

People v. Pleasant
(October 20, 2004) __ Cal.App.4th __

ISSUE

When officers are conducting a probation search, under what circumstances may they search a bedroom that belongs to someone other than the probationer?

FACTS

Ella Pleasant was on probation with a search condition. She lived with her son, Monet, a convicted felon. Although there was a lock on the door to Monet's bedroom, Ella had a key to the lock and, therefore, had access to the room.

San Diego police and sheriff's deputies decided to conduct a probation search of the house. After being admitted into the house by Ella, they conducted a protective sweep. When they discovered that the door to Monet's bedroom was locked, they asked Ella if she had a key. She said it was her son's room, that her son was not at home, but that the key to the room was on the dresser in her room. An officer retrieved the key, unlocked the door and, when he looked under the bed, discovered an assault rifle.

Monet was charged with being a felon in possession of a weapon and possession of an assault rifle.

DISCUSSION

Monet contended the search of his room was unlawful. Specifically, he argued that officers who are conducting a probation search cannot search a locked bedroom that is used solely by a non-probationer.

At the outset it should be noted that the search of the room could not be upheld as a protective sweep because the officers had no reason to believe there was anyone in the room who posed a threat to them.¹ Consequently, the legality of the search depended on whether Monet's bedroom could be searched under the terms of his mother's probation.

It is settled that officers who are conducting a probation search may search, (1) any room that is controlled solely by the probationer,² and (2) any room that is controlled jointly by the probationer and one or more other people.³ For example, officers may search all common areas, such as the living room, kitchen, and garage,⁴ and all bedrooms that are controlled jointly by the probationer and anyone else.⁵

The issue, then, was whether Ella had joint control of the bedroom. The answer was plainly yes because, (1) she owned the house; (2) Monet was her son, not a tenant; and (3) she had a key to the room. Said the court, "Since Ms. Pleasant had access to the keys

¹ See *Maryland v. Buie* (1990) 494 U.S. 325, 333.

² *People v. Woods* (1999) 21 Cal.4th 668, 682 [rooms "under the sole control of a nonprobationer" may not be searched without a warrant, the nonprobationer's consent, or exigent circumstances]; *People v. Johnson* (1980) 105 Cal.App.3d 884, 888.

³ See *People v. Woods* (1999) 21 Cal.4th 668, 682; *People v. Burgener* (1986) 41 Cal.3d 505, 533; *People v. Britton* (1984) 156 Cal.App.3d 689, 700-3; *People v. Icenogle* (1977) 71 Cal.App.3d 576, 586; *People v. Boyd* (1990) 224 Cal.App.3d 736, 743-50; *People v. Barbarick* (1985) 168 Cal.App.3d 731, 740; *People v. LaJocies* (1981) 119 Cal.App.3d 947, 955; *People v. Smith* (2002) 95 Cal.App.4th 912, 918; *People v. Palmquist* (1981) 123 Cal.App.3d 1, 13. ALSO SEE *People v. Johnson* (1980) 105 Cal.App.3d 884, 888 [court indicates that the scope of the search includes areas to which the parolee had access].

⁴ *People v. Smith* (2002) 95 Cal.App.4th 912, 916 ["It is also established a warrantless search, justified by a probation search condition, may extend to common areas, shared by nonprobationers, over which the probationer has 'common authority.'"]; *People v. Britton* (1984) 156 Cal.App.3d 689, 700-3 [search of closet used by both occupants]; *People v. Barbarick* (1985) 168 Cal.App.3d 731, 740 [home includes garden area].

⁵ See *People v. Woods* (1999) 21 Cal.4th 668.

in the room in which the gun was found, Pleasant could not reasonably expect privacy in the room and the officers reasonably entered the room under the authority of Ms. Pleasant's probation waiver."

Monet's conviction was affirmed.

DA's COMMENT

Note that if Monet was merely a tenant who was renting a room from Ms. Pleasant, the bedroom could not have been searched. This is because a house that has been divided into two or more separate and identifiable compartments, each under the *exclusive* control of different occupants, is a multiple-living unit. As such, a room under the exclusive control of a non-probationer could not be searched.⁶

⁶ See *People v. Woods* (1999) 21 Cal.4th 668, 682 ["(O)fficers generally may only search those portions of the residence they reasonably believe the probationer has complete or joint control over."]; *People v. MacAvoy* (1984) 162 Cal.App.3d 746, 753; *People v. Govea* (1965) 235 Cal.App.2d 285, 300; *U.S. v. Hinton* (7th Cir. 1955) 219 F.2d 324, 325-6 ["(S)earching two or more apartments in the same building is no different than searching two or more completely separate houses. Probable cause must be shown for [each]."].