Court of Criminal Appeals of Texas.

The STATE of Texas v. Shirley COPELAND, Appellee.

No. PD–1340–12.

Decided: May 8, 2013

Luis A. Martinez, Attorney At Law, Micah Wayne Hatley, Victoria, TX, for Appellant. Rex Luther Easley, Assistant District Attorney, Victoria, TX, for the State.

OPINION

Is a vehicle a mobile "castle" so that passengers are treated the same as tenants who may disallow police to search a residence after a fellow tenant has consented to the search? Concluding that it is not, we decline to extend the holding in Georgia v. Randolph, 547 U.S. 103, 123, 126 S.Ct. 1515, 164 L.Ed.2d 208 (2006), from residences to vehicles. Because the trial court applied Randolph to vehicles, the court of appeals erred by upholding the suppression ruling on that basis. See State v. Copeland, 380 S.W.3d 214, 216 (Tex.App.Corpus Christi 2012). We reverse and remand the case to the court of appeals.

I. Background

Deputy Jesse Garza of the Victoria County Sheriff's Office was observing a house known for illegal-narcotics activity. He saw a sports-utility vehicle ("SUV") approach the house and observed a passenger, Shirley Copeland, appellee, get out of the SUV, leave the deputy's sight, and quickly return to the SUV. After the SUV left the house, the deputy stopped the driver of the SUV for a traffic violation.

Suspecting possible narcotics activity, the deputy asked the driver, Wayne Danish, for consent to search the SUV. Danish agreed, but appellee refused. She claimed to be the owner of the SUV even though she was not listed as the owner on the vehicle registration. Appellee and Danish also informed the deputy that they were married under common law. Although appellee continued to refuse consent, Danish again consented, and the deputy searched the SUV.

During his search, the deputy found two white pills, later identified as Tramadol, in the middle console. Appellee claimed that she was holding the pills for a friend. Appellee was arrested and charged with possession of a dangerous drug, a Class A Misdemeanor. Tex. Health & Safety Code § 483.041.

Appellee filed a motion to suppress on two grounds. First, she argued that the deputy's extended detention of her was not permissible under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) because it was not reasonably related in scope to the circumstances that justified the stop or necessary to dispelling any reasonable suspicion that developed during the stop. Second, she argued that Randolph applies to the search of vehicles just as it does to the search of residences.[1] See Randolph, 547 U.S. at 121–23. The trial court's order generally granted the motion, but its findings of fact and conclusions of law addressed only the second ground. The trial court's findings of fact determined that the deputy had observed the vehicle stay at a house for a few minutes; the vehicle committed a traffic violation; the driver consented to the search; the passenger refused consent; the vehicle was registered to the driver; the two occupants asserted they were common-law married; and the deputy recovered the two pills. The trial court's conclusions of law stated that appellee had standing to challenge the search; the deputy had probable cause to stop the vehicle due to the traffic offense; there was no probable cause for the search; and the deputy did not have consent to search the vehicle under Randolph because appellee, who had equal authority to grant or refuse consent, denied consent to search the vehicle. The trial court concluded that "[w]hen two people have authority to consent or refuse a

search and both are present, the refusal by one such person negates the consent of the other." The trial court's findings of fact and conclusions of law were silent as to whether the detention was extended or exceeded the scope of the stop, which was the basis of appellee's first ground in her motion to suppress.

The State appealed. In its three issues, it complained (1) that the trial court erred by finding that appellee and the driver were married under common law, (2) that appellee had standing to challenge the search, and (3) that the police officer did have valid consent through the driver. Ruling in favor of appellee on all three issues, the court of appeals affirmed. Copeland, 380 S.W.3d at 216.[2] Because it held in appellee's favor, the court of appeals did not reach the first alternative ground in appellee's motion to suppress with respect to the length or scope of the detention. The sole ground on which we granted review in the State's petition for discretionary review challenges the court of appeals's application of Randolph to consensual searches of vehicles stopped on a public roadway.[3] See id. We declined to review the State's ground challenging whether an assertion of common-law marriage suffices to establish standing. We agree with the State that Randolph does not apply to vehicular searches and, therefore, reverse the judgment of the court of appeals. We remand the case to that court so that it may determine whether the trial court's ruling on the motion to suppress must be upheld on the alternative ground asserted in appellee's motion.[4]

II. Validity of Third–Party Consent to Search of Vehicle in Presence of Objector

We address the principles that underlie third-party consent before addressing the reasons that Randolph is inapplicable to searches of vehicles.

A. Background Principles That Underlie Third–Party Consent

The Supreme Court first recognized the "co-occupant consent rule" in United States v. Matlock. 415 U.S. 164, 171, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974). It held that "when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected." Id. The rationale for permitting third-party consent rests on "mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." Id. at 171 n. 7. Matlock explained that a third party's "common authority" would not be "limited by the law of property" and may be "broader than the rights accorded by property law." See Randolph, 547 U.S. at 110.

Matlock's holding addresses third-party consent by a co-tenant whose fellow tenant is absent when the consent is given. Matlock, 415 U.S. at 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." Id.

In contrast to Matlock, which held that a co-tenant's consent is "good against 'the absent, nonconsenting' " tenant, Randolph addresses a co-tenant's consent in the presence of a nonconsenting fellow tenant. Randolph, 547 U.S. at 121 (citing Matlock, 415 U.S. at 170). In Randolph, the Supreme Court held that a warrantless search of a shared dwelling over the express refusal of consent by a physically present resident cannot be justified as reasonable as to that resident on the basis of consent given by another resident. Id. at 122–23.

The reason for the opposing conclusions in Matlock and Randolph stems from an examination of the "social expectations" that arise under those two scenarios. Id. at 111. In Randolph, the Supreme Court explained, "The constant element in assessing Fourth Amendment reasonableness in the consent cases, then, is the great significance

given to widely shared social expectations, which are naturally enough influenced by the law of property, but not controlled by its rules." Id. In the case of a co-tenant who is alone, these shared social expectations include the understanding that any of the co-tenants "may admit visitors, with the consequence that a guest obnoxious to one may nevertheless be admitted in his absence by another." Id.

By contrast, in the case of a co-tenant whose fellow tenant is present and objecting to a visitor's entry into the home, these shared social expectations would require exclusion of the visitor. Id. at 114. The Court explained that it would not be sensible for a caller at the door of the shared premises to go inside a house when a fellow tenant stood there saying "stay out." Id. at 113. Under these circumstances, the consent of one co-tenant would not permit entry in the face of the express objection of another tenant. Id. at 113–14. The Court summarized that "there is no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another, whether the issue is the color of the curtains or invitations to outsiders." Id. at 114. "Since the co-tenant wishing to open the door to a third party has no recognized authority in law or societal practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all." Id.

The generally recognized different social expectations for the two scenarios explains the contrasting outcomes where one third-party search is permitted in the case of the absent co-tenant, and another third-party search is disallowed in the case of the present, objecting co-tenant. Compare id. with Matlock, 415 U.S. at 170–71. But the general expectations may be different in the case of a recognized hierarchy. The Court explained that, "[u]nless the people living together fall within some recognized hierarchy, like a household of parent and child ., there is no societal understanding of superior and inferior." Randolph, 547 U.S. at 114. The Court, therefore, recognized that different societal expectations may arise when co-tenants belong to a recognized hierarchy. Id.

B. Randolph is Inapplicable to Vehicles

1. Social Expectations For Vehicle Occupants Unlike Tenants

We conclude that the principle that underlies Randolph weighs against the treatment of vehicles as mobile "castles." Unlike homes occupied by general co-tenants, society does generally recognize a hierarchy with respect to the occupants of a vehicle. The driver is the person who has the superior right. For example, a police officer arresting a driver usually asks him, alone, whether he wants his vehicle towed or released to another person. And it is the driver who receives a traffic citation. A bus driver has a responsibility to maintain the safety of his passengers. A sensible would-be passenger wanting a ride would likely accept an offer from a driver even in the presence of an objecting passenger because a driver exclusively controls the destination. As the person with the exclusive control over the operation of the vehicle, a driver necessarily is placed in a superior role with respect to the society within the vehicle.[5] The passengers of the vehicle become subservient to his control. Like the hierarchy of parent and child, to which Randolph would not apply, Randolph would not apply to the hierarchy that generally applies to a driver and passenger of a vehicle during the ordinary course of travels.

At first blush, this would seem to suggest that, as long as a law-enforcement officer has the consent of a driver, no other consent is necessary or pertinent. But that is not necessarily so in all cases. After a vehicle is stopped on a public roadway, events may transpire that change the positions of the occupants in the hierarchy of the vehicle and that would likely change society's expectations with respect to which occupant controls the vehicle. For example, the driver may be arrested and he may thereafter permit a passenger to take control of his vehicle. See, e.g., Welch v. State, 93 S.W.3d 50, 53 (Tex.Crim.App.2002). The officer may learn that the driver is operating the car with the permission of the passenger, whose family owns the car. See, e.g., Houston v. State, 286 S.W.3d 604, 611 (Tex.App.-Beaumont

2009, pet. ref'd). Or a police officer's further investigation at the scene may reveal that a passenger is the owner of the vehicle and all its contents, and that the driver is merely a chauffeur.6 Events like these would likely change society's expectations to include consideration of a passenger's control over the vehicle as equal, and possibly superior, to that of the driver. These types of fluid events that may occur during a traffic stop make a decision about who, other than the driver, might control a vehicle unlike the more stagnant inquiry of a tenant who answers the door at a residence. In Randolph, the Supreme Court considered the clarity of the determination to be made by an officer in light of an easily identifiable tenant at a residence. Id. at 111. It observed that if Mrs. Graff answered "the door of a domestic dwelling with a baby at her hip," that alone was enough "to tell a law enforcement officer or any other visitor that if she occupies the place along with others, she probably lives there subject to the assumption tenants usually make about their common authority when they share quarters." Id. But telltale signs like a baby at a mother's hip will be absent in light of seatbelt laws for vehicles. Because of these differences between homes and vehicles, social expectations about vehicles include the recognition that a driver's control may quickly and unexpectedly be relegated to another as circumstances change. The mobility of the vehicle, fluidity of circumstances, and rapidity with which decisions must be made make it unreasonable to expect a police officer to assess the social expectations for each of the case-by-case determinations about who may override a driver's control.

Perhaps more importantly, Matlock and Randolph did not intend to formulate a case-by-case rule that depended on fact-specific inquiries. See Randolph, 547 U.S. at 112. "Matlock relied on what was usual and placed no burden on the police to eliminate the possibility of atypical arrangements, in the absence of reason to doubt that the regular scheme was in place." Id. As discussed in more detail above, other than the general observation that a driver is the hierarch of a vehicle as it ordinarily travels along a road, a "regular scheme" with respect to vehicles is difficult to ascertain after the stage of tendering of driver's licence and insurance. The fluid nature of traffic stops and the lack of clarity about the relationship of the passengers to the driver make the social expectations described in Randolph inapplicable to vehicles.

We also note that, although a search of a vehicle "is a substantial invasion of privacy," it is "significantly less than that relating to one's home or office." See United State v. Ortiz, 422 U.S. 891, 896, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975); South Dakota v. Opperman, 428 U.S. 364, 367, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976). Vehicles are "not to be treated identically with houses" for Fourth Amendment purposes. Rakas v. Illinois, 439 U.S. 128, 148, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978). In Randolph, the Supreme Court seemed to be particularly concerned with the elevated privacy interest in residences in observing that "the home is entitled to special protection as the center of the private lives of our people." See Randolph, 547 U.S. at 115 (internal citations and quotations omitted). Society's lessened expectation of privacy in vehicles as compared to homes further supports the conclusion that Randolph's holding should not be extended to vehicular searches.

Furthermore, Randolph's holding expressly drew a "fine line" and was intended to affect only those co-tenants who were physically present at the threshold and expressly refused consent. Id. at 121–22. Randolph's narrow holding would not have applied to Matlock, who was not present to object but was in a squad car not far away, or to Rodriguez, who was asleep in the apartment when his co-tenant consented. Id. (citing Matlock, 415 U.S. at 179, and Illinois v. Rodriguez, 497 U.S. 177, 179, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990)). Extending Randolph to vehicles would be contrary to the Supreme Court's intent in construing this narrow holding aimed at protecting those individuals who stand at the threshold of their homes objecting to a governmental intrusion. Randolph, 547 U.S. at 121–22. Because the Supreme Court did not extend the holding in Randolph to those people who were nearby or inside the home but not at the threshold, it appears that the Court intended to limit its holding to the narrowly drawn parameters of a residential search. See id. at 121.

2. Court of Appeals's Analysis Unpersuasive

The court of appeals concluded that, because this Court applied the third-party-consent principles from Matlock to a case involving vehicular searches in Welch v. State, the residential-consent requirements in Randolph must necessarily apply to vehicles. See Copeland, 380 S.W.3d at 220 (citing Welch, 93 S.W.3d at 53).[7] In making this broad generalization, the court failed to consider the underlying rationales for those decisions. As discussed in more detail above, it does not appear that the Supreme Court intended for Randolph to apply to vehicles because the social expectations for occupants of vehicles are unlike co-tenants in residences; people have a lessened expectation of privacy in vehicles as compared to residences; and Randolph was intended to narrowly apply only to the present, objecting co-tenant in a residence.

As further support for its holding, the court of appeals cited Houston v. State. Id. (citing Houston, 286 S.W.3d at 609–11). Without any analysis or explanation about why Randolph should apply to vehicular searches, the Houston court of appeals simply cited to Randolph and stated, "Voluntary consent given by a third party is not valid as to the defendant if the defendant is also present and expressly refuses consent." Houston, 286 S.W.3d at 609. Perhaps it found that a more detailed analysis was unnecessary in light of its holding that, "[b]ecause the consent was not disputed by Houston when the search occurred, the search did not violate the Fourth Amendment." Id. at 611–12. Even if Randolph applied to vehicles, it did not apply in that case under the facts, which showed that Houston had not expressly refused his consent to the search to which the driver had agreed. See id. Because the Houston court's reliance on Randolph failed to include any analysis regarding Randolph's applicability to vehicles, and because its reference to Randolph was non-binding dicta that did not affect the disposition of the case, the court of appeals in this case erred by relying on it as its authority for finding that Randolph applied to this case. See Copeland, 380 S.W.3d at 220 (citing Houston, 286 S.W.3d at 609–11).

III. Conclusion

We conclude that the holding in Randolph does not apply to vehicular searches and that those searches are controlled by pre-existing law. We reverse the judgment of the court of appeals and remand the case to that court for proceedings consistent with this opinion.

ALCALA, J., delivered the opinion of the Court in which KELLER, P .J., PRICE, WOMACK, JOHNSON, KEASLER, HERVEY, and COCHRAN, JJ., joined.

MEYERS, J., filed a dissenting opinion.