

## FLORIDA CASE LAW UPDATE 20-01

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**Case:** State v. Smith, 45 FLW D 19b (Fla. 2d DCA)

**Date:** December 27, 2019

**Subject:** Warrantless search of a hotel room was lawful where even though the occupant did not provide express consent for the search, his actions and nonverbal communication supplied implied consent

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**FACTS:** Two Deputy Sheriffs were investigating the theft of an automobile when they located the vehicle near a motel. They learned that the female suspect was inside one of the rooms. They knocked on the door and identified themselves as police officers. A male subject (Smith) answered the door, and the deputies asked if the female was in the room. In response, Smith opened the door further, stepped aside, and pointed to a woman on one of the beds. The deputies made entry and arrested the female subject. A search of her person subsequent to arrest revealed drugs and paraphernalia. The deputies also noticed additional paraphernalia in close proximity to where Smith was sitting. They read Smith his *Miranda* rights and inquired as to additional illegal substances, at which time he admitted to having marijuana and cocaine in the room. Smith was also arrested. Prior to trial Smith filed a motion to suppress the drug evidence, alleging that the entry and search of the motel room was conducted without a warrant, and that “implied consent” to search could not be inferred from his behavior at the door. The trial court agreed with Smith and suppressed the evidence, ruling that implied consent is not sufficient to overcome the warrant requirement. The state appealed.

**RULING:** The Second District Court of Appeal reversed the trial court, holding that consent to a search can be implied from actions and nonverbal communication, and that Smith’s actions reasonably implied such consent. As such, the evidence was admissible against Smith.

**DISCUSSION:** The appellate court began its analysis by restating the rule that warrantless searches are generally prohibited by the Fourth Amendment. However, voluntary consent to a search is an exception to this rule. *Thompson v. State*, 170 So.3d 856 (Fla. 2d DCA 2015.) The court further noted that determining whether consent was voluntarily in a given case is fact specific, and should be determined by looking at the totality of the circumstances. Consent does not always have to be expressly granted, but can take “the form of words, gesture, or conduct.” *State v. Smith*, 172 So.3d 993 (Fla. 1<sup>st</sup> DCA 2015.) In this case, the defendant opened his motel room door to individuals who had identified themselves as law enforcement, confirmed that the female auto theft suspect was inside, and pointed at her. The court determined that it was thus reasonable for the deputies to believe that Smith had invited them in, and no further “express” consent was required.

**COMMENTS:** Note that this case does not hold that a subject’s silence constitutes consent. It was the defendant’s affirmative actions, movements, and nonverbal communication which supported a finding that consent for entry was implied under the facts of this case.

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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.