



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 369

March 5, 2014

**CONSENT TO SEARCH PROVIDED BY AN ABUSED WOMAN WELL
AFTER HER MALE PARTNER WHO HAD DENIED ENTRY AND WAS,
TAKEN INTO CUSTODY IS UPHELD**

Reference: Walter Fernandez United States Supreme Court
571 U.S. _____ (2014)
v. February 25, 2014
California

FACTS:

Walter Fernandez observed Able Lopez cash a check. Fernandez and four fellow gang members pulled a knife and knocked Lopez to the ground. Lopez was cut while trying to defend himself. The suspects fled from the scene. Responding police officers were contacted by a witness who said: "the guy is in the apartment." The officers then observed a man run through the alley and into the building to which the witness was pointing. Several minutes later the officers heard sounds of screaming and fighting coming from the building. The officers knocked on the door of the apartment unit from which the screams had been heard. A female, Roxanne Rojas, answered the door. She was holding a baby, had a red face, was crying, had a large bump on her nose. The officers saw blood on her shirt and hands from what appeared to be a fresh injury. They asked her if anyone else was in the apartment, and she said her 4-year-old son was the only other person present.

One of the officers asked Rojas to step aside so they could conduct a "protective sweep." At that time Fernandez, wearing only boxer shorts, stepped forward and said: "You don't have any right to come in here. I know my rights." Suspecting that Fernandez had assaulted Rojas, the officers removed him from the apartment and then put him under arrest. Lopez, the robbery victim, identified Fernandez as the person who had robbed him. Fernandez was transported to the police station for booking.

About an hour after the arrest, police returned to the apartment where they received both verbal and written consent from Rojas to search the premises. During the search police seized a butterfly knife, clothing worn by the robbery suspect, ammunition, and a sawed-off shotgun. This evidence was used against Fernandez at trial.

Fernandez was convicted of several felonies and sentenced to 14 years imprisonment. He argued on appeal, citing Georgia v. Randolph (see bulletin no. 306) that, because he had told the officers "You don't have any right to come in here", Rojas's subsequent consent was improper.

ISSUE:

Does the rule adopted in Randolph extend to this situation, where Rojas's consent was obtained after Fernandez had been removed from their apartment?

Held:

No. Consent searches are permissible warrantless searches, and are clearly reasonable when the consent comes from the sole occupant of the premises.

REASONING:

1. A person who shares a residence with others assumes the risk that "any one of them may admit visitors, with the consequences that a guest obnoxious to one may nevertheless be admitted in his absence by another."
2. When a "physical present inhabitant" refuses to consent, that refusal is "dispositive as to him regardless of the consent of a fellow occupant."
3. Although Fernandez argues that the objection he made (You have no right to come in here) at the threshold of the apartment should remain in effect until such time as he changed his mind, the court does not extent Randolph to this degree.
4. Denying someone in Rojas's position the right to allow the police to enter her home would also show disrespect for her independence. Having beaten Rojas, Fernandez would bar her from controlling access to her own home unit until such time as he choose to relent. The Fourth Amendment does not give him that power.

NOTES:

Review the following cases: Brandon v State (bulletin no. 136) where non-present abused spouse gave consent to search while she was being treated at the hospital; Georgia v Randolph (bulletin no.306) where physically present co-occupant can refuse consent; and Haskins v State (bulletin no. 248) where consent to enter residence is not consent to search.

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