U.S. v. Enslin
(9th Cir. January 13, 2003) __ F.3d __

ISSUE

Did U.S. Marshals reasonably believe a homeowner could consent to a search of a bedroom occupied by a visitor? Did a command to "show your hands" result in a detention?

FACTS

U.S. Marshals received a tip that a fugitive named Mickey Bass frequented the home of Shannon Palacios. When marshals went to the house and spoke with Palacios, she said Bass wasn't there and she gave them consent to search for him.Two marshals entered a back bedroom and found Enslin in bed, with his hands under the covers. For officer-safety reasons, they ordered him to show his hands. As Enslin pulled his hands from under the covers, officers saw a gun next to him. After securing the gun, the marshals learned that Enslin was on parole. He was charged with being a felon in possession of a firearm.

It turned out that Palacios had given Enslin permission to use the room.

DISCUSSION

Enslin contended that the gun should have been suppressed for two reasons: (1) the marshals' warrantless entry into the bedroom was unlawful; and (2) their command to "show your hands" converted the encounter into a detention which, because grounds to detain did not exist, was unlawful.

Consent

Consent to search a place or thing may be given by the suspect's spouse, roommate, parent, child, or other "third person" if officers reasonably believed the consenting person had common authority over the place or thing.[1] As a general rule, a third person has "common authority" if he has a right to "joint access or control."[2]

Although it was not clear whether Palacios had actual authority to consent to the search of the back bedroom, it didn't matter because it was apparent that she had apparent authority. Said the court:

> The marshals knew that John and Shannon Palacios were the residents of the house. The marshals did not know or have reason to believe that the Palacios rented the back bedroom in the past or that Enslin was staying in the back

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[1] See *Illinois* v. *Rodriguez* (1990) 497 US 177; *People* v. *MacKenzie* (1995) 34 Cal.App.4th 1256, 1273 ["(W)e ask whether the facts available to the officer at the moment would warrant in a person of reasonable caution a belief that the consenting party had authority over the premises."]; *People* v. *Jacobs* (1987) 43 Cal.3d 472, 481 ["(T)here must be some objective evidence of joint control or access to the places or items to be searched which would indicate that the person authorizing the search has the authority to do so."]; *People* v. *Veiga* (1989) 214 Cal.App.3d 817, 821 ["A search based on consent is lawful if, from the facts presented to the officer, he reasonably believed the occupant of the premises had authority to, and did in fact, consent to the entry and search."]; *People* v. *Robinson* (1974) 41 Cal.App.3d 658, 665 ["(A) search is not unreasonable when made with the consent of a third party whom the police reasonably and in good faith believe to have authority to consent."]; *People* v. *Oldham* (2000) 81 Cal.App.4th 1, 9 ["Where the subject property is a premises occupied by more than one person, a search will be reasonable if consent is given by one of the joint occupants who possessed common authority . . . "].

[2] See *United States* v. *Matlock* (1974) 415 US 164, 171, fn.7; *People* v. *Welch* (1999) 20 Cal.4th 701, 748 ["The person in control of the premises may consent to a search thereof." Quoting *People* v. *Reed* (1967) 252 Cal.App.2d 994, 995-6].

bedroom. A person who identified herself as Shannon Palacios came to the door in response to their arrival and gave them unlimited permission to search the house. Therefore, even assuming that Shannon Palacios did not have actual authority to consent, it was objectively reasonable for the marshals to rely upon her consent to search the back bedroom.

"Show your hands"

Enslin also claimed he was effectively detained as the result of the marshals' command to "Show your hands," and that the detention was unlawful because there were no grounds for it.

The court ruled that the command did, in fact, convert the encounter into a detention. Although this ruling appears to be inconsistent with California law,[3] it did not matter because the court also ruled that the brief detention of Enslin was lawful.

The court's ruling was based, essentially, on its conclusion that the detention qualified as a "special needs" detention which is permitted if it is justified by some legitimate law enforcement need *other than* the need to temporarily stop and question a suspect.[4] Although the *Enslin* court did use the term "special needs," it applied the test that is used to determine whether a special needs detention is lawful; i.e., whether the need for the detention outweighed its intrusiveness. Said the court, "[B]eing required to show one's hands is simply too small an intrusion into Enslin's liberty to overcome the weighty interest in protecting officer safety."

Consequently, the court ruled that the marshals' entry into the back bedroom and their command to "show your hands" were both lawful. Enslin's conviction was affirmed.

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[3] See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1239 [commanding a person to take his hands out of his pocket does not automatically convert the encounter into a detention].

[4] See *People* v. *Glaser* (1995) 11 Cal.4th 354; *People* v. *Hannah* (1996) 51 Cal.App.4th 1335; *People* v. *Ingram* (1993) 16 Cal.App.4th 1745, 1751-2; *People* v. *Matelski* (2000) 82 Cal.App.4th 837, 850; *U.S.* v. *Vaughan* (9th Cir. 1983) 718 F.2d 332, 335; *People* v. *Samples* (1996) 48 Cal.App.4th 1197, 1206. ALSO SEE *Indianapolis* v. *Edmond* (2000) 531 US __ [148 L.Ed.2d 333, 340] [Court notes that detentions at some types of checkpoints are "special needs" detentions]; *Maryland* v. *Wilson* (1997) 519 US 408, 411-2 [the Court utilizes a balancing test—the same test that is used by California courts in determining the lawfulness of "special needs" detentions—in determining the lawfulness of an officer's ordering a passenger to exit during a traffic stop].