

FLORIDA CASE LAW UPDATE 15-03

Case: Thompson v. State, 40 FLW D1614b (Fla. 2nd DCA)

Date: July 15, 2015

Subject: **Officers' entry into home was not unlawful when they reasonably construed "gestures" from an occupant as an invitation to enter. Additionally, Defendant's spontaneous statements regarding the presence of drugs in his room were not the result of illegal interrogation, and were properly included as part of the probable cause for a search warrant**

FACTS: As part of a burglary investigation, officers tracked a cell phone found at the scene to the address of Thompson's sister. The officers testified that upon arrival the sister invited them into the home; however, she testified that upon answering the door, the officers asked her if Thompson was there, and she responded "yes," and pointed to him sitting on the sofa. She stated that the officers then forced themselves by her, entered the home, and walked up to Thompson. Thompson's testimony was consistent with the description provided by his sister. The officers asked Thompson for permission to search his bedroom, but he refused, stating that "he did not want his bedroom searched because there were needles with methamphetamine in the bedroom." Based upon this and other statements, the officers obtained a search warrant, which led to the discovery of stolen items as well as illegal drugs in the residence. Thompson was charged with numerous drug and theft offenses. Thompson moved to suppress the search on the grounds that the officers had no legal authority to enter the premises, and failed to include that information in their warrant application. The trial court denied the suppression, and Thompson was convicted. This appeal ensued.

RULING: The Second District Court of Appeal agreed with the trial court. As to the entry into the residence, the appellate court found that the officers could have reasonably concluded that they had been invited in. With regard to Thompson's statements, the court found that they were made voluntarily and spontaneously, and were not the result of police interrogation. Conviction affirmed.

DISCUSSION: As we know, warrantless searches are generally prohibited; however, they may be validated when they fall into one of the established constitutional exceptions, such as consent. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). Whether consent is freely and voluntarily given is a question of fact to be determined considering all of the facts and circumstances. "Police may accept an invitation to make a warrantless entry into premises only under circumstances that would cause a man of reasonable caution to believe that the person making the invitation is authorized to do so." *Illinois v. Rodriguez*, (497 U.S. 177). The court found that while there was conflicting evidence as to whether Thompson's sister had in fact invited the officers into the home, sufficient evidence existed to support a finding that the officers reasonably perceived her gesture as an invitation to enter. As to the suppression of Thompson's statements, the court found that they were volunteered by the defendant. "Incriminating statements are admissible where they are made voluntarily and spontaneously and are not the product of interrogation." *Hayward v. State*, 24 So.3d 17 (Fla. 2009). In this case, the officers asked Thompson for consent to search his room, and he responded with information regarding the presence of needles and drugs. As the court points out, he did not provide the information in response to a question about the contents of his room. Thompson was free to simply say "no" to the search request rather than volunteering information about illegal items or evidence therein.

COMMENTS: Note that if the officers had in fact asked Thompson what was in the room, they would have been required to perform a Miranda analysis and proceed as the facts and circumstances may have required.

John E. Kemner
Regional Legal Advisor
Florida Department of Law Enforcement
Jacksonville Regional Operations Center

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.