

Recent Case Report

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U.S. v. Johnson

(10th Cir. 2009) __ F.3d __ [2009 WL 3429765]

Issue

Did the defendant have standing to challenge the search of a storage unit that his girlfriend with rented with stolen identification at his request?

Facts

During a traffic stop, officers in West Valley City, Utah, learned that the driver, Johnson, and his girlfriend, Christensen, were wanted on outstanding felony warrants. After arresting them, the officers conducted a search of the vehicle incident to the arrest and, in Christensen's purse, found several documents in the name of Shannon Haroldsen. One of the documents was a rental agreement for a storage unit that had been rented the previous day.

Officers ran a record's check on Haroldsen and learned that her purse had been stolen several weeks earlier in the course of an auto burglary. When officers contacted her, Haroldsen confirmed that she did not rent the storage unit, and she gave them consent to search it. When they arrived at the facility, the manager confirmed that a woman who identified herself as Haroldsen had rented the unit the day before, and that she paid cash for the first month's rent. He also showed them a photocopy of Haroldsen's driver's license which the woman had used to identify herself.

The officers then searched the rental unit pursuant to Haroldsen's consent and found two firearms. Johnson later admitted to the officers that he had asked Christensen to rent the storage unit, knowing she was using a false ID. When his motion to suppress the guns was denied, Johnson pled guilty to possession of a firearm by a convicted felon.

Discussion

Johnson contended that the search was unlawful because, although Haroldsen had given her consent, it was Johnson—not Haroldsen—who paid for the storage unit.¹ Prosecutors argued that Johnson did not have standing to challenge the search, asserting that people who rent storage units using stolen ID cannot reasonably expect that the contents will remain private. The court agreed.

Although a person's use of an alias or pseudonym in acquiring something will not automatically deprive him of standing to challenge a search of it,² it may if it reasonably appeared that he would not have obtained the item otherwise; i.e., the item was obtained fraudulently. For example, a person who pays for something with a stolen credit card would probably lack standing to challenge a search of it.³ But, as Johnson pointed out, Christensen had obtained the storage unit with cash he had given her.

¹ **NOTE:** Johnson did not challenge the search of his car or the search of Christensen's purse.

² See *People v. Avelino Leon* (2005) 131 Cal.App.4th 966, 976 ["The expectation of privacy in the contents of telephone conversations does not become unreasonable just because the phone was procured using an alias."]; *U.S. v. Pitts* (7th Cir. 2003) 322 F.3d 449, 459 ["There is nothing inherently wrong with a desire to remain anonymous when sending or receiving a package"].

³ See, for example, *U.S. v. Caymen* (9th Cir. 2005) 404 F.3d 1196, 1200-01.

Nevertheless, the court concluded that fraud may also result in a rental situation if it reasonably appeared that the owner would not have transferred possession without knowing the renter's true identity. And that was exactly the situation here, as demonstrated by the manager's asking to see Christensen's driver's license and then making a photocopy of it. As the court observed:

The storage unit owner may have required proof of the renter's identity in order to deter illegal conduct involving the unit, to provide accountability if the contents being stored should turn out to be hazardous Whatever the exact reason, it is clear from the terms of the rental agreement that the owner of this storage unit deemed the true identity of the renter to be a material condition of the rental of the storage unit.

Thus, in ruling that Johnson lacked standing, the court said, "We will not be a party to this fraud by legitimizing Johnson's interest in the storage unit. Therefore, whatever subjective privacy expectations Johnson had in the storage unit were not expectations that society is prepared to recognize as objectively reasonable."

Comment

In another recent case, *U.S. v. Noster*,⁴ the Ninth Circuit ruled that the search of the defendant's truck by a Pasadena police officer was lawful because the officer had probable cause to believe that Noster had obtained it fraudulently. Specifically, the officer knew that, (1) Noster had falsely represented on his GMAC credit application that he was employed, (2) he stopped making payments on the truck one year earlier, (3) he had been avoiding GMAC's efforts to repossess the truck, and (4) he had also stopped making payments on several other vehicles for which felony charges against him had been filed. Said the court, "Although these facts may not ultimately prove Noster's theft of the truck by false pretenses, they are more than sufficient to support [the officer's] reasonable belief that Noster's acquisition and continued possession of the truck was unlawful." POV

⁴ (9th Cir. 2009) 573 F.3d 664.