2012 IL App (1st) 102622-U

FIRST DIVISION
August 20, 2012

No. 1-10-2622

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 21727
	)	
REGGIE HENLEY,	)	Honorable
	)	Larry Axelrood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice HOFFMAN and Justice ROCHFORD concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment entered on defendant's convictions of UUW affirmed over his claim that the trial court erred in denying his motion to quash arrest and suppress evidence alleging an unlawful entry into his residence; $200 DNA fee vacated.

¶ 2 Following a bench trial, defendant Reggie Henley was found guilty of two counts of unlawful use of a weapon by a felon (UUW), three counts of aggravated assault of a peace officer, resisting a peace officer, and possession of a controlled substance. At sentencing, the court merged defendant's convictions into two counts of UUW, sentenced him to concurrent

terms of five years' imprisonment, and assessed him fines and fees totaling $790. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence where the individual who granted police entry into his home lacked either actual or apparent authority to consent to such entry. He also claims that he was improperly assessed a $200 DNA analysis fee.

¶ 3 The record shows, in relevant part, that on October 8, 2008, Evanston police officers San Roman, Henderson, and Jones arrived at 1506 Pitner Avenue to investigate a domestic battery reportedly committed by defendant against his girlfriend Latrisha Woods. Elizabeth Johnson, the mother of the victim, granted the officers entry to the subject apartment by unlocking the door with a key. Once inside, the officers encountered defendant seated on the sofa behind a table where there was a large amount of currency and suspect narcotics. When Officer San Roman instructed defendant to stand up, Officer Henderson observed him reach for a 9 millimeter Beretta Luger under his shoe, then yelled "gun," and placed her firearm to defendant's neck, instructing him "to stop reaching." Defendant did not comply, however, and a struggle ensued between defendant and the three officers during which Officer Henderson discharged her gun into defendant's neck, and also caused a gunshot injury to the wrist of Officer Jones.

¶ 4 Prior to trial, defendant filed a motion to quash arrest and suppress evidence alleging, *inter alia*, that his residence was searched without consent. At the hearing on that motion, Latrisha Woods testified that on October 8, 2008, she lived at 1506 Pitner Avenue with defendant and their three children. That morning, she had an altercation with defendant, then went to Evanston Township High School to meet with Officer Fowler, and told him about the incident. When the officer asked whether she wanted to press charges against defendant, she told him that she did not, and denied him permission to go to her residence.

¶ 5 Woods spoke with another officer at the school who also asked whether she wanted to press charges against defendant, and whether he had permission to go to her residence. She answered no to both questions, and the officer then asked her who was at home. When she told him that defendant was there, he asked whether defendant would open the door for him. She responded that he would, and the officer then told her that he was going to her apartment to arrest defendant, and requested that she meet him at the police station so that she could give a statement. Woods testified that she never gave police consent to enter her apartment, and that her mother, Johnson, does not live at 1506 Pitner Avenue.

¶ 6 On cross-examination, Woods stated that on the day in question, she and defendant had a verbal argument when he returned home after having been drinking. They went to sleep afterwards, but about 7:45 a.m., they had another argument which became physical, with defendant hitting her in the face and choking her. When she subsequently left the house to take her daughter to school, Johnson called and Woods told her about the incident with defendant. Johnson, who works at Evanston Township High School, then told Woods to come to the school to meet with Officer Fowler. She did as instructed, met with Officer Fowler in the safety office with Johnson present, and told him about the incident with defendant.

¶ 7 Woods acknowledged that Johnson has keys to her apartment and volunteered to go there with police, but denied hearing her tell police that she would go to the apartment with them and let them in. She was also not present when Johnson told Officer San Roman that it was her apartment. Woods further stated that her grandmother owns her building, and under questioning by the court, she explained that she leases her apartment from her grandmother, that Johnson is not on the lease, and that Johnson only has keys to her apartment in case of an emergency.

¶ 8 Johnson corroborated the events which brought her daughter to the school, and the nature of the conversation with Officer Fowler. She testified that she told Officer Fowler that she

wanted defendant out of the apartment and would go to Woods' apartment, but she never told him that she lived in the apartment, or that she owned the building. She also testified that her mother owned the building, and that she (Johnson) resides at 1512 Pitner Avenue.

¶ 9 Johnson further testified that she overheard Woods tell a second officer that she would not allow police into her residence, and that she did not want to press charges. Johnson, herself, denied telling that officer that she lived at 1506 Pitner Avenue, or that she would allow him into the residence. After Woods finished speaking with the officer, however, Johnson went to 1506 Pitner Avenue and used her key to help get defendant out of the residence. She testified that the officers never asked her permission to enter the apartment, and that she never signed a consent form for them to do so. On cross-examination, Johnson denied telling Officer San Roman that Woods' apartment was hers, that she had keys to it, and that she would let him in.

¶ 10 Officer Fowler testified that Woods never told him that Johnson lived with her at 1506 Pitner Avenue, and he does not recall Johnson ever telling him that she lived at the apartment either. Johnson did tell him, however, that her mother owned the apartment. Officer Fowler also testified that he never asked either Woods or Johnson for consent to send police to the apartment.

¶ 11 On cross-examination, Officer Fowler stated that Woods told him that she lived at 1506 Pitner Avenue with defendant and her three children. He also stated that Johnson said that she would go to the apartment with police, that she had a key, and that she would let the officers in to remove defendant. After Woods told him what happened, Officer Fowler relayed the incident to a patrol unit in the high school, and Officer San Roman then spoke with Woods. Officer Fowler was not present when Woods and Johnson spoke with Officer San Roman, and had already moved on to other duties by the time everyone left for the apartment.

¶ 12 Officer San Roman testified that on the day in question, he entered the subject apartment at 1506 Pitner Avenue without a warrant and encountered defendant seated on the couch. He also testified that a handgun and narcotics were eventually recovered from the premises.

¶ 13 On cross-examination, Officer San Roman stated that he interviewed Woods on the day in question, and asked her if she wanted to sign a complaint against defendant for domestic battery. When she responded that she did, he asked Woods if defendant would let him into the apartment if he went there and knocked on the door, and she said, "no, he probably would not." At that point, Johnson "spoke up" and said, "it's my apartment, I have a key, I will let you in." She then followed Officer San Roman and two other officers to 1506 Pitner Avenue where she unlocked the door to the apartment without being asked.

¶ 14 On redirect, Officer San Roman testified that he believed he asked Woods' consent to go to her apartment, and that she gave it, but could not recall if that was so. He testified that he never wrote it in his report, and never asked her to sign a consent form. On re-cross, Officer San Roman stated that he advised Woods that he was going to her apartment to arrest defendant, that she did not object, and that Johnson volunteered to let him in so that he could remove defendant from the premises.

¶ 15 In ruling on defendant's motion, the court noted that it found that "Ms. Johnson and Ms. Woods are sympathetic to [defendant]," and "have the equivalent of buyer's remorse because they pretty much just wanted [defendant] out. They didn't want [him] to go to jail." The court further noted:

> "I guess the petitioner wants me to think that not only is there not apparent authority, but that the officers at that time in the midst of this very fluid situation had to do an inquiry beyond having the victim's mother say in front of the victim I will take you over, I

> have got the key, I will let you in, that somehow there is something about that that is untoward that the police are trying to run a game of some kind. Ms. Woods was there. Ms. Woods heard her mother say that. Ms. Woods didn't jump up and say no, no, no. Ms. Woods was doing what sometimes victims do, which she was now in a safe environment, she had her mother who was looking out for her interest, and she was deferring to her mother *** [The police] went over there to talk to [defendant] to probably arrest him for the domestic battery, and when they get in there then things change. But how did they get there? They got there because Ms. Woods' mother, Ms. Johnson, in the presence of Ms. Woods said, come on, I will go over there with you, I will open the door for you, I want him out. What else are they supposed to do? They went over there. She opened the door. They went in to get [defendant] out *** which is exactly what Ms. Woods and Ms. Johnson wanted them to do."

¶ 16 In sum, the court concluded, "It seems clear to me that there was apparent authority for Ms. Johnson to open the door," and denied defendant's motion to quash arrest and suppress evidence.

¶ 17 Following the ensuing bench trial, defendant was found guilty of two counts of unlawful use of a weapon by a felon (UUW), three counts of aggravated assault of a peace officer, resisting a peace officer, and possession of a controlled substance. The court then merged defendant's convictions and sentenced him to concurrent terms of five years' imprisonment on the two counts of UUW.

¶ 18 In this appeal from that judgment, defendant first contends that the trial court erred in denying his motion to quash arrest and suppress evidence. He specifically claims that Johnson did not have actual or apparent authority to consent to the police entry into his residence. The State responds that Woods had actual authority and gave "tacit consent" to the police entry, and that Johnson had apparent authority to consent to it.

¶ 19 In reviewing a trial court's ruling on a motion to suppress, we review the court's findings of fact for clear error, with due weight being given to any inferences drawn by the fact finder, and will only reverse when its findings are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18. However, our review of the trial court's ultimate legal ruling on the motion to suppress is *de novo*. *Hackett*, 2012 IL 111781, ¶ 18.

¶ 20 We observe that the fourth amendment prohibits the warrantless search of a person's home as *per se* unreasonable; however, there is an exception where a search is conducted pursuant to consent. *People v. Bull*, 185 Ill. 2d 179, 196-97 (1998). Consent may be obtained from the individual whose property is searched or from a third-party who possesses common authority over the premises. *Bull*, 185 Ill. 2d at 197, citing *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). In addition, a warrantless search may be based on consent given by a person with apparent, rather than actual, authority if at the time of the search police reasonably believed that person to have common authority over the place to be searched. *Bull*, 185 Ill. 2d at 198, citing *Rodriguez*, 497 U.S. at 186-89. However, it is the State's burden to prove that police were objectively reasonable in believing that the consenting person had authority to consent. *People v. Burton*, 409 Ill. App. 3d 321, 329 (2011), citing *People v. James*, 163 Ill. 2d 302, 317 (1994).

¶ 21 Initially, we note that the State's contention that Woods gave "tacit consent" to the search in question by her silence and deference to her mother cannot be sustained. The State has not cited any authority in support of its theory of "tacit consent," and we find the concept at odds

with the supreme court's cautionary admonition that, in the case of nonverbal conduct, an individual's intention to surrender her right to be free from an unreasonable search should be unmistakably clear. *People v. Anthony*, 198 Ill. 2d 194, 203 (2001).

¶ 22 Notwithstanding, we agree with the State that the evidence presented here shows that Johnson had apparent authority to consent to the police entry into defendant's residence. The testimony at defendant's suppression hearing established that on October 8, 2008, Woods told Johnson that she had been the victim of an incident of domestic violence, and Johnson requested that she come to the high school where she worked to speak with Officer Fowler. Officer Fowler then met with the mother and daughter in the safety office at the school, heard Woods tell about the incident, and relayed the incident to Officer San Roman who conducted a second interview with Woods. During that interview, Woods did not object when her mother told Officer San Roman that the apartment at 1506 Pitner Avenue was hers, that she had a key, and that she would let him in so that he could remove defendant. Johnson also subsequently demonstrated to police that she had authority over the apartment by accompanying them to the residence and unlocking the door for them with a key. Considering the relationship of Woods and Johnson reflected in the record, and Woods' passivity in the face of Johnson's affirmative demonstrations of control over the apartment, we find that it was objectively reasonable for police to believe that Johnson had authority to consent to their entry into the apartment at 1506 Pitner Avenue. *Burton*, 409 Ill. App. 3d at 329.

¶ 23 Defendant nonetheless claims that "Officer Fowler knew that Johnson did not live at 1506 Pitner Avenue," and that his "knowledge that Johnson lacked authority was attributable to Officer San Roman under the imputed knowledge doctrine." Although the State responds that defendant forfeited this argument by failing to raise it in the trial court, the record shows that counsel did argue that Officer Fowler knew that Johnson did not live at the subject residence, thereby

suggesting, but not stating, the doctrine. Nevertheless, we note that Officer Fowler never testified at the suppression hearing that he knew Johnson did not live at 1506 Pitner Avenue, and, notably, that he was not even involved with the entry into defendant's residence. Thus, defendant's attempt to invoke the doctrine by inferring such knowledge from the officer's testimony that Woods told him she lived at 1506 Pitner Avenue with defendant and her children, as well as from his testimony that neither Woods nor Johnson informed him that Johnson lived there, is unpersuasive.

¶ 24 It is also clear from the trial court's conclusion that it did not infer, as defendant does here, that Officer Fowler knew that Johnson did not live at 1506 Pitner Avenue. Moreover, we find no basis for concluding that its findings in that regard were against the manifest weight of the evidence, particularly in light of the officer's testimony that Johnson told police she would go to the apartment with them, that she had a key, and would let them in, which factors strongly indicate that she had some degree of control over the apartment. *People v. Sanchez*, 107 Ill. App. 3d 240, 250 (1982). Accordingly, we find this claim to be without merit.

¶ 25 Defendant also maintains that "Johnson's status was ambiguous and called for further investigation" because her statement that " 'it's my apartment' does not necessarily convey to a reasonable person that Johnson lived there." We disagree. There is nothing ambiguous about this statement. A reasonable person would almost certainly conclude that a person who referred to "my apartment" was, in fact, referring to the apartment in which she resided. We therefore conclude that the State established that Johnson had apparent authority to consent to police entry into defendant's residence (*Bull*, 185 Ill. 2d at 198); and, consequently, the trial court did not err in denying defendant's motion to quash arrest and suppress evidence.

¶ 26 Defendant next contends that he was improperly assessed a $200 DNA analysis fee because his DNA profile is already in the Illinois State Police database. The State concedes that

the fee was improperly assessed and should be vacated. Pursuant to the supreme court's ruling in *People v. Marshall*, 242 Ill. 2d 285, 303 (2011), we agree that the trial court was not authorized to assess defendant the $200 DNA fee where he is currently registered in the DNA database, and therefore vacate that fee.

¶ 27 For the reasons stated, we vacate defendant's $200 DNA fee and affirm the judgment in all other respects.

¶ 28 Affirmed in part; vacated in part.