

ISSUES

Was a woman's consent to search a motel room involuntary because she was told that, if she refused, (1) she would be arrested and her children taken from her, and (2) a warrant to search the room would be issued?

FACTS

LAPD officers and U.S. Postal Inspectors developed information that Soriano possessed checks that had been stolen from the mail in the Los Angeles area. They also learned he was currently living in a certain motel in L.A.

During surveillance of the motel, officers and inspectors saw a woman, later identified as Mukai, leave Soriano's room. An LAPD detective contacted her in the lobby and explained the situation. After determining that Mukai lived in the room with her two children and Soriano, the detective asked if she would consent to a search of the room. The detective also told her that "she had a right to refuse consent, but that if she did, he would obtain a search warrant." Mukai indicated she did not know what to do.

A postal inspector then spoke with Mukai. After identifying himself and explaining that officers believed that stolen mail was in the motel room, he asked if she would consent to a search. When Mukai continued to express uncertainty, the inspector told her that she was not a suspect, and that if she did not consent the officers "would seek to obtain" a search warrant.

At this point, a uniformed LAPD officer who was standing nearby told Mukai that if she did not consent to the search, "she might be arrested and her children would be placed in custody with social services." The postal inspector "interrupted" the officer, essentially telling Mukai that she was *not* going to be arrested and that her children were *not* going to be taken from her. Mukai then signed the consent form.

During the subsequent search of the motel room, the officers and inspectors discovered stolen mail, altered checks, bank account and credit card information pertaining to "various other people," counterfeit INS documents, and a stolen U.S. Treasury check. They also found solvents that are used to chemically alter checks so that payees and amounts could be changed.

DISCUSSION

Soriano claimed that Mukai's consent was involuntary because, (1) the officer threatened to arrest her and take her children if she did not consent, and (2) the detective told her that he would "obtain" a search warrant if she did not consent. For these reasons, he contended the evidence in the motel room should have been suppressed.

Threat

Consent is involuntary if it was motivated by a threat¹ such as, "You will be arrested if you refuse to consent,"² or "Your welfare benefits will be stopped if you refuse"³ It is,

¹ See *Schneekloth v. Bustamonte* (1973) 412 US 218, 228; *Bumper v. North Carolina* (1968) 391 US 543, 550 ["Where there is coercion there cannot be consent."]; *Florida v. Bostick* (1991) 501 US 429, 438 ["Consent' that is the product of official intimidation or harassment is not consent at all."].

² *Hayes v. Florida* (1985) 470 US 811, 814.

³ See *Parrish v. Civil Service Commission* (1967) 66 Cal.2d 260, 270-5.

therefore, apparent that the officer's threat would have rendered Mukai's consent involuntary if nothing else had happened.

But something else *did* happen. As noted, the postal inspector "interrupted" the officer and told Mukai that she was *not* going to be arrested, and that her children were *not* going to be taken from her. Furthermore, as the court observed, it was apparent that the inspector was calling the shots:

A federal agent is ordinarily viewed as having more authority than . . . the usual uniformed patrol officer. In addition, [the inspector] cut [the officer] off in mid-sentence and continued to do the talking thereafter. That [the officer] remained silent and in the same place, about twelve feet from where Mukai was seated, while [the inspector] did the talking and was much closer to Mukai, suggests [the officer's] own acceptance of the situation—[the inspector] was in charge, and Mukai could see that.

Consequently, the court upheld the trial court's ruling that Mukai's consent was not motivated by the officer's threat.⁴

Reference to search warrant

Consent is also involuntary if officers said or implied that, regardless of whether consent was granted, they had a legal right to conduct an immediate search.⁵ This occurred, for example, when officers sought consent after claiming they possessed a search warrant.⁶ On the other hand, consent is not involuntary if officers merely said they would "apply for," "seek," or "try to obtain" a warrant if consent was refused.⁷

In some cases, such as *Soriano*, officers said they "would obtain" or "get" a warrant if consent was refused, thereby admitting they did not have a right to conduct an immediate search but implying that the issuance of a warrant was merely a formality.

Although such a statement will not automatically render consent involuntary, it is somewhat coercive. Its importance, however, depends on whether the officers did, in fact, have probable cause for a warrant. If so, as the court in *Soriano* observed, its significance is "significantly diminished."⁸

After noting it was likely that the officers did, in fact, have probable cause for a warrant, the court ruled Mukai's consent was not rendered involuntary as the result of the reference to a search warrant. Consequently, the court ruled her consent was voluntary, and the evidence admissible.

⁴ NOTE: The court also noted that the postal inspector told Mukai—both before and after the threat—that she had a right to refuse consent.

⁵ See *Bumper v. North Carolina* (1968) 391 US 543, 550; *People v. Challoner* (1982) 136 Cal.App.3d 779, 781; *People v. Baker* (1986) 187 Cal.App.3d 562, 564; *People v. Ruper* (1966) 244 Cal.App.2d 292, 298; *People v. McClure* (1974) 39 Cal.App.3d 64, 69; *People v. Ruster* (1976) 16 Cal.3d 690, 701 [disapproved on other grounds in *People v. Jenkins* (1980) 28 Cal.3d 494, 503, fn.9]; *People v. Byrd* (1974) 38 Cal.App.3d 941, 944.

⁶ *Bumper v. North Carolina* (1968) 391 US 543.

⁷ See *People v. Gurtenstein* (1977) 69 Cal.App.3d 441; *People v. Ward* (1972) 27 Cal.App.3d 218; *People v. Goldberg* (1984) 161 Cal.App.3d 170, 188.

⁸ See *U.S. v. Meza-Corrales* (9th Cir. 1999) 183 F.3d 1116, 1125; *U.S. v. Kaplan* (9th Cir. 1990) 895 F.3d 618, 622.