

# Recent Case Report

Date posted: May 3, 2010

## U.S. v. Franklin

(9<sup>th</sup> Cir. 2010) \_\_ F3 \_\_ [2010 WL 1711497]

### Issues

(1) Can a motel room be searched pursuant to the terms of the guest's probation? (2) Did officers have probable cause to believe that the probationer was living in the motel room they searched?

### Facts

Franklin was on probation in Washington and was subject to a search condition. He told his probation officer that he was homeless, but the PO received a phone call from a woman who said that he was staying with another man in a certain motel in Spokane. She also said that Franklin had a handgun and ten rounds of ammunition. Based on "previous dealings" with the woman, and the fact that Franklin was the father of her child, the PO believed she was reliable. Still, he wanted to confirm her report so he asked a Spokane police officer to go to the motel and speak with the desk clerk. The officer showed the clerk a booking photo of Franklin and he confirmed that Franklin was the registered guest in Room 254.

The PO, accompanied by Spokane officers, arrived at the motel room at 9:45 A.M. and knocked. A man inside asked, "Who is it?" The PO recognized Franklin's voice. Franklin opened the door, and the officers conducted a search. They found the gun.

Franklin was charged in federal court with being a felon in possession of a firearm. When his motion to suppress the gun was denied, he pled guilty.

### Discussion

Franklin contended that the probation search was unlawful, asserting that a probationer who is temporarily staying in a motel is not "living" there. And even if a probationer's brief stay in a motel room can render it his "residence," Franklin argued that the search was unlawful because the PO did not have probable cause to believe that he was staying in the room. The court disagreed with both arguments.

First, the court ruled that a motel room does, in fact, constitute the "residence" of a probationer, such as Franklin, who is a registered guest. The court explained that "[r]esidential arrangements take many forms. A 'residence' does not have to be an old ancestral home," nor must it be the probationer's main residence or even a long-term residence. "The temporary nature of the occupancy," said the court, "does not change the fact that for the night or nights that Franklin rented Room 254, he was legally entitled to use the room and to control access to it. For that time period, the room was his residence."

Second, the court acknowledged that, even though a motel room may serve as the "residence" of a probationer or parolee, officers may not search it unless they have probable cause to believe that he is currently staying there. Although Franklin argued that probable cause was lacking, the court disagreed, summarily ruling that the facts cited above "overwhelmingly support" the lower court's probable cause determination." Thus, the court ruled that Franklin's motion to suppress was properly denied. POV