

FLORIDA CASE LAW UPDATE 14-04

Case: Brunson v. State, 39 FLW D2071a (Fla. 4th DCA)

Date: October 1, 2014

Subject: Consent to enter a hotel room was invalid and without authority where the consent was granted by a person who did not rent the room. Subsequent consensual search of the defendant's person was also invalid, as it was tainted by the illegal entry

FACTS: Officers were dispatched to a hotel after management called complaining that one of the rooms was being utilized for prostitution and drug use. Upon arrival, the manager provided the officers with the room number and the name of the person who rented the room (Brunson). The manager also stated that another man was with Brunson. The officers went to the room and knocked on the door, which was answered by a "younger black male." The officers asked if they could enter, but did not inquire as to the identity of the person who answered the door. The man consented to their entry, whereupon they saw another man, two women, and contraband such as marijuana, pills, and drug paraphernalia in plain view. At that point the officers asked who rented the room, and Brunson stated he had. Brunson was not the individual who had opened the door and consented to the police entry. Brunson consented to a search of the room, which revealed marijuana, crack cocaine, pills, and a gun. Brunson then consented to a search of his person, which resulted in the discovery of more crack cocaine. During his prosecution, Brunson argued that all evidence seized by the police should be suppressed, as the initial entry into the hotel room was without valid consent, and was therefore illegal. He further argued that the police were told that he was the renter of the room, and therefore they should have established the identity of the person who answered the door prior to assuming that a valid consent had been granted. The trial court agreed that the initial search of the room was illegal because a reasonable officer would not assume that the person who answered the door had the authority to consent without first confirming their identity. As such, the items seized from the room were suppressed. However, the trial court found that the search of Brunson's person was legal, because he had consented to the search. Brunson appealed.

RULING: The 4th District Court of Appeal agreed with the trial court as to the suppression of the contraband found in the room, but disagreed with the finding that the evidence seized from Brunson's person was the result of a valid consent search. All evidence was suppressed.

DISCUSSION: The appellate court, relying on *Williams v. State*, 788 So.2d 334 (Fla. 5th DCA 2001) and *Cooper v. State*, 706 So.2d 369 (Fla. 2d DCA 1998), affirmed the suppression of the evidence seized from the room based upon the principle that "the mere fact that an unknown person opens the door when a police officer knocks cannot, standing alone, support a reasonable belief that the person possesses authority to consent to the officer's entry." (Quoting *Cooper*). As to the search of Brunson's person, the court found that the consent was invalid because "consent given after police conduct determined to be illegal is presumptively tainted and deemed involuntary, unless the state proves by clear and convincing evidence that there was a clear break in the chain of events sufficient to dissolve the taint." *Navamuel v. State*, 12 So.3d 1283 (Fla. 4th DCA 2009). In this case, no evidence was offered which established that Brunson was clearly told of his right to decline police requests to search, after their illegal entry into the room. As such, no "clear break" between the illegal conduct and the request for consent occurred, and any subsequent consent is invalid.

COMMENTS: The lesson of this case is clear: before you rely on consent to enter and/or search a protected area, ensure that the person granting the consent has the legal authority to do so.

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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.