

Gonzalez v. Moreno

(1st Cir. 2019) 919 F.3d 582

Issue

Was a suspect's consent to search his computer invalid because officers lied to him about their reasons for wanting to search it.

Facts

While investigating a report that Gonzalez was downloading child pornography, FBI agents in Puerto Rico went to his home in hopes of obtaining consent to search his laptop. When Gonzalez answered the door, the agents told him they needed to search his computer because they had reason to believe that his modem was “sending a signal and/or viruses to computers in Washington,” and that he “could no longer touch or access the laptop because it contained evidence of a crime.”

Gonzalez consented and the agents took his computer which was examined by FBI technicians who found that it contained child pornography. Gonzalez was arrested and filed a motion to suppress the images on grounds that the agents' misrepresentations invalidated his consent. Instead of responding to the allegation, the U.S. Attorney dismissed the case. Gonzalez then sued the agents for violating his civil rights. When the district court rejected the agents' argument that they were entitled to qualified immunity, the government appealed to the First Circuit.

Discussion

Obtaining consent to search by means of a ruse or other misrepresentation is legal—most of the time. That is because consent, unlike a waiver of constitutional rights, need not be “knowing and intelligent.”¹ This is why undercover officers do not violate the Fourth Amendment when they obtain a suspect's consent to enter his home or business to buy drugs.²

But consent is ineffective if officers—whether undercover or not—claim that they needed to enter for some *lawful* purpose. For example, the courts have invalidated consent when an undercover officer claimed he was a building inspector, property manager, or a friend of the Sears repairman who was currently working inside the suspect's home.³

Although there is no simple test for determining when a misrepresentation of the officers' purpose will invalidate consent, it is always unlawful if the officers falsely represented that they had some official or otherwise legitimate reason for entering or searching. Accordingly, the court had “little difficulty” in ruling that the FBI agents crossed the line when they said they needed to enter to defuse a national emergency. Said the court, “[T]he agents here relied on the predictable acquiescence of citizens to assist law enforcement where it reasonably could be inferred that national interests were

¹ See *Schneekloth v. Bustamonte* (1973) 412 U.S. 218, 243.

² See *Lewis v. United States* (1966) 385 U.S. 206, 211 [“A government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises for the very purposes contemplated by the occupant.”]; *U.S. v. Bullock* (5th Cir. 1979) 590 F.2d 117 [undercover ATF agent obtained consent from Bullock, a Ku Klux Klan member, to enter Bullock's house to discuss becoming a member of the Klan].

³ *People v. Mesaris* (1970) 14 Cal.App.3d 71. Also see *Mann v. Superior Court* (1970) 3 Cal.3d 1, 9.

at stake.” Accordingly, the court ruled that the agents were not entitled to qualified immunity and, therefore, the case could proceed to trial. POV

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