

No. 1-09-1534

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FIFTH DIVISION
May 27, 2011

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. 07 CR 22180
)	
ARMANDO TREVINO,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Joseph Gordon concurred in the judgment.

O R D E R

HELD: Motion to suppress was properly denied because leaseholder had apparent authority to consent to a search of a portable safe found in overnight guest's bedroom, where the safe bore no markings indicating ownership and the key to the safe was hanging on the wall.

Following a stipulated bench trial, defendant Armando Trevino was found guilty of possession of cannabis and sentenced

to 30 months' felony probation. On appeal, defendant contends that the trial court erred when it denied his motion to suppress evidence because even if the leaseholder of the apartment where defendant was staying had apparent authority to authorize a search of the bedroom defendant was using, that apparent authority did not extend to a search of the portable safe where the cannabis was found. We affirm.

At a pretrial hearing on defendant's motion to suppress, Jimmy Hernandez testified that he rented a two bedroom apartment on the first floor of a one story building at 5019 South Ada in Chicago. Another tenant rented an apartment in the basement. The front door of the building entered into the apartment. A second door on a gangway provided access to stairs that led both up to Hernandez's apartment and down to the basement apartment. Defendant is Hernandez's cousin. On September 25, 2007, defendant told Hernandez that he had argued with his mother-in-law and needed a place to stay. Hernandez gave defendant a key and told him that he and his wife could stay in his apartment.

Hernandez further testified that he worked a late shift and returned home at approximately 1 a.m. on September 26. He entered through the door on the gangway. Defendant and his wife were asleep in one of the bedrooms, and Hernandez went to sleep in the other. While he was sleeping Hernandez heard someone knocking on his front door. Assuming that it was a neighbor

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asking to borrow money or cigarettes, Hernandez ignored the knocking. Later Hernandez heard someone "kick in" the back door. A police officer entered Hernandez's bedroom with his gun drawn and took him to the stairway near the gangway door.

Hernandez admitted that his signature appeared on a form entitled "consent to search" that was dated September 26, at 1:30. However, Hernandez testified that he simply signed a blank piece of paper because a police officer told him to, and that the consent to search was added later. The police searched the apartment. Hernandez denied ever seeing a safe.

Chicago police officer Chris Hackett testified that he was on routine patrol with his partner in the early morning hours of September 26. At approximately 1:19 a.m. he received a call of shots fired on the 5000 block of Ada. Another pair of police officers arrived at the scene first. The other officers told him that a suspect was seen entering one of two gangways, one of which went past the building at 5019 Ada. The door facing the gangway was ajar and appeared to have been forced open.

Hackett and other officers knocked on the door but received no response. The police officers believed that the shooting suspect had entered the building. They waited approximately 15 minutes, contacted a sergeant, and eventually entered the building. As he entered, Hackett observed two suspected cannabis plants on the landing on the staircase. The police officers

entered a bedroom and encountered Hernandez. After the police officers spoke with him about the shooting suspect and the cannabis plants, Hernandez signed a consent to search the apartment. The form was completed; Hernandez did not sign a blank document.

In defendant's bedroom, the police officers discovered a portable safe. There was an odor of "non-burning" cannabis in the room that grew stronger as the police officers approached the safe. The key to the safe was hanging on the wall nearby. Hackett opened the safe and discovered three bags of cannabis and defendant's social security card, birth certificate and marriage certificate.

At the conclusion of defendant's presentation of evidence the State moved for a directed finding. The trial court granted the motion and denied the motion to suppress. The trial court observed: "it seems to me that the police officers could reasonably expect to be able to search that safe based on the valid consent to search and based on [defendant's] lack of an assertion of an expectation of privacy in the safe."

The matter eventually proceeded to a bench trial where the parties stipulated to the testimony presented at the suppression hearing. They further stipulated that a proper chain of custody was maintained and that the three bags found in the safe tested positive for cannabis and weighed 892 grams. Based on this

evidence the trial court found defendant guilty of possession of the cannabis found in the safe but not guilty of possession of the cannabis plants observed in the stairwell. The trial court sentenced defendant to 30 months' felony probation. Defendant timely appeals.

Defendant first contends that the search of the safe was improper because Hernandez did not have apparent authority to consent to the search of the closed container.

When reviewing a trial court's ruling following a suppression hearing, we apply a two-part standard of review. See *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006), citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996). Findings of historical fact are reviewed only for clear error and deference must be accorded the trial court's determinations of the weight to be given witnesses' testimony and the inferences drawn from the facts. *Luedemann*, 222 Ill. 2d at 542. Legal conclusions, on the other hand, are reviewed *de novo*, and a reviewing court retains to the right to draw its own conclusion regarding the relief to be granted in response to the facts found by the trial court. *Luedemann*, 222 Ill. 2d at 542.

Generally, the fourth amendment prohibits the warrantless search of a home as *per se* unreasonable. *People v. Bull*, 185 Ill. 2d 179, 197 (1998). However, the warrant requirement is not without exception. One well established exception is a search

conducted pursuant to consent. *Bull*, 185 Ill. 2d at 197, citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). Consent may be obtained either from the owner of the property searched or from a third party who possesses common authority over the premises. *Bull*, 185 Ill. 2d at 179, citing *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990).

The parties do not dispute the basic concepts of third-party consent. However, they disagree about whether third-party consent can extend to closed containers found within a premises. Both defendant and the State support their arguments with authority from outside this jurisdiction involving searches of closed containers inside hotel rooms. The State relies on *United States v. Melgar*, 227 F.3d 1038 (7th Cir. 2000) for the proposition that a third party can possess apparent authority to authorize the search of closed containers. Defendant relies on *State v. Pickens*, 2008 WI App. 1514-CR, 779 N.W.2d 1 (2009) for the contrary proposition that a third party lacks apparent authority to allow searches of closed containers. We have carefully examined both cases, and find them both instructive. However, for the reasons that follow, we agree with the State that under the facts of this case Hernandez had apparent authority to consent to a search of the safe.

The State relies on *Melgar*, in which, during an investigation involving fraudulent checks, a woman consented to

the search of a hotel room she shared with other women. During the search, a police officer discovered a purse under a mattress. The outside of the purse bore no identifying markings, but an apparently fraudulent check and identification belonging to a second woman were discovered inside. The Seventh Circuit held that this search was proper because the police had no reason to know that the purse did not belong to the woman giving consent, the purse had no exterior markings to alert them to the fact that it belonged to another person, and it was capable of holding the contraband sought. *Melgar*, 227 F.3d at 1041-42. The court observed: "A contrary rule would impose an impossible burden on the police. It would mean they could *never* search closed containers within a dwelling (including hotel rooms) without asking the person whose consent is being given *ex ante* about every item they might encounter." (Emphasis in original.) *Melgar*, 227 F. 3d at 1042.

Defendant relies on *Pickens*, in which, during an investigation of drug trafficking, the police obtained consent to search a hotel room from a female occupant. During the search they opened a safe using a key they had recovered from the male defendant when he was arrested outside the hotel room. The search of the safe revealed narcotics and other evidence of drug sales. Rejecting the State's reliance on *Melgar*, the Wisconsin Court of Appeals held that the occupant of the hotel room did not

have apparent authority to consent to a search of the safe.

Pickens, 2008 WI App. 1514-CR, ¶ 47.

Turning to the case at bar, we conclude that Hernandez did possess apparent authority to consent to a search of the safe. As in *Melgar*, the police had no reason to know that Hernandez lacked common authority over the safe. There were no markings on the outside of the safe indicating that it belonged to defendant, and it was capable of concealing the contraband sought, *i.e.*, the shooter's firearm. We find *Pickens* distinguishable in that the key, rather than being found in the defendant's pocket, was hanging on the wall. Accordingly, there was nothing about the location of the key to the safe which would lead a police officer to believe that authority to consent to a search of the safe lay with anyone other than the leaseholder. Furthermore, as the trial court observed, defendant never asserted any ownership interest, or expectation of privacy, in the safe. Therefore, we conclude that Hernandez had apparent authority to consent to a search of closed containers within the dwelling, *i.e.*, the safe, and the trial court did not err when it denied defendant's motion to suppress.

The judgment of the circuit court of Cook County is affirmed.

Affirmed.