U.S. v. Thomas

(11th Cir. 2016) 818 F.3d 1230

Issues

(1) Did the defendant's wife have common authority over computers that were used by both her and the defendant in the family home? (2) Were officers required to wake up the defendant and obtain his consent before searching the computers?

Facts

At about 11 A.M., while her husband was still sleeping, Caroline Olausen got up and went to their family home office where she turned on the monitor for their HP computer and clicked the "restore previous internet session" button. The result was that about ten websites popped up, some of them containing child pornography. She immediately notified the Largo Police Department in Florida where she lived. When a detective arrived, Olausen told him that her husband, Eric Thomas had been using the computer the previous night while she was away from the home. She also explained that both she and Thomas knew the password to the computer, that Thomas was the primary user, and that he was "normally compulsive about properly shutting down the computers, using pop-up ware and spam filters, and deleting his Internet cookies." Olausen consented to a search of the computer and two others in the home office; the detective seek the consent of Thomas, who was still sleeping.

While another detective was conducting a forensic scan of a Dell computer, Thomas woke up and started walking toward the home office. An officer intercepted him and told him to wait in the living room where he was met by another detective who sought his consent to search the computers. At first, Thomas agreed but then said he wanted to talk to Olausen first. When Olausen said she did not want to talk with him, he said he wanted to talk to a lawyer. The detectives interpreted this as a revocation of his consent, so they discontinued the search, seized the three computers and, two days later, obtained a warrant to search them. During the warranted search, they found 860 images of child pornography. Thomas's motion to suppress the images was denied and he appealed to the Eleventh Circuit.

Discussion

Thomas argued that all of the evidence should have been suppressed because the officers were aware that he was sleeping in the house, and they were therefore required to awaken him and obtain his consent even though Olausen had already consented. Specifically, Thomas contended that (1) his wife did not have the authority to consent to searches of the HP computer that was used primarily by him; and (2), because the officers were aware that Thomas was asleep in his bedroom, they were required to awaken him and obtain his consent.

SPOUSE'S AUTHORITY TO CONSENT: A suspect's spouse may ordinarily consent to a search of the family home and the property inside if, as is usually the case, the spouses have "common authority" over the premises.[1] Because common authority exists if the

[1] See *Illinois v. Rodriguez* (1990) 497 U.S. 177, 179 [consent is sufficient if it was given by "a third party who possesses common authority over the premises"]; *United States v. Matlock* (1974) 415 U.S. 164, 170 ["[T]he consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared."].

consenting spouse was a joint owner or user of the property,[2] it seemed apparent that Olausen had common authority over the computer. But Thomas argued that because he was the primary user of the computer, Olausen lacked common authority over it, and that the officers knew it and therefore violated his Fourth Amendment rights when they searched it without his consent.

Although there is a legal presumption that each spouse has common authority over the family home and its contents,[3] it is a rebuttable presumption which, according to Thomas, was effectively rebutted by the fact that he was the primary user of the computer and that he had taken steps to delete his Internet history. The court disagreed:

> The fact that Thomas was the primary user of the computer, worked from the family home, and typically deleted his Internet history, used pop-up-ware and spam filters, and usually fully shut down the HP computer (although he did not on the night in question) were insufficient to show that Olausen lacked the requisite common authority to provide consent. Despite Thomas's security measures, Olausen had joint access and control over the computer for most purposes, and Thomas did not isolate his Internet use in a manner that prevented Olausen from accessing it all together.[4]

The court added that it was "particularly significant that Thomas did not protect his Internet history from Olausen by maintaining a separate login name and password or by encrypting his files."[5]

DUTY TO OBTAIN THOMAS'S CONSENT: As noted, Thomas also argued that Olausen's consent was ineffective because the officers had a duty to wake him up so he could veto it. This argument was based on the Supreme Court's decision in *Georgia v. Randolph* in which the Court ruled that if one spouse consents to a search of the family home, the other spouse can override it if (1) the purpose of the search was to obtain evidence against the nonconsenting spouse, (2) the nonconsenting spouse expressly informed officers that he objected to the search, and (3) the objection was made in the officers' presence when they sought to enter or search.[6]

Although the first requirements was satisfied, and although the second was arguably satisfied when Thomas refused to consent until he talked with a lawyer, the third

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[2] See *Georgia v. Randolph* (2006) 547 U.S. 103, 114 ["Each cotenant has the right to use and enjoy the entire property as if he or she were the sole owner."]; *Frazier v. Cupp* (1969) 394 U.S. 731, 740 ["Since Rawls was a joint user of the bag, he clearly had authority to consent to its search."]; *United States v. Matlock* (1974) 415 U.S. 164, 171 ["joint use of the bag rendered the cousin's authority to consent to its search clear"].

[3] See *People v. Duren* (1973) 9 Cal.3d 218, 241 ["[S]ince a wife normally exercises as much control over the property in the home as the husband, police officers may reasonably assume that she can properly consent to a search thereof."].

[4] Also see *People v. Catlin* (2001) 26 Cal.4th 81, 163 ["Although [the consenting person] stated that he predominantly used one side of the garage/shop, the evidence established that [he] and defendant had common authority over the entire garage, including the cabinet."].

[5] **NOTE**: The affidavit in support of the warrant was based solely on information obtained from the HP computer before Thomas objected to the search. Thus, the information obtained during the warranted searches would also have been admissible under the Independent Source Rule. See *Murray v. United States* (1988) 487 U.S. 533, 542; *Segura v. United States* (1984) 468 U.S. 796, 814 ["None of the information on which the warrant was secured was derived from or related in any way to the initial entry into petitioners' apartment"].

[6] (2006) 547 U.S. 103.

requirement was clearly not satisfied because Thomas was asleep when Olausen consented and, therefore, he did not object to the search in the officers' presence *when they sought consent* from Olausen. Moreover, the Supreme Court in *Randolph* expressly refused to dispense with the "in the presence" requirement, saying that the nonconsenting suspect "loses out" if he was merely "nearby but not invited to take part in the threshold colloquy."[7]

Consequently, the court ruled that, pursuant to *Randolph*, Thomas's attempted veto was unsuccessful, and it affirmed his conviction. POV

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[7] *Georgia v. Randolph* (2006) 547 U.S. 103, 121.