2016 IL App (2d) 150792-U
No. 2-15-0792
Order filed December 19, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DASHON L. WARD, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 14-CF-2538 Honorable Ronald J. White, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erroneously granted defendant's motion to quash arrest and suppress evidence, as its ruling on the issue of apparent authority was against the manifest weight of the evidence. We therefore reversed the trial court's ruling and remanded the cause for further proceedings. We declined to issue any rulings on the issues of scope of consent or plain view.

¶ 2 Defendant, Dashon L. Ward, was indicted in the circuit court of Winnebago County on seven counts: two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)); one count of being an armed habitual criminal (720 ILCS 5/24-1.1 (West 2014)); one count of possession of a firearm without a valid firearm owner's identification card (430 ILCS

65/2(a)(1) (West 2014)); one count of possession of between 15 and 100 grams of a controlled substance (720 ILCS 570/402(a)(1)(A) West 2014)); one count of possession with the intent to deliver between 15 and 100 grams of a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2014)); and one count of possession with the intent to deliver between 1 and 15 grams of a controlled substance within 1,000 feet of a church (720 ILCS 570/401(c)(1), 407(b)(1) (West 2014)). Following an evidentiary hearing, the trial court granted defendant's motion to quash arrest and suppress evidence. The State now appeals. We reverse the trial court's ruling and remand the cause for further proceedings consistent with this disposition.

¶ 3 I. BACKGROUND

¶ 4 Three Rockford police officers testified during the hearing on defendant's motion to quash arrest and suppress evidence: Jesse Washington, Sean Welsh and Mark Castronovo. No other witnesses were called. It was generally established that, on September 9, 2014, at about 1:40 a.m., the Rockford police department received a 911 call reporting gunshots in the backyard of a residence at 1721 8th Street in Rockford. The residence consisted of one upstairs apartment and one downstairs apartment. The 911 caller lived in the upstairs apartment. Several Rockford police officers were dispatched to the scene. When they arrived, defendant and Bernard Barnes were seen exiting the building. Barnes said he lived in the downstairs apartment with his girlfriend, Shakelia Anderson. Both Barnes and defendant denied that defendant lived in the downstairs apartment. The officers eventually entered the downstairs apartment and discovered two handguns, ammunition, heroin, plastic bags, and a digital scale. The officers also recovered items which led them to believe that defendant lived in the downstairs apartment. When later confronted with the contraband, Barnes admitted that defendant was paying rent and living in one of the two bedrooms in the downstairs apartment.

¶ 5 Due to the fact-specific nature of the issues in this appeal, we will now summarize the pertinent details from the testimony given by officers Washington, Welsh and Castronovo.

¶ 6 Officer Washington testified that he questioned Barnes upon arriving at the scene. Barnes said he lived in the downstairs apartment with Anderson (his girlfriend). He denied that defendant lived in the apartment. Barnes explained that Anderson was intoxicated and asleep inside the apartment. He insisted that Anderson had not been shot and she was not in distress. Washington was nonetheless concerned for Anderson's welfare because of the report of gunshots. However, he wanted to obtain Barnes' consent before entering the apartment, so he asked Barnes for permission to go inside to check on Anderson. Barnes initially refused, maintaining that Anderson was safe and not in distress. According to Washington, Barnes eventually agreed to let the officers "go in to check on [Anderson]" because he wanted to "assist with the investigation."

¶ 7 Washington then asked Barnes to sign a written "consent to search" form. He did not ask whether Barnes had the ability to read. Barnes signed the form, which the trial court admitted into evidence. The form states that Barnes consented to "complete search" of the downstairs apartment. The form did not refer to Anderson or otherwise limit the scope of the search. Washington was asked why he requested that Barnes sign the form even though Barnes had already verbally consented to the officers' entry into the apartment. Washington responded, "[w]e were entering to his home, I guess—yeah, his home. And at the point in time our initial concern was for Ms. Anderson, but also, you know, whether or not there was any evidence inside."

¶ 8 Washington described the downstairs apartment as having an east bedroom, a west bedroom, a living room, a kitchen, and a bathroom. He testified that the officers split up after

they entered the apartment. Washington entered the east bedroom first. He saw various items of men's clothing during his "quick sweep" of the room, but he did not see Anderson. He could not recall whether he saw any type of contraband in plain view, but he admitted that he made no such indications in his report. After leaving the east bedroom, Washington proceeded to the west bedroom and therein found Anderson. She appeared to be intoxicated. Other officers were in other parts of the apartment at that time, including the east bedroom. The trial court interjected at one point during Washington's testimony and the following exchange took place:

> "THE COURT: For clarification, Officer Washington, when you spoke with Mr. Barnes before you received the consent, what did he say anything about [defendant] living there? Did he say anything about whether or not [defendant] lived there?
>
> WASHINGTON: Yeah. [Barnes] said that [defendant] didn't live there at all. [Barnes] said the only person that lived there was Shakelia Anderson and himself, [defendant] was just visiting at the time, and that they were going out to go to the store to get some [sic] I think a drink or something like that.
>
> THE COURT: And that was for clarification because the officer wasn't clear. So it was my understanding through this officer that he, Mr. Barnes, said that [defendant] didn't live there."

¶ 9 Officer Welsh testified that he questioned defendant upon arriving at the scene. Defendant denied that he lived at the residence. Welsh checked defendant's status and learned that he was on parole. Defendant's registered address was elsewhere in Rockford, at 1603 10th Street. As Welsh spoke with defendant, it was announced over Welsh's radio that officers had found several spent shell casings outside the residence. Welsh testified that, upon hearing this information, defendant's demeanor suddenly changed from cooperative to argumentative.

Defendant began pacing nervously as though he was looking for a place to run. Defendant's demeanor, combined with the report of gunshots and the spent shell casings, led Welsh to handcuff defendant and place him in the back of his squad car. Welsh admitted that, at that time, he had no probable cause to believe that defendant had committed a crime.

¶ 10 After placing defendant in his squad car, Welsh went to the upstairs apartment and spoke with the 911 caller. The caller told Welsh that, at around 8 p.m., she had seen Barnes and Anderson arguing outside of the residence. She had also heard them arguing inside the downstairs apartment. The caller described the argument as "heated." While Barnes and Anderson were inside the downstairs apartment, the caller could hear banging and thumping as if someone was being shoved or pushed, or things were being thrown. Welsh testified that, because of the reports of shots fired, the discovery of shell casings, and the caller's description of the argument, the officers entered the downstairs apartment. Welsh denied that the sole purpose of the officers' entry into the apartment was to conduct a welfare check on Anderson, maintaining that there "may have been some other factors." Welsh recalled that, once inside the apartment, the officers discovered some handguns and suspected narcotics. When asked which of the recovered items was in plain view, Welsh responded, "I remember seeing the butt of a handgun sticking out from underneath the cover on a bed." This information was not included in Welch's report.

¶ 11 Following the discovery of the contraband, Welsh returned to his squad car and spoke with defendant. Welsh read defendant his Miranda rights and defendant agreed to answer some questions. Defendant claimed that he had arrived at the apartment shortly before the police arrived on the scene. He maintained that he did not live in the apartment, insisting that he lived at 1603 10th Street with his girlfriend. When Welsh advised defendant that he would go to 1603

10th Street and verify this information with his girlfriend, defendant "changed his story." He claimed that he recently had a fight with his girlfriend and he was currently living "from place to place to place." Welsh explained that some handguns and narcotics had been found inside the apartment, adding that the handguns might be tested for DNA. Defendant responded that his DNA might be found on one of the handguns because Barnes had showed it to him and let him handle it a few days prior.

¶ 12 Officer Castronovo testified that he arrived at the scene and assisted other officers in securing the exterior of the residence. This led to the discovery of the spent shell casings. Castronovo later assisted a "series of officers" in conducting a search inside the downstairs apartment. Castronovo initially testified that the purpose of the search was "[t]o see if we could locate evidence of any type." He later stated that the purpose of the search was "to see if there were any injured individuals inside." Castronovo understood that Barnes had given consent for the search.

¶ 13 Castronovo testified that he did not take part in any discussions as to what the officers would do once they were inside the apartment. He explained that Washington was one of the first officers to enter; Castronovo was one of the last. Upon entering the apartment, Castronovo went directly into the east bedroom. He was unsure as to whether Anderson had yet been located. Castronovo testified that he saw ammunition, gun cases, and a small baggie containing a tan-colored powder laying on "top of the bed in plain view." He also saw the butt of a handgun protruding from underneath a pillow on the bed. He admitted that the items on the bed were not visible until he entered the bedroom. He explained that two handguns were found underneath the pillow. The officers opened a shoebox on the floor and found 24 bags of heroin and more ammunition. They also found a box of sandwich bags and a digital scale between the mattress

and the wall. Finally, they found a plastic bag containing receipts bearing defendant's name. Castronovo testified that he spoke with Barnes after the search. When confronted with the items found inside the east bedroom, Barnes admitted that defendant was paying rent and living in the east bedroom.

¶ 14 In argument, defense counsel challenged the search only on the basis that, because defendant was renting the east bedroom, Barnes did not have the authority to consent to a search of the east bedroom. The trial court agreed with defense counsel that this was the central issue, and asked the prosecutor to discuss whether Barnes had authority to consent to a search of the entire apartment. The prosecutor respondent by arguing that the written consent form applied to the entire apartment. In delivering its findings, the trial court commented that exigent circumstances were not at issue, as the officers had relied on Barnes' consent to enter the apartment. The trial court found that, although Barnes had not testified, the officers' testimony was sufficient to establish that Barnes lacked the authority to consent to a search of defendant's room. The trial court thus concluded that the officers should not have entered the east bedroom and accordingly granted defendant's motion to quash arrest and suppress evidence.

¶ 15 The State filed a motion to reconsider, arguing that the officers had a good faith reason to believe that Barnes could grant consent to search the entire apartment. In support, the State asserted that the officers had no reason to believe defendant was living in the apartment until after the search had been conducted. The trial court rejected this argument, finding that the evidence was unclear as to whether Barnes admitted that defendant was renting the east bedroom prior to the officers' entry into the apartment.

¶ 16 The State filed a certificate of impairment pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Dec. 11, 2014)) and a timely notice of appeal.

¶ 17 II. ANALYSIS

¶ 18 The State's argument on appeal mirrors that raised in its motion to reconsider. The State argues that Barnes had the apparent authority to provide consent for a search of the entire apartment. "Contrary to the trial court's ruling," the State asserts, "the testimony established that at the time of the search [defendant] did not appear to possess any authority over the residence."

¶ 19 In response, defendant does not address the issue of whether Barnes had the apparent authority to consent to a search of the entire apartment. Rather, defendant contends that the trial court's ruling should be affirmed because the officers exceeded the scope of Barnes' consent. Defendant argues that Barnes consented to the officers' entry into the apartment for the limited purpose of conducting a welfare check on Anderson. Thus, defendant argues, once Washington determined that Anderson was not in the east bedroom, "the officers' authority to enter that room terminated."

¶ 20 In its reply, the State first notes that defendant "does not deny that [Barnes] had the apparent authority to provide consent to the officers to search his residence." Pointing to the "consent to search" form, the State goes on to challenge defendant's new argument that the officers exceeded the scope of Barnes' consent. The State also argues that, even if the officers exceeded the scope of Barnes' consent, certain items were found in plain view. Finally, in the alternative, the State requests that we reverse the trial court's ruling and remand the cause for further proceedings because these issues were not fully litigated during the hearing on defendant's motion to suppress.

¶ 21 As we will explain, we agree with the State that this case should be remanded to the trial court for further proceedings. We determine that the trial court's ruling—that Barnes lacked apparent authority—was against the manifest weight of the evidence. However, the remaining

issues regarding scope of consent and plain view have not been sufficiently litigated, and we are not prepared to render any such determinations here.

¶ 22 A. Apparent Authority

¶ 23 We first note that, because defendant has not addressed whether the trial court correctly ruled that Barnes lacked the authority to consent to a search of the east bedroom, we will consider the issue pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). See *People v. O'Brien*, 227 Ill. App. 3d 302, 305 (1992) (applying *Talandis Construction Corp.* to criminal appeal). Accordingly, we may reverse the trial court's judgment if the record is simple and the State's brief demonstrates *prima facie* reversible error. *Talandis*, 63 Ill. 2d at 133. Those circumstances are present here.

¶ 24 A trial court's ruling on a motion to suppress is reviewed under a two-part test. *In re D.L.H.*, 2015 IL 117341, ¶ 46. The court's factual findings will be reversed only if they are against the manifest weight of the evidence. *Id*. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). The court's ultimate legal ruling on whether suppression is warranted is reviewed *de novo*. *D.L.H.*, 2015 IL 117341, ¶ 46.

¶ 25 The chief evil against which the fourth amendment is directed is the physical entry into the home. *People v. Wear*, 229 Ill. 2d 545, 562 (2008). Thus, warrantless searches of a person's home are presumptively unreasonable. *Id*. However, consent to search is one of the exceptions to the warrant requirement. *People v. Davis*, 398 Ill. App. 3d 940, 956 (2010). Under the apparent authority doctrine, when 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). That is so even if the third party does not actually possess such authority. *Id*.

¶ 26 To determine if apparent authority exists, the trial court must evaluate whether the information known to the police when they searched would warrant a person of reasonable caution to believe that the consenting party possessed authority over the premises. *Rodriguez*, 497 U.S. at 188. In making that assessment, the court must examine the information available to the officer when consent was given. *Id*. The officer's belief that the consenting person had authority need not be correct, so long as that belief was reasonable. *Id*. at 185. The State bears the burden of proving that the officer was reasonable in his belief that the consenting party was authorized to do so. *People v. James*, 163 Ill. 2d 302, 317 (1994). However, "an officer may not blindly accept a person's consent to search, and a warrantless search without further inquiry is unlawful." *People v. Burton*, 409 Ill. App. 3d 321, 329 (2011). The State bears the burden of proving that the officers were objectively reasonable in their belief that the consenting party was authorized to do so. *Id.*

¶ 27 Here, the trial court determined that the evidence was unclear as to whether the officers learned that defendant was living in the apartment before they entered the apartment. On that basis, the trial court found that the State had failed to satisfy its burden of proving that the officers were reasonable in believing that Barnes was authorized to consent to a search of the entire apartment. See *James*, 163 Ill. 2d at 317. This finding was against the manifest weight of the evidence.

¶ 28 Upon their arrival at the scene, Washington and Welsh questioned Barnes and defendant. Barnes denied to Washington that defendant lived in the apartment, maintaining instead that he and Anderson lived there alone. Consistent with Barnes' statements to Washington, defendant

told Welsh that he did not live in the apartment. Welsh then learned that defendant was on parole and his registered address was elsewhere in Rockford. These were the facts known to the officers when they obtained Barnes' consent to search the apartment. We believe that a reasonable person would have taken these facts to mean that Barnes had the authority to consent to a search of the entire apartment. The evidence reflects that the officers did not learn that defendant was living in the apartment until *after* they entered the apartment and found the contraband in the east bedroom. This occurred when Castronovo confronted Barnes with the items found inside the east bedroom and Barnes admitted that defendant was paying rent and living in the east bedroom. Thus, regardless of whether Barnes actually lacked the authority to consent to a search of the east bedroom, his consent was valid.

¶ 29 B. Scope of Consent

¶ 30 Having decided that Barnes had the apparent authority to consent to a search of the entire apartment, we now turn to defendant's argument that the officers exceeded the scope of Barnes' consent. As noted, this is based on defendant's argument that Barnes' consent was limited to a welfare check on Anderson. Although defendant did not raise this issue as a basis for suppression in the trial court, we may affirm a trial court's decision on any basis appearing in the record. *People v. Gonzalez-Carrera*, 2014 IL App (2d) 130968, ¶ 15; see also *People v. Johnson*, 208 Ill. 2d 118, 129 (2003) (citing *People v. York*, 29 Ill. 2d 68, 71 (1963) (defendant may rely on an alternative legal argument in support of an order suppressing evidence even if not raised below)).

¶ 31 The scope of a search is defined by its expressed objective. *People v. Kats*, 2012 IL App (3d) 100683, ¶ 27 (citing *Florida v. Jimeno*, 500 U.S. 248, 251 (1991)). By indicating the intended object of the search to the person giving consent, the police not only apprise the person

that his constitutional rights are being impacted, but they also inform him of the reasonable parameters of the inquiry. *Kats*, 2012 IL App (3d) 100683, ¶ 27. Consent may be limited, as consent to enter one's home does not necessarily imply consent to enter all areas of the home. *Dawn*, 2013 IL App (2d) 120025, ¶ 33. To establish the scope of any consent, it is important to consider any expressed or implied limitations. *Id*. Similar to the issue of apparent authority, when determining the scope of a person's consent, the pertinent question for the court to consider is what a reasonable person would have understood by the exchange between the police and the person consenting. *Dawn*, 2013 IL App (2d) 120025, ¶ 32.

¶ 32 Here, it is unclear from the record what a reasonable person would have understood by the exchange between Washington and Barnes. Washington testified that he repeatedly expressed concern regarding Anderson's welfare and he repeatedly asked whether Barnes would allow the officers to enter the apartment to check on Anderson's welfare. Barnes initially refused, maintaining that Anderson was not in distress, but he eventually agreed that the officers could "go in to check on [Anderson]" because he wanted to "assist with the investigation." It would therefore appear that Barnes consented to the officers' entry into the apartment for the limited purpose of checking on Anderson's welfare.

¶ 33 However, Barnes also signed a written "consent to search" form which states that Barnes consented to "complete search" of the downstairs apartment. Although Washington testified that he did not ask whether Barnes was able to read or understand the form, there is nothing in the record to suggest otherwise, as Barnes did not testify. Washington also testified that, although the officers' initial concern was for Anderson's welfare, they were also concerned with whether there was any evidence of a crime inside the apartment. The latter concern was echoed by Welsh and Castronovo, as Welsh declined to answer that the sole purpose of the search was to conduct a

welfare check on Anderson, and Castronovo testified that the purpose of the search was "[t]o see if we could locate evidence of any type."

¶ 34 Defendant argues that the circumstances surrounding the consent form clearly indicate Barnes' belief that he was agreeing only on a welfare check on Anderson. We agree with defendant that "[c]onsent forms are designed to protect citizens, not to surreptitiously enlarge the scope of consent." See *United States v. Lemmons*, 282 F.3d 920, 924 (7th Cir. 2002) (concluding that it would "sanction deception" to hold that, despite the officer's assurances to the contrary, the defendant consented to an unlimited search by signing a standardized consent form). However, because Barnes did not testify, we cannot draw any conclusions regarding Barnes' understanding of the scope of the search. Given the conflicting testimony from the officers regarding the purpose of the search, the fact that Barnes did not testify, and our concern that this issue was not a focal point of the evidentiary hearing, we decline to determine whether there was a limited scope of Barnes' consent to search.

¶ 35 Furthermore, even if we were to decide that Barnes limited the scope of his consent to a welfare check on Anderson, the record is unclear as to whether the officers exceeded that limit. Defendant maintains that once Washington looked in the east bedroom and did not find Anderson, any subsequent entry into that room was outside the scope of his consent. We point out, however, that although Castronovo entered the east bedroom after Washington had already checked it, this did not establish Castrovono's knowledge that Washington had already performed a "quick sweep" of the east bedroom. And even if Castronovo was aware that Washington had already performed a "quick sweep" of the east bedroom, this would not rule out the possibility that Anderson could still have been somewhere inside the east bedroom. Finally, Catsronovo testified that he was not sure if Anderson had been found before he entered the east

bedroom. Thus, it is possible that Castronovo entered the east bedroom before Washington located Anderson in the west bedroom. Again, because the record is insufficiently developed on this issue, we cannot make any determinations on this aspect of the search.

¶ 36 C. Plain View

¶ 37 The final issue raised in the State's reply brief concerns Castronovo's observations once he entered the east bedroom, and those items which were purportedly in plain view. The plain-view doctrine allows the police to seize property without a warrant. *People v. Jones*, 215 Ill. 2d 261, 271 (2005). The requirements of the doctrine are: (1) the officer was lawfully in a position from which he observed the property: (2) the incriminating character of the property was immediately apparent; and (3) the officer had a lawful right of access to the property. *Id*. at 271-72. The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity. *Id*. at 272 (citing *Texas v. Brown*, 460 U.S. 730, 741-42 (1983)). However, if the incriminating nature of the property is not immediately apparent, meaning the police lack probable cause to believe that the property is contraband without searching further, the plain-view doctrine does not justify the seizure. *Id*.

¶ 38 Here, the State notes Castronovo's testimony that he saw ammunition and gun cases in plain view on top of the bed in the east bedroom. At the very least, the State argues, the case should be remanded for prosecution of the weapons charges. While the State's invitation is tempting, we feel it would be inappropriate to render any definitive holdings on the issue of plain view. Washington and Welsh made no indications that they had seen any contraband in their respective reports. Washington could not recall whether he saw any type of contraband during his "quick sweep" of the east bedroom, and Welsh remembered seeing only "the butt of a

handgun sticking out from underneath the cover on a bed." We point this out not to undermine Castronovo's credibility, but to show that it remains unclear exactly which items may have been seen in plain view. Once again, this is due largely to the fact that the issue of plain view was not a focal point of the evidentiary hearing.

¶ 39 III. CONCLUSION

¶ 40 In sum, the record is sufficient only for us to hold that the trial court's ruling on the issue of Barnes' apparent authority was against the manifest weight of the evidence. We express no opinions herein regarding: (1) whether the scope of Barnes' consent was limited to a welfare check on Anderson; or (2) whether any items of contraband were properly found in plain view. We therefore reverse the trial court's ruling and remand the cause for further proceedings consistent with this disposition.

¶ 41 Reversed and remanded.