Recent Case

U.S. v. Murphy

(9th Cir. 2008) 516 F.3d 1117

Issue

Can a person consent to a search of his public storage unit over the objection of a friend who was temporarily living inside and secretly using it to process methamphetamine?

Facts

Narcotics officers in Jackson County, Oregon followed two men who had just purchased methamphetamine precursors. When the men arrived at a public storage facility, they went inside. The officers staked out the premises until one of the men drove off. They then detained him and learned that he and the second man had gone into unit 17. A little later, the second man left, at which point the officers went to unit 17 and knocked.

The door was opened by Stephen Murphy who was known to the officers as a person who was temporarily living in a storage unit that had been rented by Dennis Roper. As the officers spoke with Murphy, they could see an "operating methamphetamine lab" in the unit, so they arrested him. They then sought his consent to search the unit but he refused. One of the officers then conducted a protective sweep of the unit but apparently found nothing.

After Murphy had been taken to jail, the officers continued their surveillance. About two hours later, Roper arrived and was arrested on outstanding warrants. Roper said he didn't know anything about Murphy's meth lab, and he consented to a search of the unit. At the conclusion of the search, the officers seized the lab. When the trial court denied Murphy's motion to suppress the meth lab, he pled guilty.

Discussion

Murphy contended that his methamphetamine lab should have been suppressed because, (1) the protective sweep was unlawful, and (2) Roper's consent was ineffective. The court quickly disposed of his first contention, pointing out that protective sweeps are permitted if officers reasonably believe there is someone on the premises who poses an immediate threat to them.[13] And here, said the court, the officers' belief was reasonable because they knew that Roper had rented the unit, that he was a wanted on warrants, and that the officers reasonably believed that he might be somewhere on the premises.

As for the consent search, Murphy contended it was illegal because the Supreme Court ruled in *Georgia* v. *Randolph*[1] that officers may not search a residence pursuant to consent given by one spouse or other co-tenant if, (1) the other co-tenant objected to the search, (2) the objecting co-tenant was present when officers sought consent, and (3) he made the objection at the time the officers sought consent.

Although Murphy and Roper were not co-tenants, and although Murphy paid no rent, and although a public storage unit is not a residence, a panel of the Ninth Circuit ruled that the restrictions imposed by *Randolph* applied nevertheless because the storage unit was "the closest thing [Murphy] had to a residence," and he had a key to the unit and he kept his personal belongings there. These circumstances, said the court, were "sufficient to create an expectation of privacy and thus the authority to refuse a search."

Consequently, the court reversed the district court's denial of Murphy's motion to suppress the lab.

Comment

There were essentially two issues in *Murphy*: (1) Does *Randolph* apply if the structure that was searched was a public storage unit instead of a residence? (2) If so, does it matter that the person who objected to the search was in jail and, unbeknownst to the renter, had been using it to process methamphetamine? At first glance, these questions might seem silly. But upon closer inspection, they are preposterous.

Randolph was based on the Supreme Court's determination that spouses and other people who live together have "commonly held understandings" per-

[1] (2006) 547 U.S. 103.

taining to privacy rights in the home; and that neither party should be permitted to sabotage these understandings under certain limited circumstances. Because there has not been a recent groundswell of support for expanding society's "commonly held understandings" to cover public storage units that are being used to conceal meth labs, *Randolph* would not have permitted the court to suppress Murphy's meth lab. So it decided to modify *Randolph*.

Specifically, it ruled that, regardless of what the Supreme Court said, "commonly held understandings" are not the determining factor. Instead, anyone can prevent a search authorized by someone else if he merely had a reasonable expectation of privacy in the structure. Said the court, staying temporarily in a storage unit "is sufficient to create an expectation of privacy and *thus* the authority to refuse a search."[2] It then ruled that because Murphy had such an expectation of privacy in the unit, his refusal to permit a search trumped Roper's consent.

We must stop here momentarily to fully experience the unmitigated arrogance of this opinion. Here we have a panel of the Ninth Circuit that is purporting to overrule an opinion of the United States Supreme Court. And it did this despite the Supreme Court's explicit instructions that its ruling was limited to the unique facts of the case. "[W]e have to admit," said the Supreme Court, "that we are drawing a fine line; if a potential defendant with self-interest in objecting is in fact at the door and objects, the co-tenant's permission does not suffice for a reasonable search." Taking note of this passage, the Eight Circuit recently noted that *Randolph* was a "narrow holding."[3]

Not only did the court in *Murphy* try to subvert a decision of the Supreme Court, it ignored several facts that would have demonstrated the idiocy of its conclusion that Roper did not have a right to permit the officers remove the meth lab:

(1) Murphy had no legal right to occupy the unit.
(2) Roper told the officers that he did not know that Murphy was using it to process meth.
(3) Using a storage unit as a place to live and chemically process illegal drugs undoubtedly constitutes a violation of the applicable zoning laws and Roper's rental contract.
(4) Meth labs are illegal.
(5) Meth labs tend to explode, causing death and destruction.[4]

But there's more. When Roper consented, Murphy was in jail, having been lawfully arrested on a felony. And it appeared unlikely that he would be posting bail anytime soon because his financial situation was so desperate that he was forced to live inside a public storage unit. But even if Murphy bailed out, Roper had told the officers that he didn't know anything about Murphy's meth lab, from which they could reasonably infer that Roper was not going to allow Murphy to return to the storage unit and resume his meth lab operation. Thus, at the time Roper consented, the officers were fully justified in believing that Murphy had absolutely no remaining legal rights in the storage unit and, therefore, his previous refusal to consent had become a nullity.[5]

It should be noted that the judge who wrote this opinion was Stephen Reinhardt, who is reputed to be the most overruled judge in the history of the United States. We hope the Ninth Circuit en banc or, if necessary, the Supreme Court sees fit to add *Murphy* to the pile of Judge Reinhardt's other misguided decisions. POV

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[2] Emphasis added.
[3] *U.S.* v. *Hudspeth* (8th Cir. 2008) __ F.3d __ [2008 WL 637638].
[4] See *People* v. *Duncan* (1986) 42 Cal.3d 91, 105 [production of meth "creates a dangerous environment"]; *People* v. *Messina* (1985) 165 Cal.App.3d 937, 943 ["the types of chemicals used to manufacture methamphetamines are extremely hazardous to health."].
[5] **NOTE**: When *Randolph* was announced we wrote that it was a fundamentally unsound decision because it was based unsubstantiated sociological findings, not the law. Specifically, the justices reported that they had discovered a previously undetected cultural shift pertaining to privacy rights. We pointed out that, by basing their decision on such a nebulous concept, they faced an impossible serious challenge: "How could they write an opinion based on a subtle cultural shift without sounding flaky? They couldn't. Which explains why their decision—a document representing the refined judgment of the highest court in the United States of America—was based on such shadowy abstractions as 'commonly held understandings,' 'shared social expectations,' 'voluntary accommodation, 'social practice,' 'social custom,' 'customary social understanding, the 'comfort' level of visitors, and the 'multiplicity of living arrangements.'" And so it was not entirely surprising that a lower court, such as the one in *Murphy*, would announce that it, too, had detected a cultural shift that needed to be incorporated into the law.