2012 IL App (3d) 110070-U

Order filed February 9, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Mercer County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-11-0070
v.	)	Circuit No. 09-CV-28
	)	
RYAN A. MUELLER,	)	Honorable James G. Conway, Jr.,
Defendant-Appellee.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Where the evidence established that conservation officer did not have reason to believe hunters were illegally tagging deer and hunters did not have authority to consent to search of defendant's garage, the trial court properly granted defendant's motion to suppress the warrantless search.

¶ 2 Defendant Ryan Mueller was charged with two conservation violations for illegally taking a deer and possessing another hunter's tags (17 Ill. Adm. Code 650.40(a), (d) (2009)).

The trial court granted defendant's motion to suppress evidence that was recovered during

a search of a garage on defendant's property. On appeal, the State argues that the trial court erred in finding that the warrantless search was unauthorized. We affirm.

¶ 3 Defendant was charged by conservation citation complaint with illegally taking and tagging deer in December of 2009. In August of 2010, he moved to suppress the evidence obtained during the search of a garage on his farmland. A court reporter was not present at the suppression hearing. A bystander's report was certified by the trial judge and submitted with the record on appeal.

¶ 4 At the hearing, Conservation Officer Anthony Petreikis testified that he received an anonymous complaint that a large group of hunters were "whacking and stacking" deer in the area of Mueller Road. He explained that "whacking and stacking" is a term used for the illegal accumulation of deer by a group of hunters and that it is common for hunters in groups to wrongfully share deer tags. Petreikis testified that it is always his practice to check tags on tagged deer during the hunting season, particularly when there are complaints.

¶ 5 While Petreikis was driving north on Mueller Road, he saw a truck driving out of a field on the east side of the road. Both occupants of the truck were wearing orange hunting apparel. Petreikis parked on the side of the road and got out of his vehicle. He did not activate his lights or use his siren. As he approached the truck, the passenger, Donald Yates, and the driver, Keith Stineman, exited the truck. Petreikis identified himself as a conservation officer and asked if the men had been successful. Stineman introduced himself and told Petreikis that he and Yates had not shot a deer that morning. He also told Petreikis that they were friends of defendant, had permission to hunt on defendant's land, and sometimes hunted with defendant. Both Stineman and Yates had valid F.O.I.D. cards,

harvest tags and hunting weapons.

¶ 6 Stineman then told Petreikis that other hunters he and Yates had hunted with on previous days had harvested deer but had gone home. Petreikis asked if he could see the deer that had been previously shot. Stineman agreed and drove his truck one-quarter mile south to a vacant house with an unattached garage. Petreikis followed in his State-marked vehicle. Stineman pulled up to the garage door. Petreikis testified that one of the hunters opened the garage for him. Petreikis entered the garage and inspected three dead deer that he found inside. Two deer were tagged with the name "Clark Giles," and one was tagged with the name "Roger Mueller." After looking at the deer, Petreikis told Stineman and Yates that they were fine and could continue hunting. He then left the garage. He later conducted a computer search of "Clark Giles" and discovered that those tags had been improperly used.

¶ 7 Yates testified that he noticed Petreikis driving his conservation vehicle toward Mueller Road as he and Stineman were sitting in a field east of Mueller Road. He then saw Petreikis drive on Mueller Road and stop just beyond the field access road on which he and Stineman were parked. Stineman and Yates exited Yates's truck. Petreikis approached and said that he had received a complaint of a large group of hunters illegally tagging deer on Freiden Road. Yates testified that Freiden Road is miles from Mueller Road. Petreikis then checked both hunters' F.O.I.D. cards, hunting licenses, deer tags and weapons and found no violations.

¶ 8 Yates further testified that he had permission to hunt on Mueller's property, but that he did not own or possess any of Mueller's farmland, nor did he have authority to use the

garage. Yates acknowledged that he had butchered deer for Mueller in the past and that the abandoned garage is occasionally used for storage.

¶ 9 Stineman testified that he drove Yates's truck to a point just short of Mueller Road and then exited the vehicle with Yates as Petreikis approached. Petreikis told the men that he was investigating illegal hunting on Freiden Road. Stineman testified that he had permission to hunt on Mueller's land, but not to enter Mueller's buildings.

¶ 10 On cross-examination, Stineman stated that he voluntarily went with Petreikis to show him the dead deer. Petreikis said he wanted to see if the deer were properly tagged. Stineman testified that Petreikis essentially told him, "You're not the group I'm looking for." Stineman stated that he had permission to hunt and use the garage that day.

¶ 11 Roger Mueller testified that Yates and Stineman had no interest in the Mueller farmland and did not have permission to use any buildings. Both Yates and Stineman were given permission to hunt deer on the Mueller property. He also testified that Yates and Stineman had cleaned deer for him and that dead deer had been stored in the abandoned garage.

¶ 12 Defendant Ryan Mueller testified that the garage where the deer were found was abandoned. He stated that Yates and Stineman had permission to hunt on his land in December 2009 but did not have permission to use any of the buildings; Yates and Stineman did not lease the land and had no interest in it. Defendant also testified that Yates and Stineman occasionally hunted with him and butchered deer for him.

¶ 13 The trial court found that Petreikis "did not have a reasonable belief that Yates and Stineman were involved in Wildlife Code or Criminal Code Violations." It further found that

Yates and Stineman had no lawful authority to consent to a search of defendant's garage. The court then granted defendant's motion to suppress the evidence.

¶ 14 ANALYSIS

¶ 15 I. Wildlife Code

¶ 16 The State first argues that the warrantless search of defendant's garage was authorized under section 1.19 of the Wildlife Code (520 ILCS 5/1.19 (West 2008)).

¶ 17 On review, a trial court's ruling on a motion to suppress evidence presents mixed questions of law and fact. *People v. Pitman*, 211 Ill. 2d 502 (2004). Findings of fact will be upheld unless they are against the manifest weight of the evidence. *Pitman*, 211 Ill. 2d at 512. However, a reviewing court remains free to make its own assessment of the facts in relation to the issues presented and may draw its own conclusion when determining whether the evidence should be suppress. *Id.* Thus, we review *de novo* the ultimate question of law. *Id.*

¶ 18 Section 1.19 of the Wildlife Code provides:

> "All authorized employees of the Department are empowered, pursuant to law, to enter all lands and waters to enforce the provisions of this Act. Authorized employees are further empowered to examine all buildings, private or public clubs (except dwellings), fish markets, *** vehicles, *** or other receptacles, *** which they have reason to believe contains *** wild mammals or any part thereof, taken, destroyed, bought, sold or bartered, shipped or held in possession contrary to any of the provision of this Act, including administrative rules." 520 ILCS 5/1.19 (West 2008).

Section 1.19 is a limited exception to the fourth amendment warrant requirements. *People v. Layton*, 196 Ill. App. 3d 78 (1990). The statutory provision is limited to conservation officers pursing game violations and is based on necessity. *Layton*, 196 Ill. App. 3d at 88.

¶ 19 The plain language of section 1.19 authorizes conservation officers to conduct examinations of vehicles, buildings and other locations that the officers have "reason to believe" contain wild animals taken in violation of the Wildlife Code. *People v. Levens*, 306 Ill. App. 3d 230 (1999). "Reason to believe" is probable cause to search, which arises from indicia that the person is a hunter immediately or very recently engaged in hunting. *Layton*, 196 Ill. App. 3d at 88. A valid stop of a hunter in the field requires that the conservation officer reasonably believe that the individual is currently or was recently engaged in illegal hunting. *Levens*, 306 Ill. App. 3d at 233; see also *People ex rel. Waller v. 1990 Ford Bronco*, 158 Ill. 2d 460 (1994).

¶ 20 Here, the Wildlife Code gave Officer Petreikis the authority to conduct a warrantless search of a building which he had reason to believe contained deer taken or held in violation of the statute and corresponding administrative rules. The State argues that Petreikis had reason to believe that the garage contained illegally tagged deer based on the information he received from Yates and Stineman, combined with the anonymous complaint. We disagree.

¶ 21 Petreikis's conversation with Yates and Stineman does not support the warrantless search. When Petreikis exited his truck and talked to Yates and Stineman, he had no reason to believe defendant's garage contained illegally harvested deer. He spoke with Yates and Stineman as the hunters exited Yates's truck, which was parked on defendant's farmland. Both hunters said they had not shot a deer that day. Both hunters informed Petreikis that

defendant had given them permission to hunt on defendant's farmland. Both hunters then produced valid F.O.I.D. cards, hunting licenses and harvesting tags. Petreikis's questioning revealed no illegal hunting activity. The hunters then voluntarily drove to another location one-quarter mile away and allowed Petreikis access to the garage. Although the statute permits conservation officers to examine vehicles and buildings, the officer must have reason to believe that the building contains wildlife illegally taken. At the point in time when Petreikis entered the garage, he had no reason to believe that Stineman, Yates or the defendant had illegally taken or tagged deer. Thus, his search of the garage was not authorized by section 1.19.

¶ 22 Moreover, the search was not authorized by the anonymous complaint. Petreikis testified that he received an anonymous complaint that a large group of hunters were illegally harvesting deer on Mueller Road. Petreikis encountered two hunters on Mueller Road, not a large group. When Petreikis asked to see the deer that had been previously harvested, Stineman voluntarily drove Petreikis from the area where Petreikis had questioned the hunters to the garage at another location. No evidence suggests that Petreikis had reason to believe Stineman and Yates had illegally harvested deer in the garage. Moreover, the anonymous complaint did not indicate that deer, taken in violation of the Wildlife Code, were being stored in defendant's garage. Without a reasonable belief of illegal activity, the search was not authorized by section 1.19 of the Wildlife Code.

¶ 23 II. Consent

¶ 24 In the alternative, the State argues that the warrantless search was valid based on the consent given by Yates and Stineman.

¶ 25 An exception to the fourth amendment warrant requirement is a search conducted pursuant to consent. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). A warrantless search does not violate the fourth amendment when an officer receives consent from a third party whom the officer reasonably believes possesses common authority. *Illinois v. Rodriguez*, 497 U.S. 177 (1990). Common authority depends "on mutual use of the property by a person generally having joint access or control for most purposes" such that each assumes the risk that the other may permit the common area to be searched. *People v. Bull*, 185 Ill. 2d 179 (1998). The reasonableness of the officer's belief is objective. The question we must determine is whether the facts available to the officer would cause a reasonable person to believe that the consenting party had authority over the premises. *Pitman*, 211 Ill. 2d at 524. The State bears the burden of establishing common authority. *Rodriguez*, 497 U.S. at 181.

¶ 26 Here, the facts available to Petreikis at the time Stineman and Yates opened the garage door would not cause a reasonable person to believe that they had authority over the premises. The only information Petreikis had was that a large group of hunters were illegally tagging deer. He encountered Stineman and Yates who had not harvested any deer that day and who both had legal hunting credentials. After talking with the hunters, Petreikis's actions went beyond the information that he had. Petreikis only knew that Stineman and Yates had permission to hunt on the farmland where Petreikis first approached them. He did not have any reason to believe they had significant control or joint access to other property owned by defendant or the garage located one-quarter mile down the road. Defendant had not given Petreikis consent to enter the garage, and Stineman and Yates did not demonstrate mutual use of the property such that defendant assumed the risk that they would consent to

a search.

¶ 27 The trial court found that Stineman and Yates lacked common authority to consent to the search. Whether consent has been given is a question of fact to be determined by the trial court. See *People v. Prinzing*, 389 Ill. App. 3d 923 (2009). We are not in a position to observe the witnesses and reassess their credibility; thus, we will uphold the trial court's finding unless it is clearly unreasonable. See *Pitman*, 211 Ill. 2d at 527. Based on the evidence presented in the bystander's report, we find that the trial court's ruling of no consent was reasonable.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Mercer County is affirmed.

¶ 30 Affirmed.