

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

TIMOTHY ZANE, *Appellant*.

No. 1 CA-CR 16-0472
FILED 8-3-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-132896-001
The Honorable Gregory Como, Judge
The Honorable Michael W. Kemp, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Robert A. Walsh
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Tennie B. Martin
Counsel for Appellant

STATE v. ZANE
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Paul J. McMurdie delivered the decision of the Court, in which Judge Margaret H. Downie and Judge Maria Elena Cruz joined.

M c M U R D I E, Judge:

¶1 Timothy Zane appeals his conviction and sentence for one count of misconduct involving weapons, a Class 4 felony. Zane argues the superior court erred when it denied his Motion to Suppress regarding firearms seized from a warrantless search of his home. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 On January 28, 2015, police seized several firearms from inside Zane's home. At that time, Zane's civil right to own firearms had not been restored after a prior felony conviction. Zane filed a motion to suppress the seized firearms, and the superior court held an evidentiary hearing on the motion.

¶3 At the hearing, Probation Officer Breed testified that on January 28, 2015, he and other probation officers waited outside the home of probationer Angela Wickware to apprehend her based on a probation violation warrant. Breed testified that Wickware saw the officers positioned outside of her house and ran into Zane's house without knocking. The probation officers followed Wickware to the Zane residence but did not immediately enter. Probation Officer Knott knocked on the door, and identified himself to Carrie Zane ("Carrie"), Zane's wife, and explained he had a "fugitive warrant" for Wickware's arrest. Knott asked Carrie where Wickware was, to which Carrie responded she believed Wickware had run out of the back of the house but they could go inside and check.¹

¶4 Once inside the home, two of the officers went to the rear of the house, and Breed proceeded to climb a ladder to the loft area of the home because it was large enough for a person to hide. In the loft, Breed

¹ Carrie confirmed giving consent to the officers to enter her home during her testimony at the evidentiary hearing.

STATE v. ZANE
Decision of the Court

saw openly displayed firearms. Within a minute or two of looking into the loft, Breed heard commands that Wickware had been apprehended and saw the other officers bringing Wickware out from the rear of the home. Afterwards, Breed informed the Phoenix Police Department of the firearms.

¶5 Sergeant Mentzer testified he and another police officer went to the Zane residence later that day to recover the weapons seen by Breed. Mentzer presented Carrie with a written consent form and explained to her that the police officers were there because the probation officers saw weapons in the house and her husband was a prohibited possessor. Mentzer informed Carrie she did not have to consent, without her consent they were not going to search the house, and they would limit the search to the “loft only.” Carrie called Zane and, after it became apparent he was not coming home as she requested, signed the consent form. The police officers recovered four long guns and ammunition.

¶6 The superior court found no Fourth Amendment violation because the probation officers obtained Carrie’s voluntary consent to enter the home to search for Wickware and Carrie gave written consent to search for the firearms. Therefore, the superior court denied Zane’s suppression motion.

¶7 The jury found Zane guilty and he timely appealed his conviction and sentence. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).²

DISCUSSION

¶8 Zane argues the superior court abused its discretion by denying the Motion to Suppress because: (1) the discovery of Zane’s firearms “was based on probation officers chasing a probationer [into Zane’s house] for a warrant that had been quashed;” (2) Carrie gave only a limited consent to search the house; and (3) no exigent circumstances justified the search.

¶9 “We review the denial of a motion to suppress for an abuse of discretion, considering only the evidence presented at the suppression hearing, and viewing the facts in the light most favorable to sustaining the ruling.” *State v. Manuel*, 229 Ariz. 1, 4, ¶ 11 (2011) (citation omitted). We

² Absent material revision after the date of an alleged offense, we cite a statute’s or rule’s current version.

STATE v. ZANE
Decision of the Court

defer to the superior court's assessment of witness credibility as it is in the best position to make that determination. *State v. Olquin*, 216 Ariz. 250, 252, ¶ 10 (App. 2007).

¶10 Zane contends Carrie's consent was not voluntary, and to the extent it may have been voluntary it was limited only to the back of the house and did not include the loft. We disagree.

¶11 "The Fourth Amendment to the United States Constitution protects individuals against 'unreasonable searches and seizures,' and any evidence collected in violation of this provision is generally inadmissible in a subsequent criminal trial." *State v. Valenzuela*, 239 Ariz. 299, 302, ¶ 10 (2016) (quoting *Mapp v. Ohio*, 367 U.S. 643, 654 (1961)). "A warrantless search is unlawful under the Fourth Amendment of the United States Constitution and article II, section 8 of the Arizona Constitution," unless an exception to the warrant requirement exists. *Mazen v. Seidel*, 189 Ariz. 195, 197 (1997). "One exception to the warrant requirement is a search conducted with consent." *Valenzuela*, 239 Ariz. at 302, ¶ 11. Consent may be given by "unequivocal words or conduct expressing consent." *State v. Farmer*, 97 Ariz. 348, 350 (1965). The subsequent search must fall within the scope of the consent and the consent must have been voluntarily given. *State v. Becerra*, 239 Ariz. 90, 92, ¶ 8 (App. 2016). The State "has the burden of proving that the consent was, in fact, freely and voluntarily given." *Valenzuela*, 239 Ariz. at 302, ¶ 11 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973)). Moreover, consent given by "one resident of jointly occupied premises is generally sufficient to justify a warrantless search." *Fernandez v. California*, 134 S. Ct. 1126, 1133 (2014); *Illinois v. Rodriguez*, 497 U.S. 177, 186–89 (1990) (valid consent may be given by person with either actual or apparent authority to grant permission to search).³

¶12 Regarding the probation officers' initial entry into the Zane residence, Knott testified he talked to Carrie at the front door believing she was the homeowner, identified himself as a probation officer having a

³ The Supreme Court has recognized a narrow exception to this general principle: "a physically present inhabitant's express refusal of consent to a police search [of his home] is dispositive as to him, regardless of the consent of a fellow occupant." *Fernandez v. California*, 134 S. Ct. 1126, 1133 (2014) (brackets in original). However, Zane was not physically present to refuse to consent to the search, even after Carrie called him, and Carrie and the police officers waited for his arrival for approximately 15 minutes before Carrie signed the consent form.

STATE v. ZANE
Decision of the Court

fugitive warrant for Wickware’s arrest, and “asked her if [he] could go in and find Angela.” Knott further testified: “[Carrie] said I think [Wickware] ran out the back but you can go inside the house.” Knott also testified that Carrie was dressed and appeared “very calm” during their conversation at her front door. At the suppression hearing, Carrie confirmed the officer “did ask me if they could search. And I said – I didn’t say no, but I pointed to the back bedroom to where – that’s where she is.” In search of Wickware, two officers went to the back of the house and one officer searched for Wickware in the loft, where Wickware could have been hiding.

¶13 While Breed was actively searching for Wickware and before she was arrested, Breed saw firearms in plain view. *See State v. Warness*, 26 Ariz. App. 359, 360 (1976) (police are not required to obtain a search warrant when lawfully on privately controlled premises and inadvertently discover evidence of illegal activity in “plain view”); *see also Mazen*, 189 Ariz. at 197 (“If the officer was lawfully in the place where he saw the contraband . . . there was no real search; thus ‘it cannot be unreasonable or unconstitutional to seize the item in plain view.’”) (quoting *State v. Cobb*, 115 Ariz. 484, 488 (1977)).

¶14 When Mentzer arrived to collect the firearms, he presented Carrie with a written consent form, explained its purpose, and informed Carrie she did not have to sign the form. On the form, Mentzer limited the consent to the “loft only.” Carrie called Zane, and after waiting about 15 minutes for Zane to arrive she signed the consent form.

¶15 The superior court found the searches were within the scope of the consent given by Carrie, and that Carrie gave both oral and written consent voluntarily. The superior court’s findings are supported by the record. *See State v. Guillen*, 223 Ariz. 314, 317, ¶ 11 (2010) (“To be valid, consent must be voluntarily given, and whether the consent was voluntary ‘is a *question of fact* to be determined from the totality of the circumstances.’”) (emphasis added) (quoting *State v. Davolt*, 207 Ariz. 191, 203, ¶ 29 (2004)). No abuse of discretion occurred. *See Manuel*, 229 Ariz. at 4, ¶ 11.

¶16 Because it is not necessary to our ruling, we decline to reach Zane’s other arguments. *See State v. Hardwick*, 183 Ariz. 649, 657 (App. 1995) (once the court finds grounds for resolution, it can decline to reach the remaining issues).

STATE v. ZANE
Decision of the Court

CONCLUSION

¶17 For the foregoing reasons, we affirm the trial court's denial of Zane's Motion to Suppress, and Zane's convictions and sentences.



AMY M. WOOD • Clerk of the Court
FILED: AA