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Co-Occupant Must Object to Invalidate Consent

By **DLG Learning Center**

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DAIGLE LAW GROUP

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In *US v. Morales*, an 11th Circuit case from July 2018, involved officers searching a home based on consent provided by the leaseholder and occupant of the home.^[1] The defendant, Jose Morales, claimed he also lived in the house with his girlfriend and their children and his girlfriend's mother's consent was not enough to allow the search when he was physically present outside the home.

In 2006, the US Supreme Court determined that the consent of one co-occupant cannot trump the expressed objection of another co-occupant who is present at the scene. Here, Jose Morales is claiming that while he was not physically present inside the house when the consent was given, he was standing outside and should have been consulted before the officers searched the house.

FACTS

In December 2014, a task force investigating drug sales in Miami Gardens, Florida had focused their investigation on a neighborhood house where the defendant Jose Morales lived with his girlfriend, their children, and his girlfriend's mother. One night several officers approached the house and observed Morales outside on the street with several other suspected drug dealers. The officers knocked on the door and were let in by Berta Lang – Morales' girlfriend's mother and the leaseholder for the property.

The officers informed Lang that they wished to search the house and that they believed Morales was involved in drug and gun sales in the neighborhood. Lang confirmed that Morales also lived at the house with her daughter and grandchildren. The officers went into the living room and, after several minutes, Lang signed a consent to search form claiming she had nothing to hide. Officer Rodriguez explained to her in Spanish that she could refuse to consent to the search and it was ok if she wanted them to get a warrant but Lang "insisted" they could search the house. Lang also confirmed that she had access to all areas of the house including Morales' bedroom.

The officers searched the house with a canine and uncovered two handguns in a bag in Morales' closet. Morales was arrested and transported to the station where he was Mirandized and gave a full statement acknowledging that he had been living at the house for over two years and that the guns were his.

The trial court denied his motion to suppress finding that Lang's consent was freely and voluntarily given. Morales was subsequently convicted of several gun charges and sentenced to a 15-year term.

11th Circuit Finding

The appellate court reviewed the record related to Lang's consent and listed several factors that would support a finding that the consent was voluntary. These factors include:

- Whether the police procedures were coercive in nature;
- Lang's level of cooperation with the police; and
- Lang's awareness of her right to refuse the search.

At trial Lang testified that the officers were "very professional", "calm" and spoke to her in Spanish to be sure she understood their request. Based on her testimony the 8th Circuit had no trouble determining that the consent was freely and voluntarily given.

Morales' second claim is a bit more problematic. Morales claims that the relevant line of cases out of the US Supreme Court – *United States v Matlock*, 415 US 164 (1974), *Georgia v Randolph*, 547 US 103 (2006) and *Fernandez v California*, 571 US 292 (2014) – require the officers to give Morales an opportunity to object to the search. According to Morales, he was a physically present co-occupant and, as such the officers were required to gain his consent. The appellate court disagreed, finding that Morales was "nothing more than a potential objector, nearby, but not invited to take part". At any time, Morales could have left the group outside and come into the house to see what was going on and make his objections known. Had Morales done so, officers would have been required to stop searching based on Lang's consent. However, the officers had no duty to ask him if he objected to the search and Morales' failure to raise an objection "rests on him".

WRAP UP

The success of this case rests on the fine job done by the officers in gaining consent from Ms. Lang. Lang's testimony and that of the officers describes a situation where the court can easily find that Lang's consent was a voluntary and informed decision.

With respect to the question of authority, the court squarely places the responsibility for objecting to the search on Morales's shoulders. Additionally, the court will review the process to assure there was no improper police action that thwarted the defendant's ability to object. But at the end of the day, it is clear that it is Morales' responsibility to raise any objection and a co-occupant can object to the search if they are on scene.

1. *United States v. Morales*, 2018 U.S. App. LEXIS 17885 (11th Cir. FL June 29, 2018) [↑](#)

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