



DISTRICT COURT DENIES A DEFENDANT'S MOTION TO SUPPRESS, HOLDING THAT THE DEFENDANT HAD NO REASONABLE EXPECTATION OF PRIVACY IN AN APARTMENT FROM WHICH HE HAD BEEN EVICTED



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In *United States v. Almashwali*, 2017 WL 999224 (E.D. Cal. Mar. 14, 2017), the United States District Court for the Eastern District of California denied the Defendant Abdullah Almashwali's motion to suppress the evidence that federal agents seized in an apartment in Brooklyn, New York. Specifically, the District Court denied Almashwali's motion to suppress after concluding that Almashwali had been evicted from the Brooklyn apartment, and therefore, Almashwali had no legitimate expectation of privacy in that residence at the time of the search. Because Almashwali had no legitimate expectation of privacy in the residence at the time of the search, the District Court determined that Almashwali lacked standing to challenge the warrantless search, and Almashwali's Fourth Amendment rights were not violated as a result of the warrantless search. The District Court reached this conclusion based upon the following facts.

On August 11, 2016, Almashwali was indicted on various drug felony charges. Thereafter, Almashwali moved to suppress five items of evidence seized by federal agents from a Brooklyn apartment on August 2, 2016. Almashwali also moved to suppress one additional item of evidence located in the apartment by the landlord's cleaning crew on August 3, 2016. This evidence was turned over to the federal agents that same day.

In his motion to suppress, Almashwali argued that the Brooklyn apartment was his, that federal agents conducted a warrantless search of that apartment without his consent, and that the purported landlord, Aleksandr Burman, had no authority to consent to the search of the apartment. Almashwali also argued that the baggie of white powder discovered by the cleaning crew on August 3, 2016, is the fruit of the poisonous tree since it was part and parcel of the agents' warrantless and unlawful search on August 2, 2016.

In its opposition to Almashwali's motion to suppress, the Government argued that Almashwali lacked standing to challenge the search of the Brooklyn apartment by federal agents because he had been evicted from that apartment and, therefore, lacked a reasonable expectation of privacy in the apartment. Alternatively, the Government asserted that Mr. Burman had actual or, at the very least, apparent authority to consent to the search of the apartment. The Government stated that Mr. Burman exercised that authority and gave the federal agents consent to search the apartment.

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Finally, the Government contended that the cleaning crew that discovered the evidence the next day was a private actor (not a government actor), thereby rendering suppression of that evidence inappropriate.

In his reply, Almashwali argued that the Government surveillance of him suggested that he had access to the apartment building and, perhaps, to the apartment as well on August 2, 2016, prior to the search. Almashwali noted that he had been seen by agents exiting the building with certain items, and he had been seen getting into a cab which was subsequently stopped by agents who then arrested him. Almashwali disputed: (1) whether he had been evicted; (2) whether a notice of eviction had been posted on the apartment door prior to the search; and (3) whether Mr. Burman owned the building and had authority to consent to the search.

The District Court agreed with the Government that an evidentiary hearing was unnecessary. Instead, the District Court determined that it could rule upon Almashwali's motion to suppress based upon the documentary evidence submitted by the Government.

The District Court noted that the Fourth Amendment secures the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. With respect to standing and one's reasonable expectation of privacy: "To have standing to seek suppression of the fruits of the agent's search, [one] must show that he personally had a property interest protected by the Fourth Amendment that was interfered with . . ., or a reasonable expectation of privacy that was invaded by the search." *United States v. Lopez-Cruz*, 730 F.3d 803, 807 (9th Cir. 2013) (internal quotations omitted). The reasonable expectation of privacy turns on (1) whether the person had "an actual (subjective) expectation of privacy," and (2) whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as 'reasonable.'" *Id.* In short, it turns on whether the individual's subjective expectation of privacy is objectively reasonable. *United States v. Ziegler*, 474 F.3d 1184, 1189 (9th Cir. 2007).

In this case, the District Court held that the Government had presented sufficient documentary evidence to establish that Almashwali had been evicted from his Brooklyn apartment and that on August 2, 2016, when federal agents conducted the search, control of the apartment had reverted to the landlord Mr. Burman. According to the records of the Civil Court of New York City, County of Kings, eviction proceedings were initiated against Almashwali by MA Real Estate Holdings, LLC, on January 22, 2016. Judgment in Mr. Burman's favor was initially entered on February 16, 2016, but was stayed by stipulation of the parties that same day. After additional court proceedings, on June 30, 2016, Almashwali submitted his own affidavit to the state court attesting that, on May 10, 2016, he had appeared in court and had entered "into a stipulation of settlement whereby I consented to vacate the subject premises by June 30, 2016." In his June 30 affidavit, Almashwali acknowledged that the deadline for him to vacate the apartment was about to expire and that he was subject to eviction at any time. However, Almashwali sought an approximately thirty-day extension of time in which to vacate.

In response to Almashwali's affidavit, the state court put the matter on its calendar for a hearing on July 18, 2016, to consider to his request for a stay of execution of the warrant of eviction and to consider an additional extension of time in which to vacate the apartment. However, on July 18, 2016, following the hearing, Almashwali's motion for a further stay and extension of time was denied. Finally, a Notice of Marshal's Legal Possession was issued in the Civil Court of New York City,

County of Kings eviction proceeding against Almashwali specifically stating that “The Landlord has legal possession of these premises as of: Tuesday, August 2, 2016.” That notice was also signed by the Marshal, City of New York.

Almashwali contested whether this notice was posted on the apartment door at the time of the agents’ search and asserted that an evidentiary hearing should be held in order to make a determination in that regard. The District Court rejected Almashwali’s argument. According to the District Court, whether the notice was physically posted on the apartment door at the time of the search need not be determined in light of the evidence before the District Court establishing that, at the time of the search, the apartment was legally in the possession of the landlord and not Almashwali. Moreover, the District Court found that the evidence before it established that Almashwali: (1) was well-aware of the eviction proceedings, having personally participated in them; (2) acknowledged that his extension of time to vacate the apartment had expired on June 30, 2016; and (3) had not paid rent on the apartment in over eight months.

In light of this documentary evidence of eviction, the District Court concluded that Almashwali could not be said to have had a reasonable expectation of privacy in the Brooklyn apartment on August 2, 2016, or thereafter. Therefore, the District Court denied Almashwali’s request for an evidentiary hearing, denied Almashwali’s motion to suppress, and found that the federal agents did not violate Almashwali’s Fourth Amendment rights when they searched the apartment because (1) Almashwali had no legitimate expectation of privacy in the apartment at the time of the search and (2) because Almashwali lacked standing to challenge the search.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*