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2015 IL App (3d) 130031-U

Order filed August 19, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court |
| |) | of the 10th Judicial Circuit, |
| Plaintiff-Appellee, |) | Peoria County, Illinois, |
| |) | |
| |) | Appeal No. 3-13-0031 |
| v. |) | Circuit No. 11-CF-1217 |
| |) | |
| |) | |
| SHERMAN WILLIAMS, |) | Honorable |
| |) | Stephen Kouri, |
| Defendant-Appellant. |) | Judge, Presiding. |
| |) | |

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in denying defendant's motion to suppress evidence found in his mother's house where testimony supported trial court's conclusion that officers acted reasonably in relying on consent given by defendant's brother to search the home. Trial court erred in failing to specify, in a written order, the costs defendant was required to pay.

¶ 2 Defendant was charged with residential burglary (720 ILCS 5/19-3(a) (West 2010)). He filed a motion to suppress the evidence against him. The trial court denied the motion, and the

case proceeded to a jury trial. The jury found defendant guilty. The trial court sentenced defendant to 16 years in prison, followed by 3 years of mandatory supervised release (MSR), and ordered him to pay “costs.” Defendant was later assessed monetary fines and fees totaling \$1,706.73. On appeal, defendant argues that (1) the trial court erred in denying his motion to suppress, and (2) he was improperly assessed fines and fees that were not ordered by the trial court. We affirm defendant’s conviction but remand for the proper imposition of fines, fees and credits.

¶ 3 Defendant was charged with residential burglary. 720 ILCS 5/19-3(a) (West 2010). The charge alleged that he entered the home of Christea Bonner with the intent to commit a theft therein. Police found numerous items belonging to Bonner, including two television sets and Christmas presents, in defendant’s mother’s home following a search of the property. Defendant filed a motion to suppress the evidence.

¶ 4 At the hearing on defendant’s motion to suppress, Bonner testified that her home was burglarized on December 20, 2011. Two television sets and Christmas presents for her children were taken. Her neighbors told her that they saw defendant and his brothers carrying items from defendant’s house on the day of the burglary.

¶ 5 The day after the burglary, Bonner was involved in a motor vehicle accident. When a police officer responded, Bonner told him about the burglary that took place at her home the day before. Bonner and the officer went to the home of defendant’s mother, Shelly Williams, who lives across the alley from Bonner. Defendant’s brother, Jeffrey, answered the door. Defendant came to the door shortly thereafter. The officer asked Jeffrey where the owner of the house was, and Jeffrey said she was at work. Bonner told the officer that he could talk to Shelly by calling the front desk at Bel-Wood Nursing Home, where both Shelly and Bonner worked. After

making a phone call, the officer went inside Shelly's house. Approximately 10 or 15 minutes later, he went outside and brought Bonner into the home. She walked through the house and identified items that were hers.

¶ 6 Shelly Williams testified that she is defendant's mother and the only person named on the lease to her home. Her sons did not live with her in December 2011, but defendant regularly went to her house during the day while she was at work. Defendant did not sleep at her house or pay utilities, but he kept clothing there and had a key to the house. Both defendant and Jeffrey used her address for parole purposes. Jeffrey came over approximately twice a week.

¶ 7 Shelly testified that she received a phone call at work on December 21, 2011, from a police officer, asking for permission to search her house. She denied the officer permission, and told him she was on her way home. When she arrived home, the police had already searched her house, and defendant and Jeffrey were in handcuffs in police cars. An officer told her that he would obtain a warrant and "tear up" her house if she did not sign the consent to search form, so she signed the form after she arrived home.

¶ 8 Defendant testified that he was paroled in July 2011, and used his mother's address as his parole residence. He usually spent nights at his girlfriend's house and returned to his mother's house at around 10:00 a.m. each day. He kept most of his belongings at his mother's house.

¶ 9 On December 21, 2011, defendant arrived at his mother's house around 8:30 a.m., and Jeffrey arrived shortly thereafter. When the police officers knocked on the door, Jeffrey answered. Defendant went to the door a few minutes later. When defendant reached the door, he saw two officers standing inside the house. The officers wanted to search the house. Defendant responded: "No, you can't search the house. My mom ain't going to allow it."

¶ 10 Defendant testified that he called his mother at work, and then gave the phone to one of the officers. When the officer got off the phone with Shelly, he told defendant and Jeffrey that they needed to let him search the house since they were on parole. Jeffrey said he would show the police around the house. Defendant told the officers that they were not supposed to be there.

¶ 11 Jeffrey Williams testified that he visited his mother's home every couple of days in December 2011. He used her address when he was paroled from prison in April 2011, and received mail there. His mother instructed him not to let anyone in the house except his brothers.

¶ 12 On December 21, 2011, officers came to his mother's house. When they initially asked to search the home, Jeffrey refused. When the officers asked him to call his mother, he went to get the phone, and the officers stepped inside the house. Jeffrey was not able to reach his mother at work, but the officers called her. After speaking to Shelly, an officer told him that he would be sent back to prison if he refused to let him search the home. Jeffrey became scared and agreed to show the officer around the house. Jeffrey told the officer that he did not live at the house and that his mother would not want anyone searching the house.

¶ 13 Officer Douglas Hopwood testified that he, along with Officer Shannon Walden, and Bonner, went to Shelly's house at approximately 11:00 a.m. on December 21, 2011. Hopwood asked Jeffrey if he lived at the house. Jeffrey said that he did and that he was paroled there. Hopwood asked if he could look around the house for Bonner's stolen items, and Jeffrey said he could. After searching the house and finding Bonner's property, Hopwood called Shelly at work. Shelly refused to give him permission to search her house. Hopwood testified that neither Jeffrey nor defendant said they did not live at the house and neither of them told him that he could not search it. Hopwood denied threatening Jeffrey with a parole violation if he refused to allow him to search the house.

¶ 14 Walden testified that she was called to back up Hopwood at Shelly's home. Walden testified that Hopwood knocked on the door and received consent from Jeffrey to search the house. She did not recall defendant saying that she and Hopwood could not come in the house. After finding stolen items in the home, she took defendant and Jeffrey into custody. Hopwood then called Shelly to report the situation and took Bonner inside to identify her items. She did not recall Hopwood saying anything to defendant or Jeffrey about violating parole or going to prison if they did not consent to a search of the home.

¶ 15 Detective Marvin Kenser of the Peoria Police Department testified that he spoke with Shelly on December 21, 2011, and told her that stolen property was found in her house. He asked Shelly to sign a consent to search form, which she did. Kenser denied threatening or coercing Shelly into signing the form. He admitted that Shelly initially denied consent to search but later agreed after Kenser told her he would seek a warrant to search her house without her consent. He obtained Shelly's consent because he was "being cautious." Sergeant Jerry Bainter of the Peoria Police Department confirmed that he witnessed Shelly give consent to search the house after defendant and Jeffrey were arrested.

¶ 16 The trial court denied defendant's motion to suppress, finding that "Jeffrey Williams consented to the search[,] and that "[e]ven if *** Jeffrey Williams had no authority to consent to the search, the officers acted reasonably in reliance o[n] his consent."

¶ 17 At trial, Bonner testified that after she discovered her home was burglarized, she observed footprints inside her house, as well as outside, leading from her back door to the alley, across the alley, and to the back door of Shelly's house.

¶ 18 Lashaundra Ward testified that she lives across the street from Bonner. When she looked out her front window on December 20, 2011, she saw men carrying televisions and

presents from Bonner's house. Ward recognized the men as Jeffrey, defendant, and another one of their brothers. She saw them taking items to a house across the alley. She later told Bonner what she saw.

¶ 19 Defendant testified that he was released from prison in July 2011, and used his mother's address for parole purposes. He stated that he was living with his girlfriend but sometimes stayed with his mother. He denied going into Bonner's house and taking anything. He also denied knowing that there was stolen property at his mother's house.

¶ 20 The jury found defendant guilty of residential burglary. The trial court sentenced defendant to 16 years in prison, followed by 3 years of MSR. The court's written order required defendant to pay costs and showed that defendant was entitled to credit for time he served in custody from December 21, 2011, to December 26, 2012. Defendant filed a motion to reconsider sentence, which the trial court denied.

¶ 21 A "Case Payments" sheet dated March 8, 2013, presumably prepared by the circuit clerk of Peoria County, lists 20 fines or fees assessed against defendant, totaling \$1,706.73. The document showed no credits to defendant, leaving \$1,706.73 "due."

¶ 22 ANALYSIS

¶ 23 I

¶ 24 Defendant first argues that the trial court should have granted his motion to suppress because Jeffrey lacked actual or apparent authority to consent to a search of Shelly's house since he did not live there or keep any belongings there. He further argues that it was unreasonable for the officers to conduct the search in light of his objection.

¶ 25 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We review the trial court's

findings of fact for clear error, and we will reverse those findings only if they are against the manifest weight of the evidence. *Id.* We review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 26 The burden of proof is on the defendant at a hearing on a motion to suppress evidence. *People v. Gipson*, 203 Ill. 2d 298, 306 (2003). A defendant must make a *prima facie* case that the evidence was obtained by an illegal search or seizure. *Id.* at 306-07. If a defendant makes a *prima facie* case, the State has the burden of going forward with evidence to counter the defendant's *prima facie* case. *Id.* at 307. However, the ultimate burden of proof remains with the defendant. *Id.*

¶ 27 Defendant argues that the search of his mother's house violated his fourth amendment rights. The fourth amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const., amend. IV. The fourth amendment prohibits searches conducted outside the judicial process, without prior approval by a judge or magistrate, subject to a few well-delineated exceptions. *People v. Clark*, 394 Ill. App. 3d 344, 347 (2009). One such exception is when law enforcement officers obtain consent to search from either the person whose property is searched or from a third party who possesses common authority over the premises. *People v. Burton*, 409 Ill. App. 3d 321, 328 (2011).

¶ 28 Common authority can be actual or apparent. *Id.* Under the "apparent authority" doctrine, 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. *Id.* If the facts available to the officer would cause a reasonable person to believe that the consenting party had authority over the premises, the search is valid. *Id.* at 328-

29; *People v. Huffar*, 313 Ill. App. 3d 593, 596 (2000). The officer need not always be correct but must always be reasonable. *People v. Pickens*, 275 Ill. App. 3d 108, 113 (1995).

¶ 29 The doctrine of apparent common authority does not allow a police officer to proceed without inquiry in ambiguous circumstances or to accept at face value the consenting party's apparent assumption that he has authority to allow a search. *Huffar*, 313 Ill. App. 3d at 598. In a case where reason requires further inquiry, a police officer who fails to inquire may not rely on the apparent authority rule. *Id.* If officers are aware that an individual providing consent is not a resident of the premises, they do not have reasonable grounds to conclude that the individual could validly consent to the search. See *Pickens*, 275 Ill. App. 3d at 113-14; *People v. Keith M.*, 255 Ill. App. 3d 1071, 1086 (1993).

¶ 30 When one person who has or appears to have common authority over the premises consents to a search, his consent is valid against an absent, nonconsenting person who shares that authority. *People v. Santovi*, 2014 IL App (3d) 130075, ¶ 35. However, where a co-tenant gives his consent, a search will be found unreasonable as to a defendant who was physically present at the scene and expressly stated his refusal to allow police to enter and search the premises. *Id.*

¶ 31 Here, defendant made a *prima facie* case by showing that the officers searched Shelly's home without a warrant. The State, however, met its burden of establishing that they searched the home after Jeffrey, who appeared to have authority, gave them consent to do so. Hopwood testified that Jeffrey answered the door to his mother's home. Jeffrey stated that he lived there and was paroled there. Hopwood denied that either Jeffrey or defendant ever objected to him searching the home. Walden testified consistently with Hopwood, stating that Jeffrey gave his consent to search. She did not recall defendant objecting to a search of the home.

¶ 32 Based on Jeffrey’s statement to Hopwood that he lived at his mother’s home and was paroled there, it was reasonable for Hopwood and Walden to believe that he had authority to consent to a search of the home. See *Burton*, 409 Ill. App. 3d at 328; *Huffar*, 313 Ill. App. 3d at 596. Additionally, the officers had no reason not to proceed with a search since they testified that they heard no objection from either Jeffrey or defendant. Even though Shelly initially refused to give consent when she spoke to one or more officers on the phone, the search was still reasonable because Shelly, the non-consenting party, was not present, while Jeffrey, who appeared to have equal authority to consent, was present and consented to the search. See *Santovi*, 2014 IL App (3d) 130075, ¶ 35. Based on the officers’ testimony, the trial court’s findings that Jeffrey consented to the search and that the officers acted reasonably in relying on Jeffrey’s consent were not against the manifest weight of the evidence. The trial court properly denied defendant’s motion to suppress.

¶ 33 II

¶ 34 Defendant also challenges some of the charges set forth in the March 2013 “Case Payments” sheet. He contends that some of the assessments are incorrect because they exceed the amounts allowed by statute. He further contends that the assessments were improperly imposed after sentencing without any input from the parties or oversight from the court. He asks us to remand this matter so that the trial court can enter an order that properly enumerates the “costs” that he is required to pay, as well as any credits to which he is entitled. The State agrees.

¶ 35 The propriety of fines, fees, and costs imposed by the trial court are reviewed *de novo*. *People v. Hunter*, 2014 IL App (3d) 120552, ¶ 11. When a trial court orders a defendant to pay “costs,” it must articulate the amount of those costs by “either itemiz[ing] the costs imposed by court order or summariz[ing] the total charges due in a written order bearing the judge’s

signature.” See *id.* ¶ 13. “Without a sum certain set out in the judgment order, we cannot be confident regarding the specific amounts the court intended to *order* this defendant to pay.” (Emphasis in original.) *Id.* ¶ 17.

¶ 36 “Any miscalculations with regard to monetary charges are best addressed in the trial court with both parties present.” *Id.* Consequently, when a defendant argues an appeal that the trial court miscalculated or improperly assessed a fine or fee against him, we should “remand the matter to the trial court with directions to review and, if necessary, to correct the costs summarized in the clerk’s cost sheet and incorporate the correct amount of all financial charges into a written order, perhaps an agreed order, identifying the amount and nature of each charge ordered by the court for payment as part of defendant’s sentence.” *Id.* Thereafter, the court shall subtract the court-ordered \$5 credit for each day defendant served in pretrial custody from the designated fines and fees subject to the credit. *People v. Williams*, 2014 IL App (3d) 120240, ¶ 19 (citing 725 ILCS 5/110-14 (West 2010)).

¶ 37 Here, the trial court’s written order stated “[t]hat a judgment be entered against the defendant for costs[.]” However, the court’s order failed to specify the “costs” that defendant was required to pay. Without such an order, we cannot be certain that the amounts set forth in the “Case Payments” sheet are correct. See *Hunter*, 2014 IL App (3d) 120552, ¶ 17. Since any miscalculations are best addressed in the trial court with the parties present, we remand the matter to the trial court with directions to (1) review and, if necessary, correct the costs summarized in the “Case Payments” sheet, (2) incorporate the correct amount of all financial charges into a written order identifying the amount and nature of each charge ordered by the court for payment as part of defendant’s sentence in this case, and (3) apply a \$5-per-day credit

for the days defendant spent in pretrial custody to all creditable fines. See *id.*; *Williams*, 2014 IL App (3d) 120240, ¶ 19; 725 ILCS 5/110-14(a) (West 2012).

¶ 38 The judgment of the circuit court of Peoria County is affirmed and the cause is remanded with directions.

¶ 39 Affirmed and remanded with directions