

No. 1-11-1491

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 6540
)	
EDDIE MORGAN,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction of armed habitual criminal affirmed over his contention that the trial court erred in denying his motion to suppress evidence challenging the authority of his sister to consent to a search of his bedroom; armed habitual criminal conviction did not violate prohibition against *ex post facto* laws.
- ¶ 2 Following a bench trial, defendant Eddie Morgan was found guilty of one count of armed habitual criminal and three counts of unlawful use of a weapon by a felon. The court merged the weapons convictions into the armed habitual criminal conviction and sentenced defendant to nine years' imprisonment. On appeal, defendant contends that his armed habitual criminal conviction

should be reversed because the trial court erred in denying his motion to suppress evidence, and that the armed habitual criminal statute is unconstitutional as applied to him because his prior, qualifying convictions occurred before the enactment of the statute.

¶ 3 Defendant was arrested on March 14, 2008, after a fight with his sister, Shabronda, which prompted her to call the police and resulted in the recovery of two handguns, ammunition, and heroin from his basement bedroom. At the suppression hearing, defendant testified that he lived alone in the basement apartment of a multi-unit residential building at 3837 West Lexington Street in Chicago, Illinois, and that his girlfriend occasionally stayed there. He was outside the residence when police arrived on the scene and took him into custody. At that time, he did not know whether Shabronda had given police consent to enter the residence. On cross-examination, defendant acknowledged that Shabronda also lived at the Lexington Street address, though not in the basement.

¶ 4 Sergeant Jeff Truhlar testified that he responded to a report of shots fired at 3837 West Lexington Street, a location to which he had been before, and described as a three-flat building with two main apartments and a basement apartment. Upon his arrival there, Truhlar saw Shabronda, who appeared distressed, standing on the front porch and pointing at defendant, who was getting into a parked car. Truhlar detained defendant when Shabronda cried out, "that's him, he's got a gun on him or in the house," but he did not find a gun on defendant's person.

¶ 5 Truhlar further testified that Shabronda escorted him inside the building and downstairs into the basement where she said, "that's my brother's bedroom." He searched the bedroom for weapons and recovered two handguns and ammunition from inside a shoebox under the bed and suspect heroin from inside a dresser drawer. He also found mail with defendant's name and the Lexington Street address in that dresser drawer. Truhlar then told defendant that he was under arrest.

¶ 6 The trial court denied the motion to suppress, finding that the police officers reasonably relied upon the apparent authority of Shabronda to consent to their search of defendant's bedroom. The trial court also denied defendant's motion to reconsider, rejecting his argument that the police officers could not reasonably rely upon Shabronda's apparent authority to search his bedroom because they knew it was a three-flat building and Shabronda said it was her brother's bedroom.

¶ 7 At trial, Sergeant Truhlar provided testimony similar to that given at the suppression hearing and added, *inter alia*, that he continued to search defendant's open and unlocked bedroom after recovering two revolvers and ammunition from the shoebox because there was also a magazine clip for a semiautomatic handgun inside the shoebox. Truhlar asked defendant about the orphaned magazine clip, but defendant was unresponsive to his query.

¶ 8 Chicago police officer Anthony Babicz testified that following the search of the basement bedroom, he advised defendant, who was seated in a squad car, of his *Miranda* rights. Defendant agreed to speak with him and Sergeant Truhlar and told them that the contents of the shoebox belonged to him, but he denied ownership of the heroin inside the dresser. Defendant was then transported to the police station, where a custodial search of his person revealed \$4,496.

¶ 9 The parties entered into various stipulations regarding the mail addressed to defendant and the chain of custody and forensic analysis of the heroin. After the State submitted certified copies of defendant's prior convictions for manufacture and delivery of a controlled substance in 2001 and rested its case-in-chief, defendant made a motion for a directed finding, which the trial court denied.

¶ 10 Defendant then presented the testimony of his 31-year-old sister, Shabronda. According to Shabronda, she lived in Des Plaines, Illinois, at the time of the incident, and she had gone to the gym and then her mother's house on Lexington Street, where she fought with defendant over

his car keys. She explained that she and defendant had agreed to share his car while hers was in the repair shop, but she did not use his car to go to the gym. After the fight, she called police and told them that defendant had a gun, although he did not, because she knew they would respond more quickly to such a report. She denied telling Sergeant Truhlar that defendant had a gun or that defendant lived in the basement. She had no idea why the sergeant went into the basement bedroom, which was used for guests, though she admitted that defendant occasionally slept there. She added that defendant slept on the first floor couch the night before their fight, but that he was staying in the basement bedroom on the day of their fight.

¶ 11 Following closing arguments, the trial court found defendant guilty of one count of armed habitual criminal and three counts of unlawful use of a weapon by a felon. In doing so, the trial court credited the testimony of Sergeant Truhlar that Shabronda directed him to the basement bedroom and rejected that portion of Shabronda's testimony to the contrary.

¶ 12 In this court, defendant first contends that the trial court erred in upholding the warrantless search of his bedroom on the ground that the police reasonably relied on the apparent authority of Shabronda to consent to a search of his bedroom. He argues that the police could not rely on Shabronda's apparent authority because she told them the basement bedroom was her brother's and no exigent circumstances existed to excuse the absence of a warrant.

¶ 13 On a motion to suppress evidence, defendant bears the burden of showing that the search and seizure were unlawful. *People v. Janis*, 139 Ill. 2d 300, 308 (1990); 725 ILCS 5/114-12 (West 2010). When reviewing a trial court's ruling on a motion to suppress evidence, we accord great deference to the trial court's factual findings unless they are against the manifest weight of the evidence, but review *de novo* the legal question of whether suppression is warranted under those facts. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 14 The United States and Illinois Constitutions protect individuals from unreasonable searches, and searches without a warrant which are presumptively unreasonable. *People v. Burton*, 409 Ill. App. 3d 321, 328 (2011); *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). An exception to the warrant requirement exists where law enforcement officers obtain consent to search from either the person whose property is being searched, or a third party who possesses common authority over the premises. *Burton*, 409 Ill. App. 3d at 328; *United States v. Matlock*, 415 U.S. 164, 171 (1974). Consent is determined by whether a reasonable person would have understood, by another's words, acts, or conduct, that consent had been granted. *Burton*, 409 Ill. App. 3d at 328.

¶ 15 Common authority justifying third-party consent to search, may be either actual or apparent (*Burton*, 409 Ill. App. 3d at 328), and exists in situations involving family, marital, or cohabitant relationships (*People v. Bell*, 403 Ill. App. 3d 398, 406 (2010)). Actual common authority does not depend on the laws of property, *e.g.*, whether a third party has a lease or shares ownership of the property, but instead on the " 'mutual use of the property by [third parties] generally having joint access or control for most purposes.' " *Bell*, 403 Ill. App. 3d at 406 (*quoting Matlock*, 415 U.S. at 171 n.7). In the absence of actual common authority, a third party has "apparent" common authority where the facts known to the police officers were sufficient to enable them to reasonably believe that the third party's right to occupy and use the area, at minimum, approximated that of defendant. *People v. Keith M.*, 255 Ill. App. 3d 1071, 1084-85 (1993). However, this rule does not permit police officers to " 'proceed without inquiry in ambiguous circumstances or always accept at face value the consenting party's apparent assumption that he has authority to allow the contemplated search.' " *People v. James*, 163 Ill. 2d 302, 319 (1994) (*quoting* 3 W. LaFave, *Search & Seizure* § 8.3(g), at 266 (2d ed. 1987)). The

State has the burden of proving that the officers were objectively reasonable in their belief that the consenting person had the authority to consent. *Burton*, 409 Ill. App. 3d at 329.

¶ 16 Our review of the evidence supports the trial court's finding that the police reasonably relied on the apparent common authority of Shabronda to consent to a search of defendant's basement bedroom. *Burton*, 409 Ill. App. 3d at 333. The facts confronting Sergeant Truhlar at the time Shabronda escorted him inside the residence and downstairs to defendant's open and unlocked bedroom would cause a reasonable person to believe that Shabronda's right to occupy and use the area, at minimum, approximated that of defendant, to the extent that it can be said that defendant assumed the risk that Shabronda would consent to a search. *Keith M.*, 255 Ill. App. 3d at 1084. At the time Shabronda told Sergeant Truhlar, "that's my brother's bedroom," there was no evidence that defendant kept his bedroom locked, or specifically instructed his sister not to enter his bedroom in his absence and not to allow anyone into his bedroom. *People v. Brown*, 162 Ill. App. 3d 528, 540 (1987). Defendant's assertion that he did not forfeit his privacy interest in the shoebox inside his bedroom "merely because he shared a residence with other people," is irrelevant in a third-party consent case as here (*People v. Stacey*, 58 Ill. 2d 83, 89 (1974)), and provides no basis for disturbing the trial court's ruling on his motion to suppress.

¶ 17 In light of our determination that the trial court properly concluded that the police reasonably relied on the apparent authority of defendant's sister, we need not consider whether exigent circumstances also justified the warrantless entry and search of the premises. *People v. Long*, 208 Ill. App. 3d 627, 639 (2009).

¶ 18 Defendant next contends that the armed habitual criminal statute, prohibiting possession of a firearm by one who had at least two prior enumerated offenses, is unconstitutional as applied to him because his prior, qualifying convictions occurred before the enactment of the statute. He argues that his armed habitual criminal conviction violates the prohibition against *ex post facto*

laws because his prior convictions, which are an element of the offense, occurred before August 2, 2005, the effective date of the enactment of the armed habitual criminal statute. We disagree.

¶ 19 This court has consistently rejected the precise issue that defendant raises here. *People v. Coleman*, 409 Ill. App. 3d 869, 879 (2011) (and cases cited therein). Most recently, in *People v. Black*, 2012 IL App (1st) 110055, ¶¶ 18-19, we adhered to the well-reasoned decisions in *People v. Leonard*, 391 Ill. App. 3d 926 (2009), and *People v. Bailey*, 396 Ill. App. 3d 459 (2009), and held that the armed habitual criminal statute does not violate constitutional prohibitions against *ex post facto* legislation because the statute created a substantive offense that punishes a defendant for the new offense and not for his prior convictions; therefore, defendant had fair warning that, in combination with his prior convictions, he was committing the offense of armed habitual criminal when he possessed the firearm. We also reject defendant's assertion that these cases were decided in contravention of *People v. Dunigan*, 165 Ill. 2d 235 (1995), which upheld the constitutionality of the Habitual Criminal Act, a different statute, and find, consistent with our prior decisions, that defendant's *ex post facto* challenge fails. *Black*, 2012 IL App (1st) 110055, ¶ 22; *Coleman*, 409 Ill. App. 3d at 880.

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.