Third Party Consent

Valid consent may be given not only by the defendant but also a third party with common authority.[1]

For many officers who need to search a suspect's home, car, cell phone, or other property, it will be impractical or impossible to obtain consent from the suspect. This will surprise no one because many suspects are fugitives. But it is also because officers may not want the suspect to know he is under investigation, or because they might know from experience that he wouldn't consent to anything. When this happens, there may be another option: obtain consent from someone else. Such a person must, of course, have the legal authority to consent, which means that officers must know how to make this determination. But, as we explain in this article, they can usually make the right call if they are familiar with just a few rules and principles.

"Common Authority"

A suspect's spouse, roommate, parent, accomplice, homie, or other third party may consent to a search of the suspect's property if he had "common authority" over it. As the Supreme Court explained, "[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."[2] As we will now discuss, a person will have common authority if there was a sufficiently close link or connection between the person and the place or thing that officers need to search.

Basis of common authority

There are actually four ways in which a third party can acquire common authority over a place or thing: ownership (or co-ownership), general use of the property, joint access to it, or joint control over it.

JOINT OWNERSHIP: A third party will have common authority over any place or thing that he owns or co-owns with the suspect. "Each cotenant," said the United States Supreme Court, "has the right to use and enjoy the entire property as if he or she were the sole owner."[3] (There is an exception to this rule that we will cover later: The owner of property who rents or leases it to the suspect may not ordinarily authorize a search of that property.)

JOINT USE: A third party's active use of a place or thing is a strong indication that he had common authority over it, even if he did not own, access, or exercise control over it.[4] For example, in *People v. Schmeck*[5] the defendant kept some of his clothes with a woman who would wash and store them in paper bags for him. After Schmeck killed a man in Hayward, police went to the house and asked the woman if they could look inside the bags. She consented, and officers found clothing that linked Schmeck to the murder. On appeal, the California Supreme Court ruled that, although the woman did not own the bags, she had common authority over them because she "used" them; i.e., she "routinely placed Schmeck's laundered clothing inside the bags, and he never instructed her not to do so."

JOINT ACCESS OR CONTROL: Finally, a third party will have common authority over something if he had a right to joint access or control.[6] For example, in *People v. Jenkins*[7] the California Supreme Court ruled that the defendant's sister had common authority over an unlocked briefcase she was storing for her brother even though it appeared she had never

[1] *U.S. v. Morgan* (6th Cir. 2006) 435 F.3d 660, 663. Edited.
[2] *United States v. Matlock* (1974) 415 U.S. 164, 170. Also see *Illinois v. Rodriguez* (1990) 497 U.S. 177, 179.
[3] See *Georgia v. Randolph* (2006) 547 U.S. 103, 114 [quoting from R. Powell, Powell on Real Property].
[4] See *United States v. Matlock* (1974) 415 U.S. 164, 171 ["joint use of the bag rendered the cousin's authority to consent to its search clear"]; *Frazier v. Cupp* (1969) 394 U.S. 731, 740; *People v. Catlin* (2001) 26 Cal.4th 81, 163 ["Although [the consenting person] stated that he predominantly used one side of the garage/shop, the evidence established that [he] and defendant had common authority over the entire garage, including the cabinet."]. **NOTE**: Technically, access and control are separate relationships but, for whatever reason, they are treated as one in the context of consent searches.
[5] (2005) 37 Cal.4th 240 [overturned on other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610].
[6] See *United States v. Matlock* (1974) 415 U.S. 164, 171, fn.7; *Fernandez v. California* (2014) __ U.S. __ [134 S.Ct.1126, 1133].
[7] (2000) 22 Cal.4th 900.

opened or used it. Said the court, "although the searching officer had little reason to suppose that Diane Jenkins herself was using defendant's briefcase," she had common authority because she had "exercised control" over it. Note that if the briefcase had been locked and only Mr. Jenkins could have opened it, it is likely that Ms. Jenkins would not have had common authority because she would have lacked ownership, use, access, and control. (Beginning on the next page, we will discuss the most common examples of common authority and the various circumstances that give rise to it.)

Apparent Common Authority

Because it is sometimes difficult for officers in the field to make a legal determination as to whether the consenting person had actual common authority over something, a consent search will be upheld if they reasonably believed he did.[8] This is known as "apparent authority" and it is based on the principle that "[t]he officer's conclusion that the consenting individual had authority to consent need not always be correct, but must always be reasonable."[9] Or as the Sixth Circuit explained:

> The apparent-authority doctrine excuses otherwise impermissible searches where the officers conducting the search reasonably (though erroneously) believe that the person who has consented to the search had the authority to do so.[10]

For example, in *Illinois v. Rodriguez*[11] a woman named Gail Fischer phoned Chicago police from her parent's house and said she had been beaten by a man she lived with in an apartment. When officers arrived at the house, she told them that the man, Rodriguez, was now asleep in the apartment and that she wanted them to go over there and arrest him. While speaking with the officers, Fischer referred to the apartment several times as "our" apartment and also said she "had clothes and furniture there." When Fischer and the officers arrived at the apartment, Fischer gave them the key, and they walked inside and arrested Rodriguez in a bedroom. They also seized his stash of cocaine in plain view.

It turned out that Fischer had moved out of the apartment weeks earlier, her name was not on the lease, and she did not contribute to the rent. Thus, she probably didn't have actual common authority. But the Supreme Court ruled it didn't matter because the officers reasonably believed she had it—and that was enough. As the Court observed:

> Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability.

Asking questions

Officers cannot reasonably believe that a person had common authority unless they asked him questions about it. Sometimes just a few will suffice; other times they will need to probe.[12] As the Supreme Court explained, "[L]aw enforcement officers [must not] always accept a person's invitation to enter premises. Even when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry."[13]

For example, in ruling that the defendant's girlfriend had common authority over his apartment, the court in *U.S. v. Goins*[14] pointed out that "this was not a case of officers blindly accepting a person's claim of authority over a premises in order to create apparent authority to search. Several officers questioned [her] regarding her access to the apartment, and her answers remained consistent." Specifically, she told the officers that she "had a key to the apartment,

[8] See *Georgia v. Randolph* (2006) 547 U.S. 103, 122; *People v. Oldham* (2000) 81 Cal.App.4th 1, 10.
[9] *U.S. v. Clark* (8th Cir. 2005) 409 F.3d 1039, 1044.
[10] *U.S. v. Taylor* (6th Cir. 2010) 600 F.3d 678, 681. Also see *People v. Engel* (1980) 105 Cal.App.3d 489, 504 [common authority "may be determined equally from reasonable *implications* derived from a person's express words"].
[11] (1990) 497 U.S. 177.
[12] See *U.S. v. Goins* (7th Cir. 2006) 437 F.3d 644, 649; *People v. Cruz* (1964) 61 Cal.2d 861, 867 ["[The officer] failed to make such simple inquiries"]; *U.S. v. Whitfield* (D.C. Cir. 1991) 939 F.2d 1071, 1075 ["superficial and cursory questioning"].
[13] *Illinois v. Rodriguez* (1990) 497 U.S. 177, 188.
[14] (7th Cir. 2006) 437 F.3d 644.

possessions within the apartment, and represented that she lived there on-and-off and frequently cleaned and did household chores in the home. She also said she was allowed into Goins' residence when he was not home." "These representations," said the court, "paint a believable and reasonably complete picture" of the woman's authority to search.

Similarly, in *U.S. v. Gillis*[15] a woman named Shaneska Williams told Knoxville police that she was living with Gillis in an apartment, that she was listed as the lessee, and that Gillis was hiding drugs in the kitchen cabinets. She then consented to a search of the apartment and the officers found drugs. At trial, Gillis argued that the search of his apartment was unlawful because, when Williams consented to it she no longer lived in the apartment and could not access it because he had changed the locks on the doors. But the court ruled that Williams had apparent authority because, in addition to being listed as the tenant in the lease, she provided the officers with "detailed information about the premises, including the locations where Gillis had drugs hidden on the property. They also had statements from Williams that she continued to reside at [the apartment] and that she had been at the residence earlier that same morning." "Under these circumstances," said the court, "the officers had enough information at the time of the search to reasonably conclude that Williams had apparent authority to consent.

In the remainder of this article, we will examine the most common situations in which officers must make a determination of common authority.

Consent By Spouses

If the consenting person was the suspect's spouse, officers may ordinarily infer that he or she had common authority over, among other things, the entire family home, car and all containers within.[16] As the California Supreme Court explained:

> [S]ince a wife normally exercises as much control over the property in the home as the husband, police officers may reasonably assume that she can properly consent to a search thereof.[17]

ROOMS USED MAINLY BY SUSPECT: The inference that the consenting spouse has common authority over all rooms in the family home includes rooms that were used primarily or even exclusively by the suspect.[18] This is because such an arrangement demonstrates only that the consenting spouse made it a practice not to enter or use the room—not that he or she was denied access and control.

For example, in *People v. Reynolds*[19] officers who had arrested Reynolds for kidnapping and molesting a young girl obtained his wife's consent to search the family home for evidence of the crimes. One of the rooms in the house was a darkroom that was used exclusively by Reynolds. Although the room was locked, Ms. Reynolds provided the officers with a key and, during a search of the room the officers found pornographic photographs of Reynolds' stepdaughters. In ruling that Ms. Reynolds had common authority over the darkroom, the court noted that, although it was Reynolds' "work area," he did not have exclusive control over it. Said the court, "This type of arrangement is not uncommon in a family home, but does not lead to the conclusion, as between a husband and wife, that such areas are beyond either spouse's control."

SEARCH OF COMPUTERS: It is usually reasonable to infer that the consenting spouse had common authority over all computers on the premises, including files stored on hard drives or servers.[20] However, the consenting spouse might not have common authority if the suspect had exclusive control over the computer, and the consenting spouse could not access it because he or she did not know the password.[21]

SPOUSES HOSTILE: The fact that the marriage was acrimonious does not automatically eliminate the consenting spouse's common authority over any-

[15] (6th Cir. 2004) 358 F.3d 386.
[16] See *U.S. v. Whitfield* (D.C. Cir. 1991) 929 F.2d 1071, 1074-75 ["[Officers] may assume that a husband and wife mutually use the living areas in their residence and have joint access to them so that either may consent to a search."].
[17] *People v. Duren* (1973) 9 Cal.3d 218, 241.
[18] See *U.S. v. Sealey* (9th Cir. 1987) 830 F.2d 1028, 1031; *U.S. v. Clark* (8th Cir. 2005) 409 F.3d 1039, 1044.
[19] (1976) 55 Cal.App.3d 357.
[20] See *U.S. v. Buckner* (4th Cir. 2007) 473 F.3d 551, 555; *U.S. v. Morgan* (6th Cir. 2006) 435 F.3d 660. 663-64.
[21] See *U.S. v. Tosti* (9th Cir. 2013) 733 F.3d 816, 824. Also see *Trulock v. Freeh* (4th Cir. 2001) 275 F.3d 391, 403.

thing.[22] Said the court in *People v. Bishop*, "While they are both living in the premises the equal authority does not lapse and revive with the lapse and revival of amicable relations between spouses."[23] In fact, the consenting spouse may retain common authority over the family home even if he or she had moved out temporarily or even permanently. This is because the issue is whether the consenting person retained the *right* to access or control the property—not whether she was currently exercising the right.[24]

This point was illustrated in *Bishop* where the defendant killed a woman while robbing the Los Angeles Parking Violations Bureau. After Bishop became a suspect, his wife, Heather, notified officers that he was the perpetrator, and because he had been physically abusing her, she had moved into a battered women's shelter, taking as much furniture and clothing as she could carry. Officers arrested Bishop and later obtained Heather's consent to search the family home for evidence pertaining to the crimes. By this time, however, Bishop had changed the locks on the doors, so Heather crawled in through a window, unlocked the front door and allowed the officers to enter. During the subsequent search, they found evidence linking Bishop to the crime.

Before trial, Bishop argued that the search was unlawful because the officers knew that Heather had moved out and therefore she lacked both common authority and apparent authority over the house. The court disagreed, pointing out that Bishop "did not have exclusive right of possession of the house. They were still married and, at least at that point, Bishop had "no legal right to exclude [Heather]." The court added, "The fact appellant had changed the locks to the house is indicative of the level of antagonism between Heather and appellant but is not determinative of Heather's continuing authority in her own right to consent to a search of the house."

IF THE SUSPECT OBJECTS: Here things become a bit complicated. Although officers may usually presume that each spouse has common authority over the family home and its contents, the Supreme Court ruled in *Georgia v. Randolph*[25] that one spouse's common authority over the home will not support a consensual entry or search if the other spouse objected and all of the following circumstances existed:

(1) OBJECTIVE OF SEARCH: The purpose of the entry or search was to obtain evidence against the objecting spouse. For example, officers could enter a home over a spouse's objection if the consenting spouse had asked them to come inside to discuss a domestic violence incident, keep the peace, or arrest the objecting spouse.[26]

(2) EXPRESS OBJECTION: The objecting spouse expressly informed the officers that he opposed the entry or search.[27] Thus, an objection will not be inferred, and officers are not required to ask him if he objects.[28]

(3) OBJECTION IN OFFICERS' PRESENCE: The objecting spouse objected in the officers' presence when they sought to enter or search.[29]

But there is an exception to the third requirement—and it's an important one: The United States Supreme Court ruled in *Fernandez v. California*[30] that, even if an objection was made by one spouse or (as in *Fernandez*) one half of an unmarried couple,

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[22] See *U.S. v. Tosti* (9th Cir. 2013) 733 F.3d 816, 824, fn.3; *U.S. v. Long* (9th Cir. 1975) 524 F.2d 660, 661; *U.S. v. Weston* (8th Cir. 2006) 443 F.3d 661, 668.

[23] (1996) 44 Cal.App.4th 220, 237.

[24] See *U.S. v. Long* (9th Cir. 1975) 524 F.2d 660, 661; *U.S. v. Weston* (8th Cir. 2006) 443 F.3d 661, 668.

[25] (2006) 547 U.S. 103, 106.

[26] See *Georgia v. Randolph* (2006) 547 U.S. 103, 108.

[27] See *Georgia v. Randolph* (2006) 547 U.S. 103, 120; *U.S. v. Caldwell* (6th Cir. 2008) 518 F.3d 426; *U.S. v. McKerrell* (10th Cir. 2007) 491 F.3d 1221, 1225-26 [*Randolph* requires express objection]; *U.S. v. Moore* (9th Cir. 2014) 770 F.3d 809, 813 ["*Randolph* requires an express, not implicit, refusal."]; *U.S. v. Williams* (8th Cir. 2008) 521 F.3d 902.

[28] See *Georgia v. Randolph* (2006) 547 U.S. 103, 122; *U.S. v. Lopez* (2nd Cir. 2008) 547 F.3d 397, 400; *U.S. v. Parker* (7th Cir. 2006) 469 F.3d 1074, 1079 *U.S. v. Uscanga-Ramirez* (8th Cir. 2007) 475 F.3d 1024, 1028.

[29] See *Georgia v. Randolph* (2006) 547 U.S. 103, 106; *Fernandez v. California* (2014) __ U.S. __ [134 S.Ct. 1126, 1136]; *U.S. v. Shrader* (4th Cir. 2012) 675 F.3d 300, 306; *U.S. v. Henderson* (7th Cir. 2008) 536 F.3d 776, 777; *U.S. v. Hudspeth* (8th Cir. 2008) 518 F.3d 954, 959 ["Throughout the *Randolph* opinion, the majority consistently repeated it was Randolph's *physical presence* and *immediate objection* to Mrs. Randolph's consent that distinguished *Randolph* from prior case law."].

[30] (2014) __ U.S. __ [134 S.Ct. 1126].

the consent given by the other half overrides the objection if the following circumstances existed: (1) the consent was given after the officers had removed the objecting spouse from the premises, and (2) they had good cause to remove him. The facts in *Fernandez* demonstrate how this issue is likely to arise.

LAPD officers who had responded to an ADW call saw a man run into Fernandez's apartment and then heard the "sounds of screaming and fighting coming from that building." Because they did not think they had grounds to make a warrantless entry, they knocked on the front door which was answered by a woman named Roxanne Rojas. When Rojas lied by denying that anyone had just entered, the officers told her they were going to conduct a protective sweep of the premises. Suddenly, Fernandez "stepped forward" and said, "You don't have any right to come in here. I know my rights." By then, however, the officers had seen injuries to Ms. Rojas' face that, coupled with the earlier screaming, indicated she had just been beaten. So they arrested Fernandez for domestic violence and confined him in a patrol car. They later returned to the house, obtained Ms. Rojas' consent to search it, and found evidence that was used against Fernandez.

On appeal, he argued that Ms. Rojas' consent was unlawful under *Randolph* because he had previously objected to the search. But the Court ruled that a *Randolph* violation does not result when, as here, the objecting spouse was no longer objecting because he had been lawfully removed from the premises. Said the Court, "[A]n occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason." The Court then ruled that the officers' decision to remove Fernandez from the premises was reasonable because they needed to speak with Rojas, "an apparent victim of domestic violence, outside of [Fernandez's] potentially intimidating presence."

Unmarried Couples

Although there was no blockbuster case in which the Supreme Court announced this rule, it appears to be settled that people who are living together in a relationship have equal common authority throughout the residence unless officers have reason to believe otherwise.[31] Thus in *United States v. Matlock* the Supreme Court agreed with the idea that "the voluntary consent of any joint occupant of a residence to search the premises jointly occupied is valid against the co-occupant."[32] And in *U.S. v. Morning* the Ninth Circuit ruled that, because the defendant and the consenting person were living together in a house, the consenting person "had an at least equal interest in the use and possession of the house."[33]

As noted, however, such a search may be invalidated if officers were aware of objective circumstances that reasonably indicated the consenting person lacked common authority over the place or thing they searched. Thus the Court of Appeal pointed out that there is a "sensible distinction" between "jointly occupied areas of a house and those areas where *sole* occupancy by a co-occupant dictates a stronger expectation of privacy."[34]

Two additional questions arise: First, can the consenting person authorize a search of a computer in the home the couple shared? It appears the answer is yes if the consenting person had common authority over the computer and its files, meaning that (1) the computer must have been in a room over which the consenting person had common authority, and (2) he or she must have known the password (if any).[35] Second do the rules pertaining to objecting spouses (discussed above) also apply to people who are living together in a relationship? We think they do because there is nothing in the law of consent searches that would indicate otherwise, and the Court in *Fernandez* apparently assumed that they did.

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[31] Also see *People v. Fry* (1998) 18 Cal.4th 894, 990; *U.S. v. Stabile* (3rd Cir. 2011) 633 F.3d 219, 231 ["an unmarried cohabitant has authority to consent to a search of shared premises"]; *U.S. v. Robinson* (7th Cir. 1973) 479 F.2d 300, 302 ["A defendant's paramour may give valid consent to the search of premises they jointly occupy."]; *U.S. v. Meada* (1st Cir. 2005) 408 F.3d 14, 21-22 [woman who shared apartment with defendant could consent to a search of the apartment].

[32] *United States v. Matlock* (1974) 415 U.S. 164, 169.

[33] (9th Cir. 1995) 64 F.3d 531, 534.

[34] *People v. Engel* (1980) 105 Cal.App.3d 489, 501.

[35] See *U.S. v. Nichols* (8th Cir. 2009) 574 F.3d 633, 636; *U.S. v. Stabile* (3rd Cir. 2011) 633 F.3d 219, 233; *U.S. v. King* (3rd Cir. 2010) 604 F.3d 125, 137. Compare *Trulock v. Freeh* (4th Cir. 2001) 275 F.3d 391, 403.

Consent By Roommates

A suspect's roommate may admit officers into the shared residence and also consent to limited searches. As for permitting officers to enter, the California Supreme Court observed in *People v. Frye*, "It may be inferred from the fact [that the consenting roommate] and defendant resided together in the apartment that she possessed authority to consent to the officers' entry."[36]

A suspect's roommate may also consent to a search if it is restricted to common areas and any rooms or things to which the consenting roommate had joint ownership, use, access, or control. For example, the courts have ruled that roommates could ordinarily consent to a search of a shared bedroom closet,[37] a bag under a sofa in a common area,[38] and a container in a common area.[39] A roommate may not, however, consent to a search of rooms and things that reasonably appear to be owned, used, accessed, and controlled exclusively by the nonconsenting roommate.[40] Thus, the Court of Appeal noted that consent searches have usually been invalidated when the place or thing searched was "the *individual* property of the nonpresent co-occupant."[41]

Consequently, a suspect's roommate cannot authorize a search of a bedroom controlled exclusively by the suspect or jointly with another non-consenting roommate.[42] Said the Seventh Circuit, "Two friends inhabiting a two-bedroom apartment might reasonably expect to maintain exclusive access to their respective bedrooms, without explicitly making this expectation clear to one another."[43] Or, to put it another way, "[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."[44]

Consent By Parents

Whether a parent has common authority over the bedroom and possessions of a child depends on whether the child was a minor or an adult.

Minor children: Parents may consent to a search of all property belonging to a minor child because parents have a duty to supervise their children, which means that a minor child will not have exclusive control over anything.[45] Said the Court of Appeal, "Given the legal rights and obligations of parents toward their minor children, common authority over the child's bedroom is inherent in the parental role."[46] Furthermore, it is immaterial that the minor objected to the search.[47]

Adult sons and daughters: If the suspect was an adult who was living with his parents for whatever reason, the parents' authority will be necessarily reduced but not eliminated. For example, if the adult was paying rent and had a locked bedroom, this

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[36] (1998) 18 Cal.4th 894, 990. Also see *People v. Ledesma* (2006) 39 Cal.4th 641, 703 ["Cases from a number of jurisdictions have recognized that a guest who has the run of the house in the occupant's absence has the apparent authority to give consent to enter an area where a visitor normally would be received."].

[37] See *People v. Boyer* (1989) 48 Cal.3d 247, 276. Also see *People v. McClelland* (1982) 136 Cal.App.3d 503, 507.

[38] See *People v. Reed* (1967) 252 Cal.App.2d 994, 995-96; *United States v. Matlock* (1974) 415 U.S. 164, 177-78.

[39] See *U.S. v. Ruiz* (9th Cir. 2005) 428 F.3d 877, 881.

[40] See *People v. Hamilton* (1985) 168 Cal.App.3d 1058, 1067; *U.S. v. McGee* (2nd Cir. 2009) 564 F.3d 136, 141.

[41] *People v. Engel* (1980) 105 Cal.App.3d 489, 502.

[42] See *Beach v. Superior Court* (1970) 11 Cal.App.3d 1032, 1035-36; *People v. Hamilton* (1985) 168 Cal.App.3d 1058, 1067; *P v. Veiga* (1989) 214 CA3 817, 821; *U.S. v. Davis* (9th Cir. 2003) 332 F.3d 1163, 1169, fn.4; *U.S. v. Dearing* (9th Cir. 1993) 9 F.3d 1428; *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"]; *US v. Jimenez* (1C 2005) 419 F3 34, 40 [roommate did not have common authority over locked bedroom used exclusively by other roommate].

[43] *U.S. v. Duran* (7th Cir. 1992) 957 F.2d 499, 504-505.

[44] *U.S. v. Almeida-Perez* (8th Cir. 2008) 549 F.3d 1162, 1172

[45] See *In re Robert H.* (1978) 78 Cal.App.3d 894, 898 ["Where the police search a minor's home, the courts uphold parental consent on the premise of either the parents' right to control over the minor, or their exercise of control over the premises."]; *Vandenberg v. Superior Court* (1970) 8 Cal.App.3d 1048, 1055 ["[A] father has full access to the room set aside for his son for purposes of fulfilling his right and duty to control his son's social behavior"]. Also see *Griffin v. Wisconsin* (1987) 483 U.S. 868, 876 ["one might contemplate how parental custodial authority would be impaired by requiring judicial approval for search of a minor child's room."].

[46] *In re D.C.* (2010) 188 Cal.App.4th 978, 985.

[47] See *Georgia v. Randolph* (2006) 547 U.S. 103, 114; *In re D.C.* (2010) 188 Cal.App.4th 978, 989.

might indicate a landlord-tenant arrangement which might give the suspect exclusive control over his room and property.[48] In the absence of a landlord-tenant relationship or other unusual circumstance, officers may infer that the parent has retained common authority over, at least, all rooms used by the son.[49] As the Court of Appeal explained, "Parents with whom a son is living, on premises owned by them, do not ipso facto relinquish exclusive control over that portion thereof used by the son."[50] A parent would not, however, have common authority over a closed container that was used exclusively by the adult son or daughter.[51]

Consent By Minors

Although there is not much law on the subject, it is safe to say that a teenager who appears to be in control of the premises and also relatively mature (admittedly very subjective factors) may permit officers to enter the home but not search it.[52] As the California Supreme Court observed, "As a child advances in age she acquires greater discretion to admit visitors on her own authority."[53]

Furthermore, such a person might possess authority to allow officers to "look about" common areas but not search them.[54] This is especially likely if the child had been the victim of a crime and the officers were looking for corroborating evidence. "Exceptional circumstances " said the court in *People v. Jacobs*, may justify a search that otherwise would be illegal. For example, some courts have upheld searches made at the request of a child or when a child is the victim of or a witness to a crime."[55] For example, in *People v. Santiago*[56] the Court of Appeal ruled that a 12-year old girl who lived with her aunt, and who had been regularly beaten by her aunt, has sufficient authority to permit officers to enter the premises and seize evidence of the crimes in plain view. Said the court, "None of the items was hidden, and none was found within a private area such as a locked box or bureau drawers."

Consent By Property Managers

Property managers—such as landlords and apartment managers—seldom have common authority over premises they had leased to others. Even if the property manager expressly consented to the search, and even if he retained some degree of authority to access and control the premises, he will unlikely have common authority.[57] As the Supreme Court explained in a hotel case, "when a person engages a hotel room he undoubtedly gives implied or express permission to such persons as maids, janitors or repairmen to enter his room in the performance of their duties."[58] But the Court added that it would be a stretch to infer that a hotel guest, by giving such permission, also grants the property manager the authority to allow officers to enter or search his room.

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[48] *US v. Whitfield* (D.C. Cir. 1991) 939 F.2d 1071, 1075.
[49] See *People v. Oldham* (2000) 81 Cal.App.4th 1, 10; *U.S. v. Romero* (10th Cir. 2014) 749 F.3d 900, 905; *U.S. v. Lewis* (2nd Cir. 2004) 386 F.3d 475, 481; *U.S. v. Rith* (10th Cir. 1999) 164 F.3d 1323, 1331 [18-year old defendant was not paying rent, no lock on door, no exclusive use]; *U.S. v. Block* (4th Cir. 1978) 590 F.2d 535, 541.
[50] *People v. Daniels* (1971) 16 Cal.App.3d 36, 44.
[51] See *People v. Egan* (1967) 250 Cal.App.2d 433, 436 [suspect's stepfather "claimed no right, title or interest in the kit bag. He made it abundantly clear that it was not his, and that Egan had left it there."].
[52] See *Georgia v. Randolph* (2006) 547 U.S. 103, 112; *People v. Hoxter* (1999) 75 Cal.App.4th 406, 412 ["[M]any California 16-year-olds are mature enough to be left in charge of their homes."]; *In re Reginald B.* (1977) 71 Cal.App.3d 398, 403; *Raymond v. Superior Court* (1971) 19 Cal.App.3d 321, 326 ["Here the policeman could not in good faith believe that the [12 year old] boy had authority to fetch a sample of his father's incriminating inventory."].
[53] *People v. Jacobs* (1987) 43 Cal.3d 472, 483.
[54] (1987) 43 Cal.3d 472, 483.
[55] See *People v. Jacobs* (1987) 43 C3 472, 482 [11 year-old could not effectively consent to search of her stepfather's bedroom]; *Raymond v. Superior Court* (1971) 19 Cal.App.3d 321, 326.
[56] (1997) 55 Cal.App.4th 1540.
[57] See *Georgia v. Randolph* (2006) 547 U.S. 103, 112; *People v. Joubert* (1981) 118 Cal.App.3d 637, 648; *People v. Jacquez* (1985) 163 Cal.App.3d 918, 929; *People v. Escudero* (1979) 23 Cal.3d 800, 807-8 ["[T]he tenant is generally deemed to give implied consent to reasonable entries by the owner or his agents, but only for certain narrowly limited purposes"].
[58] *Stoner v. California* (1964) 376 U.S. 483, 489.

The rule is slightly different if premises were for sale and an officer was admitted by a real estate agent: If the agent knew that the person requesting admittance was an officer, the entry would be unlawful because it would be unreasonable to believe that the agent had the authority to permit a warrantless intrusion by law enforcement. For example, in *People v. Jacquez*[59] an agent was showing a home to some prospective buyers when she saw what she thought was stolen property. She notified the police and permitted an officer to enter and examine the property which he confirmed was stolen. But the Court of Appeal ruled that, although the agent had some control over the house while the owners were away, it was limited authority—not common authority.

If, however, the agent was not aware that the person seeking entry was an officer, not a potential buyer, the entry will be lawful because (as we discussed in the accompanying article in the section "Consent By Trickery") it would be unreasonable to expect real estate agents to confirm that every person who toured the premises was, in fact, an interested buyer. (Especially because many are not.)

Finally, there is an exception to the rule restricting the authority of property managers: Officers may enter the premises based on the manager's consent if the officers reasonably believed that the tenant had abandoned the premises or had been evicted. As the Court of Appeal observed, "[T]he owners of property may consent to a police search thereof as long as no other persons are legitimately occupying that property."[60] For example, the courts have ruled that officers reasonably believed that a tenant had abandoned a motel room because of the following:

- The tenant had "paid his bill and vacated the room."[61]
- "The manager had been advised that defendant was leaving. She had seen him packing."[62]
- Because the landlady had found a dead body [not the tenant] hidden in the apartment, it was unlikely that the tenant would return.[63]
- The tenant "disappeared [from his motel room]without paying for an additional night's stay or checking out by the 11:00 A.M. deadline.[64]
- The door was open and the maid was cleaning the room for the next tenant.[65]

Consent By Car Owners

The owner of a vehicle, or a person who has the owner's permission to drive it, may ordinarily permit officers to search both the vehicle and its contents because he has not only a right to joint access and control, he is exercising that right.[66] For example, in *People v. Clark*[67] homicide investigators in Ukiah learned that, on the night of a murder, Clark had slept in a car owned by Smith. So they obtained Smith's consent to search the car and found blood-spattered clothing belonging to Clark. In ruling that Smith had common authority over the car, the California Supreme Court said, "As the owner of the searched car, Smith unquestionably had a possessory interest in it." However, as discussed in the accompanying article in the section "Scope of the Search" (Searching containers in searchable areas) a car owner could not ordinarily consent to a search of personal property that reasonably appeared to be owned, used, accessed, and controlled exclusively by the nonconsenting passenger. POV

[59] (1985) 163 Cal.App.3d 918. Also see *People v. Roman* (1991) 227 Cal.App.3d 674, 680.
[60] *People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1200
[61] *Abel v. United States* (1960) 362 U.S. 217, 241. Also see *People v. Bennett* (1998) 17 Cal. 4th 373, 391, fn.6 ["Ordinarily, a suspect has no expectation of privacy with regard to items left in a motel room after a tenancy has expired, and the police may search such items with the consent of the owner of the motel."]; *U.S. v. Rahme* (2nd Cir. 1987) 813 F.2d 31, 34 ["[W]hen a hotel guest's rental period has expired or been lawfully terminated, the guest does not have a legitimate expectation of privacy in the hotel room."]; *Finsel v. Cruppenink* (7th Cir. 2003) 326 F.3d 903, 907 ["[M]otel and hotel tenancy is ordinarily short-term. If the tenancy is terminated for legitimate reasons, the constitutional protection may vanish."].
[62] *People v. Long* (1970) 6 Cal.App.3d 741, 748.
[63] *Eisentrager v. Hocker* (9th Cir. 1971) 450 F.2d 490, 491-92.
[64] *People v. Parson* (2008) 44 Cal.4th 332, 343.
[65] *People v. Ingram* (1981) 122 Cal.App.3d 673, 678.
[66] See *People v. Amadio* (1971) 22 Cal.App.3d 7, 14; *U.S. v. Guzman* (8th Cir. 2007) 507 F.3d 681, 687 ["An owner of a vehicle may consent to its search even if another person is driving the vehicle."]; *U.S. v. Jenkins* (6th Cir. 1996) 92 F.3d 430, 438.
[67] (1993) 5 Cal.4th 950.