

2012 IL App. (2d) 110326-U
No. 2-11-0326
Order filed August 15, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-244
)	
COTY M. ORTIZ,)	Honorable
)	Gary V. Pumilia,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in denying defendant's motion to suppress evidence found during a search of his home where consent to search was granted by individual who had apparent authority to do so.

¶ 1

I. INTRODUCTION

¶ 2 Defendant, Coty M. Ortiz, was indicted on charges of intent to deliver more than 30 grams but less than 500 grams of cannabis in violation of section 5(d) of the Cannabis Control Act (Act) (720 ILCS 550/5(d) (West 2008)). Defendant moved to quash a search warrant and suppress the physical evidence discovered during a search of his home. This motion was denied. On April 1,

2011, following a bench trial on stipulated evidence in the Circuit Court of Winnebago County, defendant was convicted of violating section 5(d) of the Act. Defendant now appeals, arguing that his motion to quash and suppress should have been granted. For the reasons that follow, we affirm the decision of the circuit court.

¶ 3

II. BACKGROUND

¶ 4 The following evidence was adduced at the hearing on defendant's motion to quash and suppress. Keara Simpson testified first for the defense. She stated that she had previously been defendant's girlfriend and had known defendant since high school. She had lived with defendant at his residence, 216½ Daisyfield Road, in Rockford, from approximately January or February 2008 until August or September 2008. At that time she moved back in with her mother, who lived about six blocks away from defendant. Defendant and Simpson remained friends after Simpson moved out, but she claimed she did not keep a key to his house and could not enter without defendant's permission. Simpson also remained friends with defendant's family.

¶ 5 Simpson testified that on January 22, 2009, she received a call from defendant's sister, Crystal Ortiz. Crystal was not living with defendant at that time, but was storing some of her belongings at defendant's house. The house had been experiencing electrical problems, and Crystal wanted Simpson to make sure that the electricity was working properly. She asked Simpson to check the refrigerator to see if it was on. Simpson obtained a key from Crystal and went to defendant's home around 6:30 p.m.

¶ 6 According to Simpson, she was preparing to leave defendant's home around 7 p.m. As she opened the front door, she saw two police officers standing outside the door. The officers told her that they had been chasing a man for a few blocks and saw him enter defendant's house. Simpson

told the officers that she had not seen anyone else enter the home and that she was the only person inside. The officers asked if they could enter the house and search for the suspect. Simpson testified that she told the officers that she did not have the authority to allow them to come into the house because she did not live there. The officers replied that since they saw the suspect enter the house, they had probable cause to search the house, regardless of whether Simpson consented. Simpson claimed that she neither invited the officers into defendant's home, nor consented in any way to their search of the house. She never received permission from defendant or his sister to allow anyone else inside the home.

¶ 7 Simpson stated that the police told her to sit at the kitchen table while they searched the home for the suspect. The officers searched the entire premises, including the basement, while Simpson waited in the kitchen. She advised the officers that she did not have authority to permit them to search the home since she did not live there. A supervisor then arrived and had a discussion with the officers. About an hour later, the officers took Simpson to the Winnebago County Justice Center. She claimed that the officers initially told her that she would only have to sign a form and then could go home, but they then held her for questioning. Simpson was eventually charged with three offenses based on her presence in defendant's home and the contraband that was present there.

¶ 8 The defense then called defendant to testify. Defendant stated that he had dated Simpson previously, and the two had lived together at 216½ Daisyfield Road from February 2008 to September 2008. He rented this house from John Conforti, who lived in the adjacent house at 216 Daisyfield Road with his daughter Melissa. When Simpson moved out of defendant's home in September 2008, she gave her key back to defendant. Defendant testified that on January 22, 2009, Simpson did not have a key to defendant's house. She did not have permission to enter his house,

come and go at will, or invite other people into the house. The only other person who possessed a key to defendant's home was his sister Crystal. She did not live in the house, but stored some of her belongings there.

¶ 9 The defense rested, and the State called its first witness, Joseph Broullard. Broullard testified that on January 22, 2009, he was a deputy with the Winnebago County Sheriff's Department. On that day he was driving in a marked squad car with Deputy Sean Hughes when they received a call to assist Deputy Marino. Marino had stopped a vehicle in unincorporated Rockford, and the individual in the vehicle exited the car and fled on foot. Marino provided a description of the suspect, and Broullard and Hughes drove around the area looking for him. During their search, they were stopped by a civilian driving in his car. He informed the officers that a black male who matched the description the officers had received from Marino had attempted to open his car door as he was backing out of his driveway. The suspect asked for a ride, but the civilian refused. He then showed the officers where the suspect had run and pointed to the suspect's footprints in the snow.

¶ 10 Broullard testified that he exited his car and, along with Hughes, followed the footprints to 216½ Daisyfield, where the footprints ended. Broullard went to 216 Daisyfield, an adjacent dwelling, where he spoke with Melissa Conforti. She told Broullard that she lived at 216 Daisyfield with her father. Broullard asked her who lived at 216½ Daisyfield, and she said that defendant and Simpson lived at that residence. Broullard testified that he returned to 216½ Daisyfield, where he met Hughes, who had remained at the residence. They knocked on the front door, and a skinny black woman wearing jeans and wrapped in a blanket opened the door. The woman identified herself as Keara Simpson. The officers asked her if she was alone, and she replied that she did not think

anyone else was in the home. She told them that she had been lying on a bed talking on the phone when the officers knocked on the door. The officers explained to her that they had been following footprints that led to the house and they were concerned that somebody may have entered through the basement. Broullard testified that the officers never said they had probable cause to enter the residence.

¶ 11 Broullard testified that Hughes asked if the officers could check the basement for the suspect. Simpson consented. Broullard searched the basement while Hughes waited at the top of the stairs with Simpson. The smell of raw cannabis was strong throughout the entire house. When he was searching the basement, he found a small room with numerous marijuana plants and growing lights. Hughes and Simpson then went down to the basement, and Simpson said that she did not want the officers to search the basement anymore. The officers then went upstairs and conducted a protective sweep of the rest of the house. During this sweep they noticed numerous narcotics and narcotics paraphernalia, as well as a firearm in a closet. Based on what the officers observed during this search, they contacted their supervisor, Sergeant Heidenreich. They then contacted the Metro Narcotics Unit, which began the process of obtaining a search warrant for 216½ Daisyfield. They asked Simpson to sign a form granting consent to search the premises, but she refused. She said that she did not live at the residence, and therefore did not have authority to consent to a search. The officers kept her at the house for about an hour and a half, and then Hughes transported her to the Winnebago County Justice Center.

¶ 12 Broullard testified that after he had searched the house, Simpson told the officers that she did not live there and was only in the house to make sure that the refrigerator was working.

However, Simpson said that she still received mail at the house, and Broullard saw numerous pictures of Simpson and defendant together during his search of the premises.

¶ 13 Sean Hughes testified next for the State. He stated that on January 22, 2009, he was a deputy with the Winnebago County Sherriff's Department. On that day he was driving in a marked squad car with Broullard when he received a call to assist Marino. Marino had conducted a routine traffic stop, and someone inside the car had fled on foot. Hughes was told that the suspect was a young black male with braids wearing red clothes. Hughes and Broullard drove around the area searching for him. During that search, the officers were approached by a man who said that, as he was backing out of his driveway, a black male, dressed in black and wearing braids, tried to enter the car. The man refused to let the suspect enter, and the suspect ran west through some backyards. The man pointed to some footprints in the snow that he believed belonged to the suspect. Broullard and Hughes exited their car and followed those footprints. The officers went on foot through some backyards and eventually discovered that the footprints ended at the south side door of 216½ Daisyfield. Hughes and Broullard looked for the suspect in the area around the house, but found nothing. Hughes knocked on the south door, where the footprints ended, but received no answer.

¶ 14 Broullard then went to 216 Daisyfield, the adjacent dwelling, and spoke to Melissa Conforti. Conforti stated that she lived there. Her father owned 216½ Daisyfield and rented it out. Broullard and Hughes then went to the west door of 216½ Daisyfield, which was the front door, and knocked on it. A few minutes later a woman wrapped in a blanket answered the door. She identified herself as Simpson. Hughes testified that as soon as the door opened, he could smell raw cannabis. He explained to Simpson that he had been searching for someone who had run from a traffic stop, and the suspect's footprints led to the south door of the house. Simpson told Hughes that she did not

think anyone else was in the house. She let the officers enter the house, but stopped them and asked if they needed a search warrant. Hughes explained to her that no warrant was necessary if she was consenting to the search. Hughes testified that Simpson then said: “[T]hat’s fine. Go ahead and check.”

¶ 15 Broullard entered the basement first. However, soon after he reached the bottom of the basement stairs, Simpson ran down the stairs and told him to leave the basement. The officers left the basement and searched the rest of the house, while Simpson sat at the kitchen table. Simpson never stopped them from conducting this search. Hughes testified that during his search he saw numerous photos on the entertainment center of defendant and Simpson.

¶ 16 After the officers finished the search, Simpson told the officers that she did not live in the house and had only been there to make sure the refrigerator had not stopped running due to an electrical problem. Deputy Pearson, who had recently arrived, asked Simpson to sign a consent form giving the officers permission to search the entire house. Simpson refused to sign the form. Hughes took Simpson to the Winnebago County Justice Center for questioning.

¶ 17 The State then rested. The court denied defendant’s motion. The court found that Simpson had both apparent and actual authority to consent to defendant’s home being searched and that she, in fact, had consented to the officers’ search. The court also found that even in the absence of this consent, exigent circumstances existed that permitted the officers to search defendant’s home. Subsequently, defendant was convicted of knowingly possessing with the intent to deliver more than 30 grams but less than 500 grams of cannabis. This appeal followed.

¶ 18

III. ANALYSIS

¶ 19 Defendant argues that we should reverse the trial court’s decision denying his motion to quash the search warrant and suppress the evidence seized at his home. Defendant argues that the search of his house was impermissible because Simpson lacked the authority to consent to the officers’ search of defendant’s home. He further asserts that even if Simpson did possess this authority, she never consented to the officers’ search. Defendant also claims that exigent circumstances did not exist that would have permitted the officers to search his house; however, if we determine that the search was conducted pursuant to Simpson’s consent, we need not address this issue.

¶ 20 We first consider whether Simpson had the authority to consent to the officers’ search of defendant’s home. This is a factual question, and we will not disturb the trial court’s factual findings unless they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001).

¶ 21 The United States and Illinois Constitutions protect individuals from unreasonable searches. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; see also *People v. Caballes*, 221 Ill. 2d 282, 309 (2006) (holding that the search and seizure provision of the Illinois Constitution is interpreted in “limited lockstep” with the fourth amendment to the United States Constitution, which means, Illinois courts “will ‘look first to the federal constitution, and only if federal law provides no relief turn to the state constitution to determine whether a specific criterion—for example, unique state history or state experience—justifies departure from federal precedent.’ ”

¶ 22 Searches of a home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980). However, if the police obtain consent to search from either the person whose property is being searched, or a third party who shares “common authority” over the premises,

then they may conduct a search without a warrant. *United States v. Matlock*, 415 U.S. 164, 171 (1974). This search is limited to the areas in which the officers have received consent, and it may not extend beyond those areas. *Walter v. United States*, 447 U.S. 649, 656 (1980). To determine whether consent has been given, the trial court must evaluate whether an objectively reasonable person would have understood permission for a search to have been granted. See *Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (“The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of ‘objective’ reasonableness-what would the typical reasonable person have understood by the exchange between the officer and the suspect?”). The State must prove that the individual consenting to the search had common authority over the premises. See *Matlock*, 415 U.S. at 177.

¶ 23 Common authority exists in two forms: actual authority and apparent authority. *People v. Burton*, 409 Ill. App. 3d 321, 328 (2011). Actual authority may be express, in which the principal authorizes the agent to perform a specific act. *Progress Printing Corp. v. Jane Byrne Political Committee*, 235 Ill. App. 3d 292, 307 (1992). It may also be implied, in which the agent, although never expressly receiving permission to perform an act, nonetheless has authority to do so in order to carry out his express authority. *Id.* Apparent authority, on the other hand, is the authority which, in view of the principal’s words or conduct, a reasonably prudent person would expect the agent to possess. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 523 (1993).

¶ 24 Under the apparent authority doctrine, when the police receive consent from a third party whom they reasonably believe possesses common authority, a warrantless search does not offend the fourth amendment. *Illinois v. Rodriguez*, 497 U.S. 177, 187-88 (1990). This is true even when the third party does not actually possess common authority. *Id.* To determine if apparent authority

exists, the trial court must evaluate whether the information known to the police at the time of their search would “warrant a man of reasonable caution in the belief” that the consenting party possessed authority over the premises. *Rodriguez*, 497 U.S. at 188. In making this assessment, the trial court must examine the information available to the officer at the time consent was given. *Rodriguez*, 497 U.S. at 188. The officer need not always be correct that the consenting party has authority, so long as the belief that authority exists is reasonable. *Rodriguez*, 497 U.S. at 185. The State bears the burden of proving that the officers were objectively reasonable in their belief that the consenting party had the authority to consent. *People v. James*, 163 Ill. 2d 302, 317 (1994). Hence, in this case, we must determine whether Hughes and Broullard were reasonable in their belief that Simpson had authority to consent to a search of defendant’s house. See *Rodriguez*, 497 U.S. at 188. We find that they were.

¶ 25 First, when the officers interviewed defendant’s neighbor, Melissa Conforti, she told them that Simpson lived in defendant’s house with him. She also told the officers that her father owned defendant’s house and rented it to him. Second, when Simpson answered the door, she was wearing a blanket and said she had been lying on the bed talking on the telephone. A reasonable person could conclude from this behavior that she was a resident, and not a guest, of the home. See *United States v. Gates*, 745 F. Supp. 2d 936, 946 (N.D. Cal. 2010) (finding that where a probationer being seen minimally dressed inside a house was evidence that he was a resident, and not guest, of the house). Furthermore, guests are usually not in a house alone, without any of the residents present. Third, during the officers’ search of the house they saw a number of pictures of defendant and Simpson together. They assumed, reasonably, that defendant and Simpson were a couple living together in the house. See *Gray v. State*, No. 05-92-00456-CR (Tex. App. Feb. 1, 1993) (not designated for

publication) (where photograph in defendant's home of him and a woman together was evidence that they were a couple). Fourth, Simpson behaved as though she had the authority to consent to a search of defendant's home. According to Hughes's testimony, she told the officers to "[g]o ahead and check" the house. She then limited the scope of the search by telling the officers to leave the basement, and the officers complied. Based on these facts, we find that it was not against the manifest weight of the evidence for the trial court to find that the officers satisfied the reasonable-police-officer standard set out in *Rodriguez*. In short, a reasonable police officer could have concluded that Simpson had authority to consent to a search of defendant's home.

¶ 26 We now turn to the issue of whether Simpson consented to a search of defendant's home. The State must prove by a preponderance of the evidence that the consent was voluntarily given. *People v. Smith*, 124 Ill. App. 3d 914, 919 (1984). Whether consent has been granted is determined by whether a reasonable person would conclude that the officers in fact received consent. See *Jimeno*, 500 U.S. at 251 (1991). This determination is made based on the individual's actions, words, or behavior (*Burton*, 409 Ill. App. 3d at 328) in light of the totality of the circumstances (*Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)). This inquiry presents a mixed question of law and fact, so we apply the manifest-weight standard to issues of historical fact and conduct *de novo* review regarding the ultimate issue of whether the search was constitutional. *People v. Prinzig*, 389 Ill. App. 3d 923, 932 (2009).

¶ 27 Here, we find ample evidence that Simpson consented to the officers' search of the house. First, Simpson answered the door when the officers knocked and allowed them to enter the home. Since the officers did not have a warrant, she could have refused to allow them to enter. See *Kentucky v. King*, 131 S. Ct. 1849, 1862 (2011) (holding that an individual has a right to refuse to

let officers into a house). However, letting the officers enter the house and answering their questions is evidence that she consented to the search. See *People v. Gross*, 166 Ill. App. 3d 413, 423-24 (1988). Second, Simpson verbally consented to the officers' search of the house. After she let Hughes into the home, she asked if the officers needed a warrant to conduct the search. Hughes responded that they did not need one if she consented. She answered: "[T]hat's fine. Go ahead and check." Third, she narrowed the scope of the officers' search by telling them to leave the basement, but did not require them to leave the house altogether. Thus, there was ample evidence that Simpson consented to the officers' search of defendant's home.

¶ 28 We find further support for our holding in *Gross*, 166 Ill. App. 3d at 423. In that case, the police knocked on the defendant's door and the defendant answered. They asked him if anyone had run inside his apartment. The defendant answered that no one else was home. He then left the door open, walked to his kitchen table, and sat down. The police followed him into his apartment and conducted a search, and the defendant at no point objected to the search. The defendant later claimed that he never consented to the officers' search of his home. The court rejected this argument, holding that the defendant's conduct manifested consent to the officers' search of his house. *Id.* at 424.

¶ 29 Similarly, in our case, the police knocked on defendant's door and Simpson answered. The police asked her if anyone had run inside the home, and she replied that she was alone in the house. Like the defendant in *Gross*, she left the door open and told the officers they could search the house. She then sat at the kitchen table while the officers conducted the search. Other than objecting to the search of the basement, Simpson did not interfere with the search. Therefore, like *Gross*, we find that Simpson's conduct manifested consent for the officers to search defendant's house.

¶ 30 We recognize that Simpson provided testimony that conveyed a different version of the facts than those we used to support our analysis. For example, Simpson claimed that she did not come to the door wrapped in a blanket, but rather dressed and ready to leave the house. She also claimed that the officers told her that they had probable cause to search defendant's home and that they were going to conduct a search regardless of whether she consented. However, Simpson's testimony was rejected by the trial court. Instead, the trial court accepted the testimony of Hughes and Broullard. Their testimony formed the basis of the trial court's decision to deny defendant's motion to suppress the evidence. Generally, we leave it to the trial court to judge the credibility of the witnesses, weigh the evidence, and resolve conflicts in the evidence. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). We must accept the trial court's factual findings as long as they are not against the manifest weight of the evidence. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). A finding is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly evident. *In re Joshua S.*, 2012 IL App (2d)120197, ¶ 44. Such is not the case here.

¶ 31 Finally, defendant argues that under the plain view doctrine, the officers' seizure of evidence in defendant's home was impermissible. The plain view doctrine permits officers to seize incriminating evidence that is in plain view, even if they do not have a search warrant. *People v. Humphrey*, 361 Ill. App. 3d 947, 950 (2005). Here, Hughes and Broullard did not seize any evidence during their initial search of defendant's home. Rather, before seizing any evidence, the police obtained a search warrant. Therefore, the plain view doctrine does not apply. *People v. Rucker*, 294 Ill. App. 3d 218, 223 (1998) (holding that the plain view doctrine only applies when police seize evidence without a search warrant).

¶ 32 The evidence established that Simpson consented to the search, and she had apparent authority to do so. Accordingly, the officers' search of defendant's house without a warrant was permissible.

¶ 33 IV. CONCLUSION

¶ 34 In light of the foregoing, we affirm the judgment of the Circuit Court of Winnebago County in denying defendant's motion to suppress the evidence discovered during the search of his home.

¶ 35 Affirmed.