

U.S. v. Andino

(2nd Cir. 2014) 768 F.3d 94

Issues

(1) Could DEA agents lawfully enter a house if, although they had consent from an incarcerated resident, they were refused entry by a resident who was present? (2) Apart from consent, did an exigent circumstance justify the warrantless entry? (3) If so, did the exigent circumstance also allow them to enter the kitchen and second floor?

Facts

In the course of a DEA investigation, agents in Buffalo, New York arrested Anderson Montanez who later gave them written consent to search his home. Montanez informed the agents that he shared the house with his girlfriend, Yvette Andino, that he had hidden “a couple” of ounces of cocaine in a book bag, and that Andino could show them where it was located. DEA agents and Buffalo police officers arrived at the house at about 11 P.M. and surrounded it.

When agents walked to the front door, they discovered there was an outer and an inner door. After they knocked on the outer door, Andino opened the inner door and an agent identified himself and informed her that Montanez had consented to a search of the premises for his cocaine. Andino asked to see a copy of the consent form but when she saw it she slammed the door shut and ran into the kitchen. The agents then heard the sounds of running water and the opening and closing of kitchen drawers. Since Andino was obviously flushing the cocaine, agents forcibly entered and arrested her as she entered the living room from the kitchen. Agents then went into the kitchen, turned off the faucet and seized a baggie containing cocaine in the sink. Then, while conducting a protective sweep of the second floor, they saw a book bag and seized it.

Andino and Montanez were charged with, among other things, conspiracy to distribute cocaine. Before trial, they filed a motion to suppress the cocaine in the sink on the grounds that the agents’ warrantless entry into the house was not justified by exigent circumstances or consent; and, even if there were exigent circumstances, the exigency ended when the agents arrested Andino. The district court summarily denied Montanez’s motion because he had consented to the search. (Montanez did not appeal this ruling.) But the district court granted Andino’s motion as follows: It ruled that the agents’ entry into the house was lawful because they reasonably believed that Andino was in the process of destroying evidence. But it also ruled that the agents’ entries into the kitchen and the second floor were unlawful because Andino had already been arrested and was therefore unable to destroy anything. The government appealed to the Second Circuit.

Discussion

At the outset, it should be noted that the government did not challenge the district court’s ruling that the agents did not have sufficient grounds to conduct a protective sweep of the second floor. This was probably because they had no reason to believe that anyone but Andino was on the premises.¹ Consequently, the only issues on appeal were the legality of the warrantless entry into the house and the entry into the kitchen.

¹ See *Maryland v. Buie* (1990) 494 U.S. 325, 327 [officers must have reasonable suspicion that the area swept “harbored an individual”]; *People v. Werner* (2012) 207 Cal.App.4th 1195, 1209 [“Here, there were no particularized facts supporting a reasonable suspicion that there was a dangerous person inside defendant’s home.”]; *U.S. v. Jones* (4th Cir. 2012) 667 F.3d 477, 484 [“The question is whether there was

ENTRY INTO HOME: CONSENT: Although Montanez consented to the search, Andino did not. And although officers are not required to seek consent from all residents before entering,² the Supreme Court in *Georgia v. Randolph* ruled that, if one resident of a house consents to an entry or search, the consent is invalid if (1) the non-consenting resident affirmatively informed officers that he objected to the search, and (2) this objection was voiced in the officers' presence when they sought to enter or search.³ Because Andino expressly refused to consent (by slamming the door) and because she did so when the agents announced their purpose, the court ruled that, as to Andino, the agents' entry into the house could not be based on Montanez's consent.

ENTRY INTO HOME: EXIGENT CIRCUMSTANCES: The question, then, was whether the agents' warrantless entry into the house was justified by exigent circumstances. Officers may, of course, enter a home without a warrant if they reasonably believed there was destructible evidence on the premises that would be destroyed if they waited for a warrant. As the Supreme Court explained, "[T]o prevent the imminent destruction of evidence has long been recognized as a sufficient justification for a warrantless search."⁴ In light of this rule, the Second Circuit reversed the trial court and ruled that the agents' entry into Andino's home was, in fact, justified by exigent circumstances. Specifically, the court ruled that the combination of the following circumstances demonstrated a sufficient threat to the evidence as to justify a warrantless entry: (1) based on information from Montanez, the agents reasonably believed there was cocaine on the premises; and (2) after the agents identified themselves and told Andino that Montanez had consented to a search of the premises, she slammed the door shut, ran away from the door, turned on a faucet, and started opening and closing the kitchen drawers. Said the court, "These are classic sounds indicating destruction of evidence."

ENTRY INTO KITCHEN: EXIGENT CIRCUMSTANCES: Andino argued that, even if the agents' entry into the house was lawful, they could not enter the kitchen because she had already been arrested in the living room and, therefore, had no ability to destroy anything in the kitchen. Although the district court bought this argument, the Second Circuit rejected it mainly because they could hear the faucet running, and this indicated that some evidence was still being flushed. Therefore, said the court, "the officers' entry into the kitchen after physically securing Andino was justified by continuing exigent circumstances." And because the cocaine was in plain view when the agents closed the faucet, the court ruled that the district court erred by suppressing the evidence.

a reasonable basis for the officers to believe that there could be other individuals in the residence who might resort to violence when incited by their confederate's arrest"].

² See *Georgia v. Randolph* (2006) 547 U.S. 103, 122 [officers need not "take affirmative steps to find a potentially objecting co-tenant"]; *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 397, 400 ["[T]he marshals had no duty to ask Lopez whether he consented to the search, no matter how easy or convenient it might have been to do so."]; *U.S. v. Parker* (7th Cir. 2006) 469 F.3d 1074, 1079 ["That Parker was not asked for his consent and did not have an opportunity to object to the search does not render invalid Johnson's voluntary consent."].

³ See *Fernandez v. California* (2014) __ U.S. __ [134 S.Ct. 1126, 1136 [*Randolph* "applies only when the objector is standing in the door saying 'stay out' when officers propose to make a consent search"]; *Georgia v. Randolph* (2006) 547 U.S. 103, 106 [the ruling requires "a physically present inhabitant"]; *People v. Ledesma* (2006) 39 Cal.4th 641, 704, fn.16 ["[*Randolph*] does not change the legal standards applicable to the present case, in which defendant was not present when the police received consent"].

⁴ *Kentucky v. King* (2011) __ U.S. __ [131 S.Ct. 1849, 1856]. Also see *Missouri v. McNeely* (2013) __ U.S. __ [133 S.Ct. 1552, 1559] ["we have also recognized that in some circumstances law enforcement officers may conduct a search without a warrant to prevent the imminent destruction of evidence"].