Smith v. City of Santa Clara

(9th Cir. 2017) 876 F.3d 987

Issue

Are officers prohibited from conducting a probation search of a residence if an occupant who is not on probation objects to the search?

Facts

Officers in Santa Clara developed probable cause to believe that Justine Smith had taken part in the theft of a car at knifepoint. While they were trying to find her, they learned that she was on probation with a search condition that encompassed searches of her home. They also learned from the probation department that she was currently living in a duplex with her mother, Josephine. So the officers decided to conduct a probation search of the home in order to determine if Justine was hiding inside. But when they arrived, Josephine informed them that she would not admit them without a warrant. The officers entered nevertheless but Justine was not there.

Josephine then filed a federal civil rights lawsuit against the officers and their department, claiming that their warrantless entry violated the Fourth Amendment. The case went to trial and the jury determined that the officers' entry was lawful. Josephine appealed to the Ninth Circuit.

Discussion

It is settled that a probation search of a home is lawful if (1) the officers were aware that the terms of probation included authorization to search the home without a warrant, and (2) they had probable cause to believe the probationer lived in the home. It is also settled that officers may conduct probation searches of homes even though the probationer was not present at the time.[1] Thus, it appeared that the search of Josephine's house was legal.

Josephine argued, however, that the search was illegal because the Supreme Court in *Georgia v. Randolph* ruled that officers may not conduct consent searches of homes if one of the occupants expressly objected to the search.[2] And although the search of Josephine's home was a probation search—not a consent search—she contended that *Randolph* should also be applied to probation searches because they are technically based on consent.

The Ninth Circuit disagreed, ruling that the restrictions imposed by *Randolph* apply only to actual consent searches and, because probation searches in the federal system are not based on consent, *Randolph* did not apply and therefore Josephine's objection to the search did not render it illegal.

Comment

Although the California Supreme Court has ruled that probation searches are consensual in nature,[3] we are fairly certain it would have upheld the search in *Smith*

---

[1] See *People v. Mason* (1971) 5 Cal.3d 759, 763.

[2] *Georgia v. Randolph* (2006) 547 US 103.

[3] See *People v. Schmitz* (2012) 55 Cal.4th 909, 920 ["a probationer who is subject to a search clause has explicitly consented to that condition"]; *People v. Robles* (2000) 23 Cal.4th 789, 795

because the difference between the federal standard of overall "reasonableness" and the "consent" is more theoretical than substantive. Moreover, when the U.S. Supreme Court had an opportunity to choose between the two tests in 2001, it declined but then resolved the case by applying the reasonableness standard.[4] POV

Date posted: March 19, 2018

["[A] person may validly consent in advance to warrantless searches and seizures in exchange for the opportunity to avoid serving a state prison term."]; *People v. Ramos* (2004) 34 Cal.4th 494, 506 ["[B]y accepting probation, a probationer consents to the waiver of Fourth Amendment rights in order to avoid incarceration."].

[4] *United States v. Knights* (2001) 534 U.S. 112, 118 ["We need not decide whether Knights' acceptance of the search condition constituted consent [however] because we conclude that the search of Knights was reasonable under our general Fourth Amendment approach of "examining the totality of the circumstances"].