

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Consent

By Charles Gillingham

The legal update page has dealt with the issue of consent to search on a couple of occasions in the past few months. This area of the law is evolving most specifically because of the *Georgia v. Randolph* case. Your author spent quite a bit of time prosecuting child exploitation cases facilitated by computers, so a case out of a federal circuit drew my interest. Remember when you read this update--this case is not binding in California or for state law enforcement anywhere. This is a federal appeals court in Missouri interpreting the law. It is important, however, to look at what courts are doing with consent as you may come up with a similar set of circumstances.

Randolph Review

If you recall, the *Randolph* case arose because of a 911 call made by Mr. Randolph's unhappy spouse. She told the responding officers that Mr. Randolph had drugs and paraphernalia in the house. Randolph was home. The wife consented to the search and Randolph immediately objected. The United States Supreme Court held that a physically present co-tenant can withdraw valid consent to search made by another co-tenant. **The United States Supreme Court anticipated those of you who are imaginative thinkers by making it very clear that you cannot remove the co-tenant from the premises and make him unavailable to withdraw consent.**

Hudspeth

State officers from Missouri executed a search warrant at the premises of a company that had been moving large amounts of pseudoephedrine (also known as "Sudafed" and used in the illicit synthesis of methamphetamine). Defendant was the CEO of the company. Pursuant to the search warrant, the officers searched the defendant's work computer. Officers located child pornography. Defendant admitted downloading the images from the internet. The officers suspected, correctly, that defendant likely had images located on his home computer. The officers requested consent from the defendant. In his first good move of the day, defendant declined.

The officers then went to the defendant's home. The officers contacted defendant's wife and explained the situation to her. She gave consent to search defendant's computer. Officers not surprisingly found images on the defendant's home computer.

(To those officers who investigate child molest and sexual exploitation cases, this is a great investigative technique. In my experience, the spouse of the defendant is frequently a great source of information immediately after being told of the investigation. I recommend, however, taping that initial interview. In my experience, at the time of trial, wives of defendants are no longer so forthcoming. In not so rare cases, they even stop supporting their children in favor of the offender. Interviewing and taping the wives and mothers of your victims can give you leads in your investigations and will save you heartache later. I say wives and mothers as most of your offenders will be men.)

Ruling

Defendant argued that his wife could not give consent over his objection. Defendant based his argument on *Randolph*. The Federal Appellate Court held that the United States Supreme Court was very specific in *Randolph*. The Court held that one tenant cannot give consent over the objection of a physically present objector. In this instance, Hudspeth was not physically present; his wife therefore could provide consent to search the home computer over his objection. Remember the holding in *Randolph* restated above--Hudspeth was removed from the work area lawfully pursuant to his arrest. Because his removal was not done to attempt to gain consent from his wife her consent was valid. As in any case with consent, you are not obligated to explain to the individual from whom you are receiving consent that they have the right to deny consent.

Chuck Gillingham is a veteran prosecutor and regular instructor for the California District Attorney's Association and the Federal Internet Crimes Against Children Task Force. Chuck also teaches Multidisciplinary Child Interviewing and Child Exploitation Investigation for Third Degree Communications, Inc.

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