

# Recent Case

## U.S. v. Hudspeth

(8<sup>th</sup> Cir. en banc 2008) 518 F.3d 954

### Issue

Could the wife of a child pornography suspect consent to a search of the family computer if her husband had been arrested earlier at his workplace and had refused to consent?

### Facts

Missouri narcotics officers executed a warrant to search a business which had been selling large quantities of pseudoephedrine tablets. The CEO of the company was Hudspeth. During the search, officers found child pornography on Hudspeth's business computer; and he admitted to having downloaded the images from the internet. He was then arrested. Figuring that he had also stored child pornography at his residence, an officer asked if he would consent to search his home computer. He refused.

After Hudspeth was taken to jail, officers went to his home and, after explaining the situation to his wife, obtained her consent to search the home computer which, as expected, contained child pornography. When Hudspeth's motion to suppress the images was denied, he pled guilty.

### Discussion

Hudspeth argued that the computer images should have been suppressed because his wife could not effectively consent over his objection. This argument was based on the case of *Georgia v. Randolph*<sup>1</sup> in which the United States Supreme Court ruled that, under certain circumstances, officers may not search a residence pursuant to consent given by one co-tenant if the other had objected. Specifically, the court ruled that the consent is ineffective if, (1) the

objecting co-tenant was physically present when officers sought consent, and (2) he made an express objection when officers sought consent from the co-tenant. In the words of the Court, "[A] warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident" is invalid.

Significantly, the Supreme Court in *Randolph* made it clear that it was limiting its ruling to the particular facts of the case. As the court in *Hudspeth* pointed out, "The *Randolph* opinion repeatedly referred to an 'express refusal of consent by a *physically present* resident.'" Accordingly, the court ruled that Ms. Hudspeth's consent was valid because her husband was not present when she consented.<sup>2</sup> Said the court, "[The] rationale for the narrow holding of *Randolph*, which repeatedly referenced the defendant's physical presence *and* immediate objection, is inapplicable here." Hudspeth's conviction was affirmed.

### Comment

There are two other recent cases in which federal circuit courts applied *Randolph*. In *United States v. Caldwell*,<sup>3</sup> the suspect was asked if he would consent to a search of the hotel room he shared with Kelly Meyer. Caldwell responded, "You'll have to ask [Meyer]. It's her room." Meyer then consented, and the search turned up a large quantity of drugs. Caldwell urged the Sixth Circuit to rule that a co-tenant who stands mute when asked for consent should be deemed to have objected. But the court refused for the same reason that the court in *Hudspeth* upheld Ms. Hudspeth's consent; viz., that *Randolph* must be limited to its unique facts. And since Caldwell did not expressly object, *Randolph* did not apply.

The second recent case, *United States v. Murphy*, is covered separately.

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<sup>1</sup> (2006) 547 U.S. 103.

<sup>2</sup> **NOTE:** In *Randolph*, the Court indicated that a co-tenant's consent would be invalid if "the police have removed the potentially objecting tenant from the entrance for the sake of avoiding possible objection." This was not an issue in *Hudspeth* because, although Hudspeth had been removed from his business and was not present when the officers sought consent from his wife, there was a legitimate reason for his removal; i.e., he had been lawfully arrested and was at, on en route to, jail.

<sup>3</sup> (6<sup>th</sup> Cir. 2008) \_\_ F.3d \_\_ [2008 WL 495326].