U.S. v. Wright

(7th Cir. 2016) 838 F.3d 880

Issue

Did a suspect's domestic partner have authority to consent to a search of the suspect's computer?

Facts

A detective with the Urbana Police Department in Illinois received an incident report that the victim of a domestic violence incident had notified the responding officers that the suspect, her partner Talon Wright, was a pedophile. The detective contacted the woman, Leslie Hamilton, and arranged for her to meet with him at police headquarters. At the meeting, Hamilton said she thought that Wright was a pedophile because he would use his cell phone to visit a website called "Jailbait" and that he had mentioned seeing a video with a "disturbing title" on the family's home computer. Based on this information, and his knowledge that the "Jailbait" website featured pornographic images of underage girls, the detective obtained Hamilton's consent to search the couple's apartment, including their computers.

When they entered the apartment, the detective saw a desktop computer in the living room that was connected to a flat-screen TV. Hamilton explained that Wright owned the computer but it was "kind of a family computer" and that she and her children used it to watch movies, play games, check the children's grades, and store work-related documents." The detective hooked up his laptop to the desktop computer, conducted a "preview" search, and found images of child pornography. He then obtained Hamilton's permission to seize the computer for an off-site forensic examination. The examination revealed additional pornographic images and a video of Wright engaging in sexually explicit conduct with a minor.

After the forensic search, the detective again met with Hamilton and learned that she and Wright both had children from previous relationships and the children lived in the apartment. She added that she was the lessee of the apartment, that she and Wright had been engaged in a "tumultuous on-and-off relationship for the last two years and had broken up several days earlier." Currently, Wright was living with his mother, and Hamilton and her children were soon going to live elsewhere.

Hamilton said she thought the computer was password protected and that, although she did not know the password, her children did. (The forensic analysis of the computer revealed it was not password protected.) The computer's browser history showed that it was frequently used to visit kid-friendly websites, online videos relating to women's and mother's issues, and the homepage for the children's school.

Wright was arrested and filed a motion to suppress the computer images on grounds that Hamilton did not have the authority to consent to a search of his computer. The court denied the motion, and Wright appealed to the Seventh Circuit.

Discussion

The Supreme Court has ruled that a suspect's spouse, roommate, parent, or other third party may consent to a search of property owned or controlled by the suspect if the

consenting person had "common authority" over it,[1] or if officers reasonably believed that she did.[2] Although common authority may be based on any relevant circumstance, it is almost always based on one or more of the following:

> **Ownership**: A person will ordinarily have common authority over any place or thing he owns, even there were co-owners.[3]
>
> **Use:** A third party's active use of the place or thing is a strong indication that he had common authority over it.[4]
>
> **Access or control**: Even if the consenting person did not own or use a place or thing, he may have common authority if he had a right to joint access or control.[5]

Wright argued that, although Hamilton had common authority over the apartment, she did not have common authority over his computer. The court disagreed, pointing out that, although the computer belonged to Wright, "it functioned as a family computer" and, furthermore, Wright left the computer in the apartment when he went to stay with his mother, "leaving Hamilton with unrestricted access to and control over it in his absence." The court also rejected Wright's argument that Hamilton's common authority terminated when he moved out of the apartment. Said the court, "But the end of a romantic relationship doesn't automatically mean that common authority over shared property has been revoked."

The business about the password muddied things up because, as a general rule, a person does not have common authority over a computer that he or she cannot access.[6] As the court explained, "It's true that ignorance of a computer password may demonstrate lack of authority under some circumstances. Like a lock on a briefcase or storage trunk, password protection on a computer demonstrates the owner's affirmative intent to limit access to its contents." In this case, however, it turned out that the computer was not password protected and that, even if it were, it would not have mattered because Hamilton's children knew the password and this "strongly suggests that Wright made no attempt to keep it from her."

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[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."].

[2] See *Georgia v. Randolph* (2006) 547 U.S. 103, 122 ["it would be unjustifiably impractical to require the police to take affirmative steps to confirm the actual authority of a consenting individual whose authority was apparent"]; *Illinois v. Rodriguez* (1990) 497 U.S. 177, 185 [an officer's belief in common authority must "always be reasonable"].

[3] 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."].

[4] See *Frazier v. Cupp* (1969) 394 U.S. 731, 740; *People v. Catlin* (2001) 26 Cal.4th 81, 163.

[5] See *Fernandez v. California* (2014) __ U.S. __ [134 S.Ct.1126, 1133 ["consent by one resident of jointly occupied premises is generally sufficient to justify a warrantless search"]; *United States v. Matlock* (1974) 415 U.S. 164, 171, fn.7 ["a person may have common authority if he has joint access or control for most purposes"]; *People v. Schmeck* (2005) 37 Cal.4th 240, 281 [the consenting person "had access to defendant's personal effects sufficient to endow her with authority to consent to the search"].

[6] Compare *U.S. v. Tosti* (9th Cir. 2013) 733 F.3d 816, 824 ["the computer and electronic media were neither password protected nor encrypted"]; *U.S. v. Thomas* (11th Cir. 2016) 818 F.3d 1230, 1241 ["We find it particularly significant that Thomas did not protect his Internet history from [his wife] by maintaining a separate login name and password or by encrypting his files."].

Consequently, the court ruled that "[t]hese facts easily establish that Hamilton exercised common authority over the computer" and that Wright's motion to suppress was properly denied.

Comment

Although the detective's post-search interview clearly established the Hamilton had common authority over the computer, questions about common authority should be asked *before* the search—not after. That way, if the officer concludes that common authority does not exist, or if it's a close question, he can seek a warrant. As the First Circuit explained in another recent case, "We encourage law enforcement officers in the future to obtain sufficient facts about a given living situation to not only give them the ability to assess the validity of third-party consent before initiating a search, but also to allow a reviewing court to make an assessment in the event that consent is later challenged."[7] POV

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[7] *U.S. v. Casey* (1st Cir. 2016) 825 F.3d 1.