

11-09: Spousal Consent to Search

Case: Barnes v. State, 36 FLW D2760a (Fla. 1st DCA)

Date: December 20, 2011

Subject: Wife's consent to search of the marital home was valid, even though she had moved out of the home several days earlier due to domestic violence perpetrated by her husband

FACTS: The appellant's wife moved out of their marital home after an alleged incident of domestic abuse. A few days later, she called the police to report the abuse. She also reported that her husband was a convicted felon, and that there were firearms in the residence. She granted consent for the police to enter the premises and search for the guns. The appellant, who was home alone when the police arrived, did not object to the search. A rifle was recovered from the couple's bedroom, and the appellant was charged, in addition to the domestic abuse charges, with possession of a firearm by a convicted felon. Barnes moved to suppress the rifle, arguing that his wife, who was not then living in the marital home, had no authority to consent to the search. The motion was denied and Barnes was convicted. This appeal followed.

RULING: The 1st District Court of Appeal upheld the trial court, and ruled that the wife's consent was valid.

DISCUSSION: The court based its decision on the legal principle that authority to consent to a search arises from the mutual use of the property by persons generally having joint access, common authority over, or other sufficient relationship to the premises or effects to be searched (citing to *U.S. v. Matlock*, 415 U.S. 164 (1974).) Although in this case the appellant's wife had voluntarily left the home a few days before the search, there was no evidence that her access to the home had been restricted in any way, or that she had formally intended to permanently move her residence. This conclusion is further supported by the fact that the wife left the residence as a result of domestic violence perpetrated upon her by the appellant. Under the circumstances, the court held that the wife retained sufficient authority over the premises to enable her to consent to a search therein.

COMMENTS: Remember that if Barnes had objected to the search when the police arrived, then the wife's consent would not have been valid as to the seizure of any evidence sought to be admitted against him, and the rifle would likely have been suppressed. The U. S. Supreme Court has held that in situations where one co-tenant consents to a search but another, physically present co-tenant expressly refuses consent, a warrantless search based on the one-party consent is not reasonable as to the objecting co-tenant. *Georgia v. Randolph*, 547 U.S. 103 (2006).

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.