



Legal Update

May 2018

The Appeals Court holds that a woman who lived in an apartment with the defendant had authority to consent to a warrantless police search of a closed, unlocked suitcase located in a shared closet.

Commonwealth vs. Jose Hernandez, Mass. Appeals Court, No. 17-P-377 (2018): On February 3, 2015, Lynn police were responding to a domestic threat at an apartment that the defendant, Jose Hernandez shared with the victim. The victim, Flor Prudencio, told police that the defendant had threatened to shoot her if he was not able to see his children. Prudencio knew the defendant had a firearm and when police arrived, she brought them into the bedroom where the defendant kept a suitcase on the top shelf of the closet. Police removed the suitcase and opened it. The suitcase was not locked and did not have a nametag on it. There was loaded firearm inside along with a baggie of ammunition. The police charged the defendant with improper storage of a firearm, illegal possession of a firearm, illegal possession of ammunition and threatening to commit a crime. The defendant filed a motion to suppress and argued that Prudencio lacked authority to allow police to search the suitcase. The motion judge concluded that Prudencio had “both actual and apparent authority over the apartment that she shared with the defendant,” and that the

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officer legally entered the apartment. Additionally, the judge found that Prudencio had shared access to the closet, where the suitcase was located and “there was no evidence that she was restricted from accessing the suitcase or what was inside.” The defendant filed an appeal after he was found guilty and argued that Prudencio’s common authority over the apartment, did not extend to the closed container.

Conclusion: The Appeals Court held that the victim who shared an apartment with the defendant had authority to validly consent to the police searching the apartment and the unlocked suitcase located in the common closet of their shared bedroom.

ISSUE: Did the victim need separate authority to allow police to search the suitcase?

In *United States v. Matlock*, 415 U.S. 164 (1974), the Supreme Court addressed whether a defendant's adult coinhabitant could validly consent to a search of the bedroom she shared with the defendant and to search the diaper bag in the bedroom’s closet. The Court held that the coinhabitant could consent and that it could be obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected." *Id.* at 171. The Court further explained that consent based on common authority did not arise from "property interests," but from "mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the coinhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." *Id.* at 171.

The facts of *Matlock* establish that additional or separate authority are not required to search a container located in the coinhabitant's bedroom. The Court's reasoning was that coinhabitants have "assumed the risk," vis-à-vis each other, such that any of them can permit a search of a common area, including items kept in such an area. Similarly, in *Porter P.*, the court stated that "a third party has actual authority to consent to a warrantless search of a home by the police when the third party shares common authority over the home." *Porter P.*, 456 Mass. at 262. However, in *Porter P.*, the person who provided the consent to search -- the director of the transitional shelter in which the defendant was staying -- was not a coinhabitant, and thus not able to validly consent to a search of the defendant's room. *Id.* at 262, 266. All of these cases reflect the common understanding that coinhabitants of a home have a greatly diminished expectation of privacy vis-à-vis each other, at least as to "common areas." Coinhabitants accordingly can consent to searches in areas where they have "joint access or control for most purposes." *Porter P.*, 456 Mass. at 262, quoting from *Matlock*, 415 U.S. at 171.

In the present case, Prudencio had joint access and control. There was no question she had authority to consent to the search of her home, her bedroom, and her closet. These

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were "common areas," which were readily apparent upon viewing the small apartment, and observing that Prudencio and her three children, "had the run of the place." Prudencio's authority to consent to a search of the family closet did not stop at the boundary of the suitcase. " In coinhabiting as he did, and leaving his gun unlocked in a closet used by all, the defendant made a 'significant sacrifice of individual privacy' vis-à-vis Prudencio, and 'assumed the risk' that she would access his belongings (the suitcase) or consent to a search of them." See *Bass*, 661 F.3d at 1305-1306. Based on these facts, the Appeals Court affirmed the convictions and held that Prudencio had lawful authority to consent to police searching the bedroom and the suitcase contained with the closet.

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