

alleges that Mr. Sosa was then in hiding because there was an active conspiracy among various of his co-defendants and others to find, kidnap and kill him. Eventually, Mr. Sosa was located and arrested on February 3, 2005 in the Brick Township, New Jersey home of another Latin King member.

Mr. Sosa now challenges the admissibility of evidence that was found in a black gym bag that he had left at his mother's home at 537 East 5th Street in Lakewood, New Jersey. At the hearing held to address the suppression motion, Mr. Sosa testified that although he had lived in the East 5th Street home approximately three years ago, he had moved out some time during 2002. Hearing Trans. at 8:5-21. According to Mr. Sosa, he still visited his mother and his two half-siblings there once every few months and was always welcomed at the home. Hearing Trans. at 8:22-25; 9:1-9; 15:3-5. Mr. Sosa testified that when he stayed at the home, he slept in a small partitioned area in the basement where there is a bed, television and dresser. Hearing Trans. at 23:5-22. Mr. Sosa testified that on the evening of January 27, 2005 he had left a house where he had stayed and gone to Ms. Cotto's home because he was looking for a safe place to spend the night. Hearing Trans. at 14:5-9; 13-16; 15:17-24. He left the East 5th Street house on the morning of the 28th, leaving his duffel bag near the dresser on the floor and next to but not in a closet in what he described as his mother's room on the second floor of the home. Hearing Trans. at 22:3-7; 15-19. Mr. Sosa testified that the bag was zippered shut but was not locked. Hearing Trans. at 22:19-25.

At the same hearing, Special Agent Robert Falero, one of the agents who arrested Mr. Sosa, testified that the FBI attempted to track Mr. Sosa by searching for addresses stored in an electronic database. Hearing Trans. at 3-14. Agent Falero stated that the database listed 537 East

5th Street in Lakewood, New Jersey as the last known address on file for Mr. Sosa, but that this address had not been verified since 2003. Hearing Trans. at 42:16-21. In the process of executing an arrest warrant for Mr. Sosa, at approximately 6:00 a.m. on the morning of January 28, 2005, the agents first went looking for Mr. Sosa at 3023 Lee Street in Philadelphia, an address that was believed to be a temporary residence for Mr. Sosa in Philadelphia. Hearing Trans. at 25:18-25; 26:1-13.² There the agents learned that Mr. Sosa was not at 3023 Lee Street, and were told that he might have gone to the home of his mother, Rosita Cotto, which was the East 5th Street address in Lakewood, New Jersey. Hearing Trans. at 26:18-19, 22-25; 19:12-14; 43:3-7.

According to Agent Falero, the agents arrived at the East 5th Street address between 8:30 and 9:15 on the morning of January 28. Hearing Trans. at 57:5-8. Agent Falero further testified that rather than finding either Mr. Sosa or Ms. Cotto there, the agents were met by Victor Velez Quinonez, who represented to the agents that he was Ms. Cotto's husband, but that she had left him and the home nine days earlier. Hearing Trans. at 28:6-7; 29:24-25; 30:1-7. Mr. Velez Quinonez was at the home along with a small child of approximately five years of age. Hearing Trans. at 28:17-19. Agent Falero stated that it was clear to him that Mr. Quinonez had just awakened for the day when they arrived, and Mr. Quinonez represented to the agents that he lived at the 5th Street address. Hearing Trans. at 47:11-15. The agents' understanding that this was Mr. Quinonez's residence was further supported by (1) the presence of family photos (which included Mr. Quinonez) placed around the home, (2) clothing owned by Mr. Quinonez strewn

² Agent Falero testified that he had seen Mr. Sosa at this Philadelphia address in the past and had seen him there about two weeks prior to January 28, 2005. Hearing Trans. at 26:8-17.

about what he told the agents was his bedroom, and (3) by the fact that police department records showed a prior arrest of Mr. Quinonez at the very same address. Hearing Trans. at 32: 21-24; 47:11-19.

Upon questioning by the agents, Mr. Quinonez told them that although Ms. Cotto had lived at that address for the past four to five years, she had departed approximately one week earlier to move in with another man.³ Hearing Trans. at 30:3-7. The agents did not have a warrant to search the residence on January 28. However, satisfied that Mr. Quinonez was an adult resident who lived at and exercised authority over the home, the agents inquired as to whether Mr. Quinonez would consent to allow them to search the house. Hearing Trans. at 30:25; 31:1-25; 32:1-12. After Agent Falero, who spoke in Spanish to Mr. Quinonez, explained the consent form to him, Mr. Quinonez executed a written consent for a search of the residential premises to take place. Hearing Trans. at 40:2-4; 41:18-24.

While searching the house, the agents found the black duffel bag Mr. Sosa had left there. The bag was located in what the agents believed to be Mr. Quinonez's bedroom.⁴ Hearing Trans. at 32:17-28, 25; 33:2 . When Mr. Quinonez was asked about the bag, he told the agents that he did not know how the bag got there. Hearing Trans. at 33:3-4. The agents opened the bag and

³ The FBI agents state that when they returned to the 537 East 5th Street residence later in the day on January 28, 2005, they saw and spoke with Ms. Cotto, who admitted to them that she no longer lived there and had moved to a different residence in Lakewood, New Jersey.

⁴ The agents' belief that the room was Mr. Quinonez's bedroom was based on the presence of a significant amount of his personal effects, clothing, and identification in the room. Hearing Trans. at pp 32, 54. This was, in fact, the room that Mr. Sosa testified was his mother's room.

found a New Jersey driver license for Mr. Sosa,⁵ Latin King literature, orders in blank signed by King Smiley, two neoprene face masks, full face masks, a photo of Mr. Sosa with co-defendant Joseph Wallenberg, a hat with Latin King writing on it, papers and other miscellaneous items, and some clothing. Hearing Trans. at 33:8-14.

Mr. Sosa seeks to suppress admission of the evidence contained in the duffel bag, arguing that the warrantless search of the house was a violation of his “legitimate privacy interest in his mother’s home and a clear property interest in his own belongings.” In response, the Government contends that the motion should be denied for two reasons. First, the Government argues that because Mr. Sosa had no reasonable expectation of privacy in Ms. Cotto’s residence, he does not have standing to challenge the search. The Government further argues that the search was not invalid because the agents obtained the consent of Mr. Quinonez, who had actual and apparent authority to permit the search. For the reasons discussed below, the Court will deny the motion and finds that the evidence will not be suppressed.

DISCUSSION

A. Legitimate Expectation of Privacy

The Supreme Court has advised that “Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.” Rakas v. Illinois, 439 U.S. 128, 133-34 (1979). Whether an individual has standing to assert a violation of a Fourth Amendment right is determined by assessing whether he or she possessed a “legitimate expectation of privacy” in the area searched. Rawlings v. Kentucky, 488 U.S. 98, 104 (1980). A

⁵ The address listed on Mr. Sosa’s identification found inside the bag was an address other than the 537 East 5th Street address.

subjective expectation of privacy is legitimate if it is “one that society is prepared to recognize as ‘reasonable.’” Minnesota v. Olson, 495 U.S. 91, 95 (1990).

It is clear that a person need not own, or even lease, a property in order to have a legitimate expectation of privacy in it. Rakas v. Illinois, 439 U.S. 128, 142 (1978). For example, someone who is visiting a home as an overnight guest can have a legitimate expectation of privacy in that place, as well as in the property in his or her possession while the person is visiting. See, e.g., Olson, 495 U.S. at 96; Rakas, 439 U.S. at 142, n.11 (noting that even if a visitor has no interest in a premises, he could validly object to a seizure of his own property). However, the privacy interest conferred upon a guest, by its very nature, is recognized by society as a temporary right, and not one that is intended to continue after the overnight guest has departed. See Olson, 495 U.S. at 99 (“when we cannot sleep in our own home we seek out another private place to sleep . . . ‘a temporarily private place whose momentary occupants’ expectations of freedom from intrusion are recognized as reasonable’”) (citing Katz v. United States, 389 U.S. 347, 361 (1967)).

The Court concludes that Mr. Sosa does not have standing to object to either the search of Ms. Cotto’s home or of the duffel bag he voluntarily left there. Mr. Sosa is the emancipated son of the owner of the searched premises. He does not make this house his regular dwelling, but makes his home elsewhere. From the evidence presented, Mr. Sosa’s status seemed to have been nothing more than a periodic visitor and overnight guest, albeit a familiar one. Even though Mr. Sosa claims a right of privacy based on his status as a previous overnight guest, any such right dissipated when he left the premises. Thus, Mr. Sosa has established no reasonable expectation of privacy in his mother’s home. The Court notes the significance of Mr. Sosa not having stated

during his testimony that he left the bag in the house for safekeeping, for some articulated temporary purposes or even with the expectation that his mother would launder the contents.⁶ Indeed, it is easier to conclude that the bag had been abandoned than that it would be retrieved promptly or purposefully.

⁶ In a supplemental letter brief submitted after the hearing at the allowance of the Court, counsel for Mr. Sosa argues that either United States v. Waller, 426 F.3d 838, 844 (6th Cir. 2005) or United States v. Gricco, No. 01-90, 2002 WL 393115 (E.D. Pa. Mar. 12, 2002), supports a finding that Mr. Sosa had a legitimate expectation of privacy in the duffel bag. After reviewing both cases, the Court concludes that the facts of each of these cases differ significantly from those presented here.

In Waller, the defendant had received permission from his friend to store some personal belongings at the friend's one-bedroom apartment. Among other various items, the defendant stored some personal toiletries along with some firearms in a brown luggage bag and stored the closed bag in the friend's bedroom closet. Waller, 426 F.3d at 842. After the friend granted consent to search the premises and while the defendant, who had already been arrested, waited outside the apartment, the police found the bag in the closet and were told that the bag was not the tenant's and that the tenants had a mutual understanding that the luggage contained the defendant's private personal effects. Id. at 845. The police opened the bag, located the firearm and charged the defendant as a felon in possession of a firearm. Id. at 842. In concluding that the friend who rented the apartment did not have common authority over the contents in the bag, the court stated that the defendant had "shown by his conduct" that he wished to preserve the contents of a locked suitcase. Id. at 844. This conduct included that the defendant had not disclosed the contents of the bag, that he had not given the tenants authority to look inside the bag and because the tenants believed the bag to contain the defendant's personal effects. Id.

In Gricco, the court found that the defendant had a reasonable expectation of privacy in a metal storage trunk located in the basement of his mother-in-law's home because the defendant had locked the trunk and was the only person who had a key to it. Gricco, 2002 WL 393115, at *2. The trunk was placed in an open area of a basement "where [the defendant] was storing it," and the defendant also had sole control over a locked room in the basement. Id. The defendant had, therefore, been given access to the home for storage purposes.

The circumstances of this case differ significantly from Waller and Gricco in that Mr. Sosa did not testify that he had stored the bag at Ms. Cotto's home for safekeeping. Moreover, the placement of the bag outside of the area in which Mr. Sosa typically kept his private items when he stayed at the home (namely, the basement) suggests that the other residents of the home (including Mr. Quinonez) would not have any reason to believe that the contents of the bag were to be kept private.

In addition, Mr. Sosa could not have reasonably expected to retain privacy interests with respect to the duffel bag because he took no steps to separate it from the general contents of the household. Mr. Sosa did not leave the bag in the basement room where his personal belongings as an overnight guest typically would be housed, but rather left it in a space that was non-personal to him and in an area over which other persons – either Ms. Cotto, Mr. Quinonez, or both – who live in and exercised common authority over the house clearly exercised control. Additionally, there was no lock placed on the bag and no name tag or other means of identifying whose bag it was and/or that the contents of the bag should remain private. Under these circumstances, the Court finds that no reasonable expectation of privacy on the part of Mr. Sosa in the contents of the duffel bag arose and, as such, no violation of Mr. Sosa’s Fourth Amendment rights would preclude the admission of the evidence recovered.

B. Consent to Search the Premises

Because the Court has concluded that Mr. Sosa had no reasonable expectation of privacy in either the home or the contents of the duffel bag, the Court need not proceed with an analysis as to whether the consent given by Mr. Quinonez was effective to affirm the warrantless search of the premises. However, in the interest of completeness, the Court notes that even if Mr. Sosa were to have been found to have a reasonable expectation of privacy in the contents of the duffel bag, the agents’ belief that Mr. Quinonez had apparent authority to consent to the search of the home and contents was reasonable.

That a warrantless entry into a home is considered a presumptively unreasonable search under the Fourth Amendment is well settled. Payton v. New York, 445 U.S. 573, 586 (1980).

However, there is no need to obtain a warrant to search premises where voluntary consent has been obtained, “either from the individual whose property is searched or from a third-party who possesses common authority over the premises.” Illinois v. Rodriguez, 497 U.S. 177, 181 (1990). Common authority over a premises arises from “mutual use of the property by persons generally having joint access or control for most purposes....” Id. The burden of establishing that common authority rests upon the government. Id. Even where a person’s authority to consent to a search is later questioned, or is questionable, if the officers, at the time of obtaining such consent, reasonably believed that the person had authority to consent to the search, the search does not violate the Fourth Amendment. See Illinois v. Rodriguez, 497 U.S. 177, 188-89 (“as with other factual determinations bearing upon search and seizure, determination of consent to enter must ‘be judged against an objective standard: would the facts available to the officer at the moment ...warrant a man of reasonable caution in the belief’ that the consenting party had authority over the premises”) (citing Terry v. Ohio, 392 U.S. 1, 21-22, (1968)); see also Warner v. McCunney, No. 05-1248, 2005 WL 2811738, *2 (E.D. Pa. Oct. 27, 2005). Thus, to the extent that the agents’ belief with respect to Mr. Quinonez’s authority to consent to the search, at the time the consent was obtained, would have been a reasonable belief, the search of Ms. Cotto’s home would not have crossed constitutional boundaries.

Under the circumstances of this case, the Court concludes that the agents’ belief that Mr. Quinonez exercised apparent authority and control over the home was reasonable. To this end, the Court notes that when the agents arrived at the Cotto home in the early morning hours of January 28, 2005, they found Mr. Quinonez just waking up there, with no other adult in the home and, indeed, no one else present other than a very young child who seemed under the charge of

Mr. Quinonez. No other adults were present in the home, and the agents were told that Mr. Quinonez was Ms. Cotto's common law husband and that Ms. Cotto had left the premises nearly a week earlier. In addition to these facts, the room which Mr. Quinonez asserted to be his bedroom contained his clothing, personal effects and identification, and photos of Mr. Quinonez with other family members were displayed throughout the home. Under these circumstances, the Court finds that the law enforcement agents reasonably believed that Mr. Quinonez had apparent authority to consent to the search of the home.

Additionally, because the duffel bag was left in the room that was apparently Mr. Quinonez's bedroom, the agents' belief that Mr. Quinonez had authority to consent to the search of the bag also was reasonable. For the search of a closed object inside a home to be valid, the consent to search a container or place must be grounded on the consenting party's "common authority over or other sufficient relationship to the . . . effects sought to be inspected." U.S. v. Matlock, 415 U.S. 164, 171 (1974); see also United States v. Davis, 332 F.3d 1163 (9th Cir. 2003) (no common authority allowing consent to search duffel bag of houseguest of roommate because bag was hidden under bed in roommate's bedroom, thereby effecting a reasonable expectation of privacy). The common authority upon which proper consent is grounded does not, however, rest solely on ownership of the property, but rather on "mutual use of the property by persons generally having joint access or control for most purposes." Id. at 172 n.7. Such authority is present when it would be "reasonable to recognize that any of the co-inhabitants [of a property] 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.; see also U.S. v. Long, No. 04-159, 2005 WL 2807123 at *6 (W.D. Pa. Oct. 27, 2005) (finding that wife

had authority to consent to search of husband's duffel bag in closet).

The placement of the bag in an open area in an upstairs bedroom of the home in which Mr. Quinonez had been sleeping and in which his personal effects and clothing were so obviously present justifies a reasonable belief that he had apparent authority to consent to the search of the bag.⁷ As discussed above, the bag was neither locked nor labeled with a person's

⁷ In their supplemental letter brief, counsel for Mr. Sosa argues that the fact that his duffel bag was placed in his mother's bedroom is insufficient to establish that Mr. Quinonez had either apparent or actual common authority over the contents of the bag. In support of this argument, counsel relies primarily on United States v. Waller, 426 F.3d 838 (6th Cir. 2005), United State v. Chun Yen Chiu, 857 F. Supp. 353 (D.N.J. 1993), United States v. Corral, 339 F. Supp. 2d 781 (W.D. Tex. 2004) and United States v. Wogan, 356 F. Supp. 2d 462 (M.D. Pa. 2005).

In Waller, which was discussed above at note 5, the court found that the tenants of an apartment did not have authority to consent to a search of a piece of closed luggage and firearms that the defendant had placed in a bedroom closet after requesting and receiving permission to store some items at the apartment, and the tenants did not have access to the luggage. Waller, 426 F.3d at 847. Thus, it was (or should have been) clear to the searching officers that no basis for actual or apparent authority was present.

In Chun Yen Chiu, the court declined to find that a reasonable officer would have concluded that a landlord had authority to consent to a search of a property on behalf of its tenant. Chun Yen Chiu, 857 F. Supp. at 361-62.

In Corral, the court found that neither apparent nor actual authority was a reasonable assumption for agents who learned – prior to obtaining consent from the sole adult present on a property – that this person did not own or live in the home, was a person employed to clean the home weekly and was “in charge” of the owner's young son. Corral, 339 F. Supp. 2d at 798.

In Wogan, the court found that consent to search a closed bag located in the trunk of a car was not valid because it was obtained from the grandmother of the defendant (who owned the car) *after* the bag had already been opened and under circumstances which suggested that the grandmother gave consent only because she believed that the consent was a formality. Wogan, 356 F. Supp. 2d at 468-69.

The facts and evidence set forth in this case suggest more clearly than any of these cases that the law enforcement agents' reliance on Mr. Quinonez's consent was reasonable. As has already been noted, the bag was left in the bedroom where Mr. Quinonez slept. Secondly, there

name, and was left in the bedroom of what at least legitimately appeared to be a co-inhabitant of the home. Under these circumstances, Mr. Sosa assumed the risk of having a person who could exercise control and authority over the room – whether that authority was actual or apparent – would consent to have the premises searched. Thus, even if Mr. Sosa were to have had a reasonable expectation of privacy in the bag, the agent’s reliance on the apparent authority of Mr. Quinonez to consent to a search of the home and the duffel bag was reasonable, thereby precluding any Fourth Amendment violation.

CONCLUSION

For the reasons discussed above, the Motion to Suppress Evidence Seized from 537 East 5th Street, Lakewood, New Jersey will be denied. An appropriate Order follows.

/S/ _____
Gene E.K. Pratter
United States District Judge

December 2, 2005

is no evidence that Mr. Sosa was storing the bag at Ms. Cotto’s house or intended for it be placed in a private area. Were that the case, it is far more likely that the bag would have been placed in the basement area of the home over which Mr. Sosa occasionally exercised some control and privacy. It was, therefore, reasonable to assume that Mr. Quinonez had authority to consent to search items within that room. The facts of the cases relied upon by Mr. Sosa share the common thread of some conduct that would have conveyed to other residents of the home that the property was intended to remain private. No such conduct is displayed in this case.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
WILLIAM SOSA	:	No. 05-44-1

ORDER

AND NOW, this 2nd day of December, 2005, upon consideration of the Motion to Suppress Evidence Seized from 537 East 5th Street, Lakewood, New Jersey Pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure (Docket No. 278), the response thereto, and after a hearing on the Motion, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
United States District Judge