

A federal officer had probable cause to believe that a woman had participated in a bank robbery. Two days after the robbery, the woman checked into a local hotel. When the woman left her room for the evening, the hotel manager opened the hotel room door so that the officer could enter the room and look inside. The officer did not find any of the stolen money but did see, lying open on the bed, the woman's diary. The diary contained an entry describing the woman's involvement in robbing the bank.

The woman was charged in federal court with bank robbery. She has moved to suppress the diary.

Should the court suppress the diary?

- A. No, because the hotel manager had actual authority to allow the officer into the hotel room.
- B. No, because the officer reasonably relied on the hotel manager's apparent authority to allow the officer into the hotel room.
- C. Yes, because admitting the diary would violate the woman's privilege against self-incrimination.
- D. Yes, because the officer had no warrant.

Explanation:

A court should suppress evidence obtained during an unreasonable Fourth Amendment search. A search is unreasonable if it is conducted without a warrant based on probable cause and no exception to the warrant requirement applies. **Consent** is an exception that **allows police to conduct a warrantless search** when (1) consent is given voluntarily (ie, the product of free will, not police coercion), (2) the search is limited to the scope of the consent, and (3) the person giving consent has the actual or apparent authority to do so.

Actual authority exists when the person giving consent has the **right to use or occupy** the property—eg, a registered hotel guest.

Apparent authority exists when police **reasonably (but erroneously) believe** that the person giving consent has **actual authority** to do so—eg, the person answering the hotel room door falsely states that he/she is staying in the room.

Hotel managers do not have *actual* authority to consent to a warrantless search of a guest's room because they have no right to use or occupy the room during the guest's stay (**Choice A**). And in *Stoner v. California*, the Supreme Court held that hotel managers lack *apparent* authority because police cannot reasonably believe that managers have actual authority to consent (**Choice B**). Therefore, the hotel manager could not consent to the officer's warrantless entry of the woman's hotel room, and the diary found during that search should be suppressed.

(**Choice C**) The Fifth Amendment **privilege against self-incrimination** protects individuals from being compelled to create or produce self-incriminating evidence. Here, the woman's diary entry described her involvement in the bank robbery (self-incriminating evidence). But since she voluntarily wrote that entry (no compelled creation) and the diary was discovered during a search of her hotel room (no compelled production), it will not be suppressed on Fifth Amendment grounds.

Educational objective:

Consent to a search must be given by a person with (1) actual authority—the right to use or occupy the property—or (2) apparent authority—police reasonably, but erroneously, believe that the person has actual authority to consent. Therefore, hotel managers have no authority to consent to a warrantless search of a guest's hotel room.

References

U.S. Const. amend. IV (prohibition against unreasonable searches and seizures).

Stoner v. California, 376 U.S. 483, 489–90 (1964) (explaining that a hotel guest has a reasonable expectation of privacy in his/her room and a hotel manager cannot consent to a search of the room).

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Admissibility of evidence obtained by Fourth Amendment violation

