

ISSUES

(1) Did the defendant have a reasonable expectation of privacy in a motel room he paid for with a stolen credit card? (2) Did the defendant's wife voluntarily consent to an entry and search of the motel room?

FACTS

Bautista booked a six-night stay at a motel in San Diego via www.lodging.com. He also paid for the room online—using a stolen Visa card. Four days after Bautista had checked in, the website notified the motel manager that the card had been reported stolen. The manager called the San Diego police.

When officers arrived, the manager told them what had happened and asked them to speak with Bautista to see if he could “explain the credit card situation.” If not, she said she wanted him evicted unless he “made other payment arrangements.”

When the officers knocked on the door, a woman inside asked, “Who is it?” One of the officers said, “San Diego police. Open the door.”¹ She then opened the door, identified herself as Bautista's wife, and said her husband was not there. As the officer was telling her about the stolen credit card, she started backing up. This caused one of the officers to “place a foot on the edge of the door to hold it open.” The officer then asked her if they could come inside. She responded by stepping back and saying “come in.” Inside the room, the officers saw no incriminating evidence in plain view.

The woman identified herself as Bautista's wife and, at the officers' request, consented to a search of the room “for illegal drugs or other contraband.” During the search, the officers found, among other things, counterfeit \$20 and \$50 bills. Bautista was eventually arrested and, during questioning by Secret Service agents, confessed to printing the money.

DISCUSSION

Bautista contended the counterfeit money should be suppressed because his wife was coerced into consenting to the officers' entry and search of the room. The Government responded that, regardless of whether the consent was coerced, Bautista paid for the room with a stolen credit card and, therefore, did not have standing to challenge the search.

Reasonable expectation of privacy

A defendant has standing to challenge a search only if he had a reasonable expectation of privacy in the place or thing that was searched.² Although motel guests usually have a reasonable expectation of privacy in their rooms, it ends when they check out.³ I can also be relinquished before check-out in two ways: (1) if the occupants remain on the premises after the rental period has expired, or (2) if they are evicted. As the court in *Bautista* observed, “[W]e have held that if a hotel guest's rental period has expired, or

¹ NOTE: The court said these were “essentially” the officer's words.

² See *Rakas v. Illinois* (1978) 439 US 128; *United States v. Leon* (1984) 468 US 897, 910 [“Standing to invoke the [exclusionary] rule has thus been limited to cases in which the prosecution seeks to use the fruits of an illegal search or seizure against the victim of police misconduct.”].

³ See *Abel v. United States* (1960) 362 US 217, 241; *People v. Ingram* (1981) 122 Cal.App.3d 673, 680.

has been lawfully terminated, the guest does not have a legitimate expectation of privacy in the hotel room.”⁴

In *Bautista*, however, none of these things occurred; i.e., Bautista had not checked out and the rental period had not expired. Furthermore, although the manager could have evicted him, she did not do so. As the court summed up the situation, “Bautista still had two days remaining on his reservation and the motel had taken no affirmative steps to repossess the room.”

The Government argued that Bautista’s eviction was “inevitable.” That might have been true but, as the court pointed out, “Bautista was still in possession of the room when the police entered and searched the premises, and that is the point in time when we determine the existence of any Fourth Amendment violation.”

Consent to enter and search

Because Bautista had standing to challenge the entry and search, the government had the burden of proving they were lawful. As for the entry, Mrs. Bautista consented. The defense claimed her consent was invalid because it was involuntary. The court agreed.

It is settled that consent to enter or search a residence must have been voluntary, meaning it must have been given freely—not as the result of an officer’s threats, promises, pressure, or other form of coercion.⁵ In *Bautista*, there were plainly no promises or threats; therefore, there must have been some other form of coercion. Unfortunately, the court did not say what it was.

Instead, it simply said that her “invitation” to enter “must be viewed in light of the officer’s [sic] actions that preceded it” and, therefore, her invitation to enter “cannot fairly be portrayed as voluntary consent to the officer’s [sic] entry.”

What action “preceded” the consent? The court focused on the officers’ “demand” that Mrs. Bautista open the door. But a demand under the circumstances does not seem unreasonable, given the officers’ duty to speak with the occupants of the room who had used a stolen credit card to pay for it, and the motel manager’s request that they investigate the matter. (The court classified the stolen credit card report as “unconfirmed.” Yet it acknowledged elsewhere that www.lodging.com had been notified that the card had been stolen—presumably by Visa—and that one of the sources of the information was the credit card holder, himself.)

The court also noted that one of the officers placed his foot against the door to prevent Mrs. Bautista from closing it. But this did not constitute a search or seizure and, furthermore, it seems justified given the officers’ right to speak with Mrs. Bautista and her suspicious act of backing up for no apparent reason as the officers discussed the stolen credit card.

The court also pointed out that “both officers stood in full uniform, their guns visible on their hips.” But because virtually all uniformed officers have “guns visible on their hips,” this circumstance seems unremarkable.

⁴ Citing *U.S. v. Haddad* (9th Cir. 1977) 558 F.2d 968, 975. ALSO SEE *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.”].

⁵ See *Bumper v. North Carolina* (1968) 391 US 543, 548 [“When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given.”]; *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1578; *Schneekloth v. Bustamonte* (1973) 412 US 218, 228 [“(Consent must) not be coerced, by explicit or implicit means, by implied threat or covert force.”]; *Florida v. Bostick* (1991) 501 US 429, 438 [“‘Consent’ that is the product of official intimidation or harassment is not consent at all.”].

In any event, having ruled Mrs. Bautista's consent to enter was involuntary, the court then ruled her consent to search was invalid because it was the "fruit" of "an illegal investigation." In the words of the court, "Although Mrs. Bautista told the police they could search the room, under the Fourth Amendment evidence obtained subsequent to an illegal investigation is tainted by the illegality and thus inadmissible, notwithstanding consent, unless subsequent events have purged the taint."

What made the investigation "illegal?" Again, the court doesn't say. We can only assume it had something to do with the circumstances that caused Mrs. Bautista to consent to the officers' entry. But because the officers had seen no incriminating evidence before they sought consent to search, there does not seem to have been a connection between the consent to enter and the consent to search. The court did not, however, discuss this issue.