

Recent Case Report

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In re D.C.

(2010) __ Cal.App.4th __ [2010 WL 3720164]

Issues

(1) Did the mother of a minor have the authority to consent to a search of her son's bedroom? (2) If so, was the search rendered unlawful when the minor objected to it?

Facts

While investigating a report of drug activity outside an apartment building, Oakland Housing Authority police officers detained a resident who they learned was on probation with a search condition. They were escorting him to his apartment to conduct a probation search when they happened to meet his mother who, when informed of the circumstances, consented to a search of the premises. When the officers arrived at the apartment, however, the man's younger brother, a minor identified herein as D.C., "barred their way" and told them, "You're not going to enter the apartment." But when D.C.'s mother told him to "get out of the way," he complied and the officers entered.

There were three bedrooms in the apartment, one of which was used exclusively by D.C. While searching D.C.'s bedroom, officers found property that had been stolen in a recent burglary in the building. As a result, D.C. was charged in juvenile court with possession of stolen property. After the court denied his petition to suppress the stolen property, it found the allegation to be true and adjudged him a ward of the court. D.C. appealed.

Discussion

D.C. argued that the search was unlawful for two reasons: (1) there was insufficient proof that his mother had a right to consent to the search of his bedroom; and (2) even if she had such a right, his objection to the search overrode it. The court disagreed with both contentions.

WHO CAN CONSENT? A suspect's spouse, roommate, parent, or other third party may consent to a search of a place or thing owned or controlled by the suspect if it reasonably appeared that the consenting person had a right to joint access or control; i.e., "common authority."¹ Consequently, the parents of a suspect who lives in the family home—whether the suspect is a minor or adult²—may ordinarily consent to a search of the suspect's bedroom because parents ordinarily retain a right to access and control over the family home.

¹ See *United States v. Matlock* (1974) 415 U.S. 164, 171, fn.7 ["The authority which justifies third-party consent [rests] on mutual use of the property by persons generally having joint access or control for most purposes."]; *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"].

² See *People v. Daniels* (1971) 16 Cal.App.3d 36, 43 [a parent's common authority over a bedroom used by an adult son may be inferred "absent circumstances establishing the son has been given exclusive control over the bedroom"].

There are, however, exceptions. For example, a parent may lack common authority over a bedroom that is occupied by an adult son or daughter who is paying rent, as this may indicate that the living arrangement is tantamount to landlord-tenant, not parent-child.³ Consequently, in these situations officers may need to question the consenting person to make sure that he does, in fact, possess common authority.⁴ This was not an issue in *D.C.*, however, because D.C. was a minor.

Nevertheless, D.C. argued that it is unreasonable for officers to assume that the parent of a minor possesses common authority and, therefore, they should have inquired. The court disagreed, pointing out that unlike the parents of an adult son or daughter, “the parents of minor children have legal rights and obligations that both permit and, in essence, require them to exercise common authority over their child’s bedroom.” Accordingly, the court ruled that, “[g]iven the legal rights and obligations of parents toward their minor children, common authority over the child’s bedroom is inherent in the parental role.” The court also pointed out that D.C. acknowledged his mother’s superior authority when she told him to let the officers enter and he “moved aside.”⁵

D.C.’S OBJECTION TO THE SEARCH: D.C. argued that, even if his mother had the authority to consent to the search, her authority terminated when he expressly objected. This argument was based on the United States Supreme Court’s decision in *Georgia v. Randolph*⁶ in which the Court ruled that a spouse’s consent may be invalidated if the other spouse notifies officers beforehand that he objects. But the court in *D.C.* ruled that *Randolph* did not apply here because it “governs only a disagreement between joint adult occupants having apparently equal authority over a residence.”

For these reasons, the court ruled that the search of D.C.’s bedroom was lawful. POV

³ See *U.S. v. Rith* (10th Cir. 1999) 164 F.3d 1323, 1331; *U.S. v. Block* (4th Cir. 1978) 590 F.2d 535, 541; *U.S. v. Whitfield* (D.C. Cir. 1991) 939 F.2d 1071, 1075 [“A landlord-tenant type of arrangement between a parent and an older child might indicate that the child has been given greater autonomy in the house, that his room is his private enclave, a place no one else may enter without his permission.”].

⁴ See *People v. Daniels* (1971) 16 Cal.App.3d 36, 43 [parent could consent to a search of an adult son’s bedroom “absent circumstances establishing the son has been given exclusive control over the bedroom”]. **NOTE:** If the consenting person and the suspect are adults (e.g., roommates), it is necessary for officers to determine whether the consenting person has common authority. See *Beach v. Superior Court* (1970) 11 Cal.App.3d 1032; *People v. Hamilton* (1985) 168 Cal.App.3d 1058, 1067; *People v. Veiga* (1989) 214 Cal.App.3d 817, 821; *U.S. v. Davis* (9th Cir. 2003) 332 F.3d 1163, 1169 [roommate lacked common authority over suspect’s separate bedroom]; *U.S. v. Almeida-Perez* (8th Cir. 2008) 549 F.3d 1162, 1172 [“[I]f part of a dwelling is appropriated for the exclusive use of one occupant, other inmates of the house have no right to consent to police entry of the space”]; *U.S. v. Jimenez* (1st Cir. 2005) 419 F.3d 34, 40 [roommate did not have common authority over locked bedroom used exclusively by other roommate].

⁵ **NOTE:** The search of D.C.’s bedroom could not be based on his brother’s probation search condition. See *People v. Woods* (1999) 21 Cal.4th 668, 682 [“[O]fficers generally may only search those portions of the residence they reasonably believe the probationer has complete or joint control over.”].

⁶ (2006) 547 U.S. 103.