

ISSUES

(1) Was it reasonable for an officer to believe that a man who had consented to a search of a motel room had authority to do so? (2) Was a detainee's consent to search involuntary because the officers drew their guns at some point before seeking consent?

FACTS

An officer in Midvale, Utah was doing some paperwork in his patrol car when he was approached by man, later identified as Nitokalisi Fonua (hereinafter, "Nick"). Nick "looked suspicious," mainly because he was "jittery, looking around and appeared to be very nervous." Nick's suspicion rating jumped dramatically when, for no apparent reason, he informed the officer he had stolen a white GMC Blazer, which he had parked nearby. Naturally, the officer asked Nick if he would show him the Blazer, and Nick said sure.

When they located the Blazer, the officer walked over and looked inside. The first thing he saw was a sawed-off shotgun on the back seat. Then he noticed some markings on the shotgun, "markings that looked gang-related."

Nick told the officer that the key to the Blazer was inside his motel room at the Days Inn. Also in the room, he said, were his "cousins," meaning "people he knows from the streets." The officer asked Nick "if we could obtain the keys to the vehicle so we could turn those back over to the owner." Nick said the keys "were in the room somewhere" and that he "didn't care" if the officer went in and retrieved them. Nick also gave the officer his key to the room.

When backup arrived at the motel, officers knocked on the door which was opened by a man named Vake. There were two other occupants: a woman and Kimoana, the defendant. By this time, the officers were aware that Kimoana—not Nick—had rented the room.

The first thing the officers saw as the door opened was the woman pointing "an unidentified black object" at the wall. Concerned for their safety, they ordered the occupants to "show their hands." Then they pat searched them. Finding no weapons (the "unidentified black object" was a television remote control), they holstered their guns.

Although the officers already had Nick's consent to search the room, they sought and obtained consent from Vake. During the search, they found a "long-barreled revolver" under a mattress. As the result, Kimoana was convicted of being a felon in possession of a firearm.

DISCUSSION

Kimoana contended the gun should have been suppressed because, (1) Nick did not have authority to consent to a search of the room, and (2) the officers had coerced Vake into giving consent.

AUTHORITY TO CONSENT: It is settled that consent to search a place or thing may be given by any person who has actual or apparent authority to do so,¹ and that a person has

¹ See *Illinois v. Rodriguez* (1990) 497 U.S. 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. Oldham* (2000) 81 Cal.App.4th 1, 10 ["(E)ven if the consenting cotenant, in fact, lacks authority, officers may rely on his or her apparent authority."].

such authority if he has a right to “joint access or control.”² Although Nick did not rent the room, the court ruled he had both actual and apparent authority to consent to the officers’ entry and search because “he had stayed there overnight, left his possessions there, and carried a key to the room.” Said the court, “This supports a finding that [Nick] had joint access or control over the room, and thus had actual authority to consent.”

VAKE’S CONSENT: Kimoana argued that Vake’s consent had been coerced because “the officers entered the motel room with guns drawn,” they “raised their voices” at the occupants, and had ordered them to “put their hands where the officers could see them.” According to Kimoana, “this chain of events constituted subtle coercion or show of force sufficient to render Vake’s consent involuntary.”

Generally speaking, consent is involuntary if it was “coerced by explicit or implicit means, by implied threat or covert force.”³ Plainly, the atmosphere in the motel room was coercive at first. But the court noted that, by the time Vake was asked for consent, the officers had reholstered their guns and the atmosphere in the room, according to one of the officers, had become “calm.” Furthermore, the court pointed out that several courts have upheld consent searches when officers, for good reason, initially drew their weapons at some point before seeking consent, but had reholstered them by the time they sought consent.⁴

Consequently, the court ruled the consent search was lawful, and it affirmed Kimoana’s conviction.

² See *United States v. Matlock* (1974) 415 U.S. 164, 171, fn.7; *People v. Veiga* (1989) 214 Cal.App.3d 817, 828 [“(A) police entry is countenanced when it is based upon a co-occupant’s consent because by undertaking joint occupancy the defendant either has no actual (subjective) expectation or privacy, or, if he or she has such expectation, society is not prepared to recognize it as reasonable.”]. NOTE: The “joint access or control” test is based on the theory that a person who shares access to, or control over a place or thing with others necessarily assumes the risk that one of the others might permit officers to search it. See *United States v. Matlock* (1974) 415 U.S. 164, 171, fn.7.

³ See *Schneekloth v. Bustamonte* (1973) 412 U.S. 218, 228.

⁴ Citations omitted.