Discussion

Alexander claimed that both the search of the Riviera and the search of the apartment were illegal and, therefore, both firearms should have been suppressed. The court disagreed.

THE CAR SEARCH: As noted, the officer searched the car after he received permission to search from the repossessor. The issue was whether the repossessor had the authority to consent.

It is settled that consent to search a place or thing may be given by a third person so long as officers reasonably believed that he had actual or apparent authority over it, even if he and the suspect had joint authority.[1] Do repossessors have such authority? Although the court did not analyze the issue, it ruled that it is reasonable for officers to believe that they do and, thus, the search was lawful.

The court also ruled that, even if the repossessor lacked apparent authority, Alexander could not challenge the search because he lacked standing. As the court explained, a person has standing only if he had a reasonable expectation of privacy in the place or thing that was searched.[2] Although a defendant usually has standing if he owned, controlled, or lawfully possessed the thing that was searched,[3] he may lose it if he attempts to disassociate himself from it.

Here the courts ordinarily distinguish between denials of ownership and complete denials; i.e., denials of any possessory interest. Thus, while a defendant's claim that he does not own the item is a "strong indication" that he had no protectable interest in it,[4] his claim that he had no interest whatsoever constitutes absolute proof.[5] Although the court did not say which type of disassociation occurred here, it ruled that Alexander lacked standing to challenge the search because he "had disclaimed that the vehicle was his," and the officers knew that the car was not registered to him. Said the court, "A

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[1] See *United States* v. *Matlock* (1974) 415 U.S. 164, 171 ["[W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over [it]."]; *Illinois* v. *Rodriguez* (1990) 497 U.S. 177, 185 ["[I]n order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government-whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement-is not that they always be correct, but that they always be reasonable."].

[2] See *Rakas* v. *Illinois* (1978) 439 U.S. 128; *U.S.* v. *Payner* (1980) 447 U.S. 727, 731 ["[A] court may not exclude evidence under the Fourth Amendment unless it finds that an unlawful search or seizure violated the defendant's own constitutional rights."].

[3] See *Rakas* v. *Illinois* (1978) 439 US 128, 143, fn12 ["[O]ne who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of his right to exclude."].

[4] *People* v. *Allen* (1993) 17 Cal.App.4th 1214, 1220-23.

[5] See *People* v. *Dees* (1990) 221 Cal.App.3d 588, 594; *People* v. *Dasilva* (1989) 207 Cal.App.3d 43, 48; *People* v. *Allen* (1993) 17 Cal.App.4th 1214, 1221-22; *People* v. *Oldham* (2000) 81 Cal.App.4th 1, 15; *U.S.* v. *Lipscomb* (1st Cir. 2008) 539 F.3d. 32, 36 ["Lipscomb actively disowned any interest in any of the seized items; thus, according to his own testimony, he lacks the expectation of privacy required to challenge the seizure of the crack cocaine and gun."]; *U.S.* v. *Amaral-Estrada* (7th Cir. 2007) 509 F.3d 820, 827 [no standing to challenge a search of a car because the suspect "denied any knowledge of the car"].

reasonable person in the searching officers' position would believe that Alexander had relinquished his property interests in the Riviera. Therefore, Alexander abandoned the vehicle and his Fourth Amendment rights were not violated by the vehicle search."

THE SEARCH OF THE APARTMENT: Alexander contended that the gun in the apartment should have been suppressed on grounds that Vaniece's consent was involuntary. One reason for invalidating a consent search is that the officers said or implied that, although they were seeking consent, they could legally search anyway. In such a situation, there is no "consent," merely submission to a claim of authority.[6]

Although some older cases have held that consent was involuntary if officers claimed they could "get" a warrant (as opposed to saying they would "seek" one), recent federal decisions indicate that such a statement will not render the consent involuntary if the officers did, in fact, have probable cause for a warrant. As the Ninth Circuit observed, "[C]onsent is not likely to be held invalid where an officer tells a defendant that he could obtain a search warrant if the officer had probable cause upon which a warrant could issue."[7]

The question, then, was whether the officers who had reentered Vaniece's apartment had probable cause to obtain a warrant to search for drugs and items associated with the sale and manufacturing of crack cocaine. Alexander claimed they didn't because the source of the officers' information was an anonymous caller. But the court explained there was reason to credit the information from this particular source. First, it noted that the caller had provided a "highly detailed tip," as opposed to general allegations of criminality. Second, the officers confirmed the caller's allegation that Alexander kept a handgun hidden in the engine compartment of the Riviera, which was especially significant because this is the type of information that would have been known only by someone who was privy to Alexander's criminal affairs. Third, the K-9 had alerted to the threshold, a circumstances that tended to confirm the caller's allegation that Alexander possessed cocaine.

Consequently, the court ruled there was sufficient reason to believe the caller was reliable and, therefore, there was probable cause to believe there were drugs and paraphernalia inside the apartment.[8] POV

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[6] See *Florida* v. *Royer* (1983) 460 U.S. 491, 497 [consent is involuntary when it is "a mere submission to a claim of lawful authority"]; *Lo-Ji Sales* v. *New York* (1979) 442 U.S. 319, 329 ["Any 'consent' given in the face of colorably lawful coercion cannot validate the illegal acts shown here."]; *People* v. *Valenzuela* (1994) 28 Cal.App.4th 817, 832 ["Where the circumstances indicate that a suspect consents because he believes resistance to be futile ... the search cannot stand."]

[7] *U.S.* v. *Kaplan* (9th Cir. 1990) 895 F2 618, 622. ALSO SEE *U.S.* v. *Meza-Corrales* (9th Cir. 1999) 183 F.3d 1116, 1125 ["[T]he existence of probable cause lessens any need for us to deem that a consent was invalid on the basis of a police officer's statements regarding the obtaining of a search warrant."]; *U.S.* v. *Rodriguez* (9th Cir. 2006) 464 F.3d 1072, 1078 ["when probable cause to justify a warrant exists, the weight of [this factor] is significantly diminished."].

[8] **NOTE**: The court also ruled that, even if Vaniece's consent was involuntary, the gun would have been admissible under the inevitable discovery doctrine because the officers had probable cause for a warrant; and an officer was, in fact, writing a warrant at the time. See *Nix* v. *Williams* (1984) 467 U.S. 431, 444, 447 ["[I]f the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury"].