

NOTICE

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2014 IL App (4th) 130788-U

NO. 4-13-0788

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 25, 2014

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Vermilion County
MICHAEL CATTRON and CAREY FAULKNER,)	No. 13CF198
Defendants-Appellees.)	
)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err in granting defendants' motion to suppress where the resident of the premises did not have the common authority to consent to the search of defendants' belongings.

¶ 2 In April 2013, police conducted a search at 1631 Clyman Lane after obtaining consent to search from the resident, Jasmine Curry. Police began to search the home, identifying several laundry bags located in and around a closet in the living room, bags Curry indicated did not belong to her but rather belonged to defendants, Michael Cattron and Carey Faulkner, who were overnight guests in her home. Police subsequently searched the bags and recovered a handgun.

¶ 3 In April 2013, the State charged defendants by information with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)). In July 2013,

defendants filed a motion to suppress the gun, arguing Curry lacked the authority to consent to a search of defendants' belongings, a motion which the trial court granted the following month.

¶ 4 The State appeals, asserting the trial court erred in granting defendants' motion to suppress the gun because Curry had sufficient authority to consent to the search of defendants' belongings under the common-authority doctrine. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 On April 12, 2013, police were dispatched to the area of 1631 Clyman Lane after receiving a complaint that two men matching defendants' description threatened a subject, later identified as Charles Davis, with a gun. Upon arrival, officers observed two men matching Davis's description of the suspects enter a residence located at 1631 Clyman Lane. Police approached the residence and asked Curry, the resident of the premises, for consent to search her residence for weapons. Curry consented and, following a search, police recovered a gun in the back tank of the upstairs toilet. Officers then placed defendants under arrest and transported them to the public safety building. Two hours later, officers returned to the residence to question Curry and obtain consent to search her residence a second time. During the second search, officers recovered a handgun from a laundry bag allegedly belonging to defendant Cattron.

¶ 7 Later that month, the State charged defendants by information with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) based on the recovery of the two guns from Curry's residence. In July 2013, defendants filed a motion to suppress evidence. Specifically, defendants asked the court to suppress the gun that police recovered after the second search of Jasmine Curry's residence. In August 2013, the trial court held a hearing on the motion to suppress, where the court heard the following evidence.

¶ 8 Officer Timothy Kentner of the Danville police department testified he was present for the two searches conducted at 1631 Clyman Lane. Kentner stated that during the first search, he waited outside the residence while other officers searched inside. Officers recovered a gun from inside an upstairs toilet tank. Approximately two hours later, Kentner participated in the second search of the property. Prior to the second search, Curry told officers that she was the resident of the premises and defendants were visiting overnight because she had children in common with both men. Curry repeatedly told the officers that defendants did not reside with her. Kentner did not personally obtain Curry's written consent to search but said he was present when other officers obtained the consent. Although he saw the bags in the living room while officers obtained Curry's written consent to search the home, he did not ask for specific consent to search those bags.

¶ 9 Kentner began his search of the home in the living room. During his search, he came across bags of dirty laundry in the northwest corner of the room, next to a closet. One or two of the bags were located in a partially ajar closet, three or four were located just outside of the closet. Curry indicated those bags belonged to Cattron and Faulkner. Kentner and another officer began examining the bags, which were pulled mostly closed with a drawstring. Upon removing one of the bags from the closet, Kentner did not outwardly observe any illegal items. He then loosened the drawstring, reached into the bag, and pulled out several articles of clothing. When Kentner removed a pair of shorts from the bag and dropped them on the floor, he heard a "clunk," which he found to be consistent with "something metal and large."

¶ 10 Curry stated the shorts belonged to defendant Cattron. Kentner did not recall whether he asked her if she ever used the bag or if the bag belonged to her. He thought Curry told other investigators that defendants left their bags of dirty clothes for Curry to launder.

However, Kentner acknowledged nothing in his report indicated either defendant left the bags for Curry's use. Kentner searched the shorts and recovered a black semi-automatic handgun with no magazine and one round in the chamber. Kentner stated the bags outside of the closet yielded no illegal items, with the only item of note being an electronic scale.

¶ 11 Detective Dawn Hartshorn of the Danville police department testified she was present for the second search of Curry's residence. Prior to conducting the second search, Hartshorn met with Curry and obtained her written consent to search the residence for guns, drugs, and other weapons. When officers began searching, locating the laundry bags in the living room, Curry indicated those bags belonged to defendants. According to Curry, defendants did not reside in the home but were visiting in order to spend time with the children they shared with Curry. When Officer Kentner recovered a gun from a pair of shorts, Curry indicated the shorts belonged to Catron. Curry said the bags were not hers and she did not touch the bags. Hartshorn testified Curry never withdrew her consent as to those bags. Contrary to Kentner's testimony, Hartshorn did not recall Curry stating that defendants left the bags in the living room so she could launder their clothing, and the parties later stipulated Hartshorn's statement was consistent with the police reports and the videotaped interview of Curry that followed the search.

¶ 12 Following the presentation of evidence, the State asked the trial court for a directed finding denying defendants' motion to suppress, asserting defendants presented no evidence that the bags were in defendants' exclusive possession so as to overcome Curry's general consent to search the residence. Defendants argued the State had the burden to demonstrate Curry had authority to consent to the search of defendants' personal property. The court denied the State's motion for a directed finding, stating the officers could not presume Curry had common authority over defendants' belongings, which were in closed containers,

where they were visitors to the home. The court further found the officers were under an obligation "to conduct further inquiry as to the ambiguous nature of the closed containers." The court then shifted the burden of proof to the State for additional evidence. The court granted the State's request for a continuance over defendants' objection and bifurcated the hearing so the parties could consult with another officer who was present during the search of Curry's residence.

¶ 13 Later that month, the hearing reconvened, at which time the State elected to stand on the evidence previously presented. The trial court then reiterated its concerns from the previous hearing date, stating the officers had an obligation to determine Curry's authority over defendants' bags once Curry indicated the bags did not belong to her. Because the officers failed to determine Curry's authority to consent to the search of defendant's bags, the court (1) found the officers exceeded the scope of Curry's consent and (2) granted defendants' motion to suppress. On August 22, 2013, the State filed a certificate of substantial impairment.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, the State asserts the trial court erred in granting defendants' motion to suppress the gun because Curry had sufficient authority to consent to the search of defendants' belongings under the common-authority doctrine.

¶ 17 In reviewing the trial court's ruling on defendant's motion to suppress evidence, we apply a two-part standard of review. *People v. Harris*, 228 Ill. 2d 222, 230, 886 N.E.2d 947, 953 (2008). The court's findings of fact will not be overturned unless those findings are against the manifest weight of the evidence. *Id.*, 886 N.E.2d at 953-54. However, the court's ultimate decision regarding the motion to suppress is subject to *de novo* review. *Id.*, 886 N.E.2d at 954.

¶ 18 At a hearing on a motion to suppress evidence, the defendant has the initial burden of presenting *prima facie* evidence that the police conducted an unlawful search and seizure. *People v. Ortiz*, 317 Ill. App. 3d 212, 219-20, 738 N.E.2d 1011, 1018 (2000). A defendant makes a *prima facie* showing by demonstrating two components: (1) that police conducted a search and (2) the search was illegal. *People v. Berg*, 67 Ill. 2d 65, 68, 364 N.E.2d 880, 881 (1977). Once the defendant meets this threshold requirement, the burden shifts to the State to provide evidence justifying the search and seizure. *Ortiz*, 317 Ill. App. 3d at 220, 738 N.E.2d at 1018. Thus, we first examine whether the trial court erred in finding defendant presented *prima facie* evidence that police conducted an illegal search.

¶ 19 A. Whether Defendants Presented *Prima Facie*
Evidence of an Illegal Search

¶ 20 The State asserts defendants failed to present a *prima facie* case because defendants did not have a reasonable expectation of privacy in the laundry bags in Curry's living room. We disagree. Clearly, officers conducted a search of defendants' belongings, which satisfies the first component of a *prima facie* showing. The issue then is whether defendants satisfied the second component of the *prima facie* showing by demonstrating the search was illegal. An overnight guest has a long-recognized reasonable expectation of privacy in the residence in which he is spending the night. *Minnesota v. Olson*, 495 U.S. 91, 98 (1990). "The overnight guest seeks shelter in another's home precisely because it provides him privacy and a place where he and his possessions will not be disturbed." *People v. Wimbley*, 314 Ill. App. 3d 18, 23, 731 N.E.2d 290, 293 (2000). Accordingly, defendants, as overnight guests, had a reasonable expectation of privacy in Curry's home. Defendants' witnesses also offered undisputed testimony that Curry told police, prior to police searching the laundry bags, that the bags belonged to defendants, thus demonstrating defendants' possessory interest in their items.

risk that the other may permit the common area to be searched." *People v. Burton*, 409 Ill. App. 3d 321, 328, 947 N.E.2d 843, 851 (2011) (quoting *Matlock*, 415 U.S. at 171 n. 7). Thus, this concept is based "on the idea that mutual use of the property by persons having joint access or control for most purposes makes it reasonable to recognize that each may, in his or her own right, permit the inspection." *Burton*, 409 Ill. App. 3d at 328, 947 N.E.2d at 851. The common-authority doctrine is generally applied in situations involving cohabitating relationships. *People v. Bell*, 403 Ill. App. 3d 398, 406, 932 N.E.2d 625, 632 (2010). The State bears the burden of establishing common authority. *Id.*

¶ 24

1. *Actual Common Authority*

¶ 25 Common authority may be apparent or actual. *Burton*, 409 Ill. App. 3d at 328, 947 N.E.2d at 851. "Actual common authority is not dependent on the laws of property, such as whether a third party has a lease or shares ownership of the property." *Bell*, 403 Ill. App. 3d at 406, 932 N.E.2d at 632. Actual authority is defined as "[a]uthority that a principal intentionally confers on an agent or authority that the agent reasonably believes he or she has as a result of the agent's dealings with the principal." Black's Law Dictionary 142 (8th ed. 2004). In other words, to prove Curry had actual common authority, the State needed to demonstrate that defendants actually conferred upon Curry "joint access or control" over the bags of laundry. See *People v. Miller*, 346 Ill. App. 3d 972, 987, 806 N.E.2d 759, 771 (2004); see also *Matlock*, 415 U.S. at 171 (person consenting to the search must have common authority over "the premises or effects sought to be inspected").

¶ 26

Curry clearly possessed authority and control over her residence superior to that of defendants, who were mere overnight visitors. However, nothing in the record demonstrates defendants gave Curry joint access to or control over their *effects* within the home. When police

moved to search defendants' laundry bags, Curry immediately told them the bags belonged to defendants. The police then made little effort to ascertain whether defendants conferred upon Curry joint access to or control over those bags prior to conducting the search. Though Officer Kentner recalled overhearing Curry state defendants asked her to wash their laundry, that information was not contained within his police report. Moreover, Detective Hartshorn, who actually spoke with Curry in the residence and later participated in Curry's recorded interview, testified Curry made no mention of washing defendants' laundry. The trial court's decision to (1) place more weight upon the testimony of Hartshorn and (2) accept the parties' stipulation that the reports and recordings reflected that Curry did not make any statements about defendants authorizing her to access their bags was not against the manifest weight of the evidence. See *Harris*, 228 Ill. 2d at 230, 886 N.E.2d at 953-54 (The trial court's findings of fact in a suppression hearing will not be overturned unless they are against the manifest weight of the evidence). Thus, the State failed to establish Curry had actual common authority over defendants' laundry bags such that police could rely upon her consent as a basis to forego a warrant. We now examine whether Curry had the apparent common authority to consent to the search of defendants' belongings.

¶ 27 *2. Apparent Common Authority*

¶ 28 The State next asserts that even if Curry lacked the actual common authority to consent to a search of defendants' belongings, police reasonably believed she had the apparent common authority to consent to the search. Thus, the State argues the trial court erred in suppressing the gun as fruit of an illegal search. We disagree.

¶ 29 The premise of apparent common authority is that "a warrantless search does not violate the fourth amendment where the police receive consent from a third party whom the

police *reasonably believe* possesses common authority, but who, in fact, does not." (Emphasis in original.) *Burton*, 409 Ill. App. 3d at 328, 947 N.E.2d at 851. The reasonableness standard is viewed objectively and requires a reviewing court to look at whether the facts available to the officer at the time would cause a reasonable person to believe the consenting party possessed the authority to consent. *Id.* at 328-29, 947 N.E.2d at 851. "[H]owever, an officer may not blindly accept a person's consent to search, and a warrantless search without further inquiry is unlawful." *Id.* at 329, 947 N.E.2d at 851. We determine the reasonableness of the officer's actions at the time of the search. *Miller*, 346 Ill. App. 3d at 987, 806 N.E.2d at 771.

¶ 30 The State relies upon *Burton* to support its argument that police reasonably believed Curry had the apparent common authority to consent to the search of defendants' belongings. In *Burton*, police responded to a domestic-violence call at an apartment leased to the defendant's girlfriend. *Burton*, 409 Ill. App. 3d at 323, 947 N.E.2d at 846. The defendant, his girlfriend, and numerous other individuals shared the premises. *Id.* at 330, 947 N.E.2d at 852. Upon request, the defendant's girlfriend gave consent for police to search the home. *Id.* at 323, 947 N.E.2d at 847. At the time, the defendant had his own bedroom, but he and his girlfriend shared a closet space within the bedroom. *Id.* at 322, 947 N.E.2d at 846. The closet space contained two doors, one of which opened into the defendant's bedroom, the other of which accessed the apartment's only bathroom. *Id.* The closet also contained the residence's washing machine and dryer, used by all of the occupants of the residence. *Id.* While conducting the search, officers entered the closet and discovered a handgun in the pocket of the defendant's coat. *Id.* at 326, 947 N.E.2d at 849.

¶ 31 On appeal in *Burton*, the defendant asserted the leaseholder's consent to search the home did not extend to his private, closed container (*i.e.*, his coat pocket) or to an object to

which the leaseholder had no access. *Id.* at 330, 947 N.E.2d at 852. The *Burton* court concluded that "even if Garland lacked actual authority to permit the search of defendant's coat[,] *** the officers reasonably *believed* that Garland possessed authority to permit a search of the closet, including defendant's coat." (Emphasis in original.) *Id.* The court also emphasized that the defendant, who was present at the time of the search, did not object to or clearly refuse his consent to search. *Id.* at 334, 947 N.E.2d at 855. Rather, the defendant said he would not sign the written consent form "because the officers did not need his consent." *Id.* The court noted that the "[d]efendant's refusal to sign the *form* was not a clear refusal to consent to the *search*." (Emphasis in original.) *Id.*

¶ 32 Conversely, defendants rely upon *Miller* to support their contention that Curry did not possess apparent common authority to consent to the search of defendants' property. In *Miller*, an individual named Michael DeMong rented a home and permitted the defendant "to use the house," providing the defendant with a key. *Miller*, 346 Ill. App. 3d at 976, 806 N.E.2d at 762. DeMong eventually moved out but continued to pay rent and visit the home, and both he and the defendant continued to keep personal items within the home. *Id.* The home contained two storage cabinets, one of which had a padlock. *Id.* Both DeMong and the defendant stored items in the locked cabinet; however, only the defendant possessed the keys to the lock. *Id.*

¶ 33 At some point, DeMong contacted police and told them, a couple of months prior, he observed contraband in the storage cabinet. *Id.* at 976, 806 N.E.2d at 762-63. With DeMong's consent, police forcibly removed the padlock from the storage cabinet and seized a large quantity of cocaine from a zipped duffel bag. *Id.*, 806 N.E.2d at 763. Prior to police opening the duffel bag, DeMong advised police the bag did not belong to him but rather belonged to the defendant. *Id.* at 987, 806 N.E.2d at 771.

¶ 34 In a postconviction petition, the defendant asserted his counsel was ineffective for failing to challenge the search of his duffel bag. *Id.* at 978, 806 N.E.2d at 764. The State countered that a motion to suppress would have been unsuccessful because DeMong had actual and apparent common authority to consent to the search. *Id.* at 980, 806 N.E.2d at 766. The appellate court concluded DeMong did not have the authority to consent to the search, as he disavowed any possessory interest in the duffel bag. *Id.* at 987, 806 N.E.2d at 771. The court noted, "[a]s soon as DeMong informed police that the bag was not his, it was incumbent upon the officers to make further inquiry into whether DeMong had 'common authority' over the duffel bag. The officers did not make this inquiry. The officers did not ask DeMong whether he stored any possessions in the duffel bag or made use of the duffel bag for any purpose." *Id.* at 987-88, 806 N.E.2d at 771.

¶ 35 After an in-depth reading of both cases relied upon by the parties, we find defendants' reliance on *Miller* more persuasive than the State's reliance on *Burton*. The difficulty with the State's reliance on *Burton* is twofold. First, *Burton*'s girlfriend was a cohabitant rather than an overnight guest such that the common-authority doctrine was clearly applicable. In this case, we would be required to extend the common-authority doctrine far beyond its current reaches of cohabitating relationships and create a blanket rule that residents have joint access to or control over a guest's personal belongings. Second, in *Burton*, the defendant was present for and acquiesced to the search, whereas defendants in this case were neither present for nor acquiesced to the search. These distinguishing facts limit the applicability of *Burton* to the present case.

¶ 36 *Miller*, on the other hand, is far more analogous to the present case. Here, like *Miller*, the resident of the premises consented to police searching a bag belonging to another

individual. In both instances, the residents explicitly told police the bags did not belong to them but rather belonged to someone else. Additionally, in both *Miller* and the present case, police did not conduct any further inquiry to determine the extent to which the residents had the authority to consent to the search. Though the State argues that *Miller* is distinguishable because there, the duffel bag was zipped closed, while in this case the bag was simply pulled partially closed by a drawstring, we find that argument unpersuasive. "For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion, so also may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attaché case." *United States v. Ross*, 456 U.S. 798, 822 (1982). Here, according to police, the laundry bags were not pulled entirely closed; however, the bags were secured to the extent that the items contained within the bag could not fall out. This is sufficient to secure defendants' right to conceal their possessions from official inspection.

¶ 37 As the *Miller* court stated, "[a]s soon as DeMong informed police that the bag was not his, it was incumbent upon the officers to make further inquiry into whether DeMong had 'common authority' over the duffel bag." *Miller*, 346 Ill. App. 3d at 987, 806 N.E.2d at 771. Just as in *Miller*, the State failed to provide evidence that police conducted any meaningful inquiry into Curry's authority to consent to a search of defendants' belongings. Absent such an inquiry, the police could not have formed a reasonable belief as to Curry's apparent common authority to consent to a search of defendants' bags.

