Recent Case Report

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U.S. v. King

(3rd Cir. 2010) __ F.3d __ [2010 WL 1729733]

Issue

If a person consents to a search of personal property in the person's home, is the search invalid under the rule of *Georgia* v. *Randolph* if, (1) the property is co-owned a spouse or other person who resides in the house, and (2) the co-owner notified officers beforehand that he objected to the search?

Facts

In the course of an investigation into child pornography in Texas, officers searched a suspect's computer and found, among other things, pornographic images of a two-year old girl. Officers determined that the girl was the daughter of Angela Larkin who was living in Reading, Pennsylvania with Richard King. The matter was referred to an FBI agent in Pennsylvania who learned that Larkin was wanted on a local bench warrant. So he requested that state troopers go to Larkin's house and arrest her.

After the troopers arrived and arrested Larkin, they obtained her consent to take her computer. She also provided them with her passwords. When King heard that Larkin had consented, he told the troopers that he objected to the seizure, explaining that the hard drive belonged to him, and saying that he wanted to remove it before they took the computer. The troopers took it anyway.

A few days later, the FBI agent reviewed Larkin's emails and chats and found "incriminating conversations" between her and King. As a result, the agent obtained a warrant to search the computer which, as it turned out, contained evidence that he had sexually abused the little girl. Thee agent also found thousands of images of child pornography.

Before or after the agent searched the computer, King phoned him and agreed to meet with him at the FBI office in Williamsport. The meeting occurred on a Saturday. Because the FBI office was closed on Saturdays, the front doors were locked. Consequently, the FBI agent had to open the door from him. After King entered, the agent pat searched him and took him to an unlocked interview room. He then told King that he "was free to leave at any time." The agent did not seek a *Miranda* waiver from King. (Because there were no other FBI agents in the building, an agent in Philadelphia listened over the phone.)

As the interview progressed, King admitted to sexually abusing Larkin's daughter. At the conclusion of the interview (which lasted several house), King was allowed to leave, but he was subsequently indicted on charges of, among other things, aggravated sexual abuse of a child and disseminating child pornography through interstate commerce. When his motion to suppress the evidence on the computer and his confession to the agent were denied, he pled guilty and was sentenced to 30 years in federal prison.

Discussion

King contended that the evidence discovered on his hard drive should have been suppressed because his computer had been seized over his objection. He also argued that

his confession was obtained in violation of *Miranda* because he had not waived his *Miranda* rights.

SEIZURE OF COMPUTER: Although Larkin had consented to the seizure of her computer, King agued that the seizure of his hard drive was unlawful under the rule of *Georgia* v. *Randolph*.[1] In *Randolph*, the U.S. Supreme Court ruled that, even if one spouse consents to a search of the family home, officers are prohibited from searching it if the other spouse is present and announces that he objects to the search. In King, however, the court ruled that the *Randolph* rule is limited to situations in which officers had obtained consent to search a residence—it does not apply if officers obtained consent to search a particular item of personal property, such as a computer. Said the court, "the rule of law established in *Randolph* does not extend beyond the home," and it "does not apply to personal effects."[2]

MIRANDA: King argued that his confession should have been suppressed because it was obtained in violation of *Miranda*. Specifically, he contended that the agent should have obtained a waiver before questioning him because he was "in custody" at the time. It is, of course, settled that officers must obtained a Miranda waiver before interrogating a suspect who is in custody. Furthermore, a suspect who has not yet been arrested may be deemed "in custody" if he was questioned under circumstances that were so coercive or intimidating as to constitute the functional equivalent of an arrest.[3]

Citing these principles, King argued that, although he was not under arrest, the interview should be deemed custodial because, (1) it occurred in a FBI office, and (2) it had lasted several hours. Although these two circumstances are relevant in determining whether a suspect was in custody for *Miranda* purposes, the court pointed out that the overall tenor of the interview as noncustodial. Specifically, it noted that King came to the office voluntarily, he was not arrested, the door to the interview room was not locked, the agent did not use any coercive interview tactics, and (probably most important) the agent notified King that he could leave at any time.[4] Accordingly, the court ruled that King was not in custody for *Miranda* purposes, and that his motion to suppress his confession was properly denied. POV

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[1] (2006) 547 US 103.

[2] **NOTE**: The court acknowledged that its decision is contrary to the Ninth Circuit's decision in *U.S.* v. *Murphy* (9th Cir. 2008) 516 F.3d 1117 in which the court ruled that *Randolph* was not limited to searches of residences, but applied equally to a search of a storage shed in which the defendant and his accomplice were manufacturing methamphetamine. As we reported at the time, *Murphy* was the result of this particular panel's extreme ideology rather than an honest examination of the facts and legal issues. In any event, the court in *King* refused to apply *Murphy* saying that it disagrees with its reasoning.

[3] See *California* v. *Beheler* (1983) 463 US 1121, 1125 ["the ultimate inquiry" is whether there has been a "restraint on freedom of movement of the degree associated with a formal arrest"].

[4] See *California* v. *Beheler* (1983) 463 US 1121, 1122 ["Beheler voluntarily agreed to accompany police to the station house"]; *Oregon* v. *Mathiason* (1977) 429 US 492, 495 ["He came voluntarily to the police station"].