IN THE COURT OF APPEALS OF IOWA

No. 1-414 / 10-1035
Filed August 10, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PRESTON GEORGE BELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes (suppression hearing) and Mark D. Cleve (bench trial), Judges.

Preston Bell appeals the district court's decision declining to suppress evidence police obtained when they searched a motel room he rented. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, and Cory McAnelly, Student Intern, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

In this appeal from a suppression ruling we must determine whether two occupants of a motel room—rented for them by the defendant—had common authority with the defendant to consent to a search of the room, or alternatively, whether police reasonably concluded the occupants had authority to consent when their belongings were in the room and they explained that the defendant signed for the room because they did not have cash or identification.

Defendant Preston Bell was convicted and sentenced for possessing crack cocaine with the intent to deliver in violation of Iowa Code sections 124.401(1)(c)(3), 124.206(2)(d), and 703.1 (2009). Bell appeals the district court's decision declining to suppress evidence police found when they searched a motel room Bell had rented for Perry Westbrook and Westbrook's fiancé, Lana Shariff. Westbrook and Shariff consented to a police search of the motel room. Because the record reflects that Westbrook and Shariff had common authority with Bell over the room or had at least apparent authority to consent to a search, we affirm the district court.

I. Background Facts and Proceedings

In January 2009, officers of the Metropolitan Enforcement Group (MEG), a drug unit that works in both Iowa and Illinois, received a tip from an anonymous "concerned citizen" that Bell was selling narcotics from rooms 222 and 242 at the Motel 6 in Davenport. MEG Special Agent Kevin Winslow testified he was familiar with Bell, who had been arrested before for narcotics distribution in the

Quad Cities. The informant also indicated Bell would probably have "two or three other subjects in that room . . . distributing narcotics under his direction."

After receiving the tip, police reviewed Motel 6's records and confirmed Bell had signed for and rented room 222. Agents then conducted surveillance from the Motel 6 parking lot. Agent Winslow testified that the officers observed behavior indicative of "narcotic sales, purchases, [and] distribution"—namely, a number of people entering and exiting room 222 and staying only a short period of time.

Following one suspected sale, officers stopped a departing car; the occupants were two women who had left room 222. A drug-dog detected narcotics. The officers then searched the vehicle and found "Chore Boy" cleaning pads, which are used when smoking crack cocaine, as well as hypodermic needles. But they also found evidence of insulin use and did not uncover any narcotics. So, the police allowed the women to leave.

Because the officers were concerned the women would reveal the investigation to Bell, they decided to approach room 222. A drug-dog sniffed the walkway outside the motel room and detected narcotics. At that point, one group of officers approached the second-floor room to speak with the occupants; meanwhile, another group of officers encountered Bell downstairs.

The officers who approached room 222 identified themselves as police to the occupants, Westbrook and Shariff. Detective Epigmenio Canas testified at the suppression hearing that the officers asked for permission to enter the room, which Westbrook and Shariff granted. The officers told the occupants that "a

narcotics investigation [was] going on." Detective Canas testified that he asked for consent to search the room and both Westbrook and Shariff "stated, 'yes.'" He further testified that he had discussions with Westbrook and Shariff about who was actually staying in the room. Westbrook and Shariff told the officers the room was theirs and explained that Bell had signed for it "because they didn't have . . . cash or IDs to get a room."

After obtaining consent from the occupants, the officers began to search room 222. Special Agent Kyle Schultz swept his hand along a light fixture in the bathroom and found two rocks of crack cocaine,[1] weighing less than one gram. The agent also saw packaging materials. After he discovered the crack cocaine and packaging materials, Schultz testified that another officer entered and "said that Preston Bell had revoked consent and that [they] were ceasing [the] search." At that point, officers stopped searching room 222.

At the same time officers approached room 222, a second group of officers stopped Bell. Agent Winslow testified that they searched Bell and found $1625 in his pockets. They then placed Bell in an undercover vehicle. Although the exact timing is somewhat unclear from the record, Agent Winslow testified at the suppression hearing that before speaking to Bell he learned that Westbrook and Shariff had consented to a search but told the officers that Bell had actually rented the room. Agent Winslow testified that he then became concerned that "multiple subjects . . . [had] some sort of privacy issue to this room." Agent

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[1] In his deposition testimony admitted as an exhibit at trial, Detective Canas said that Special Agent Schultz began his search in the bathroom because the anonymous tip "advised that narcotics were being hidden in the bathroom area above the light."

Winslow spoke with Bell to determine Bell's interest in the room and whether he would consent to search. Agent Winslow testified at the suppression hearing that Bell told him he rented room 222 for his friend and stated, "it's not my room. I'm not staying there." When pressed on whether he would authorize a search of room 222, Bell eventually declined to consent.

Detective Canas testified at the suppression hearing that Special Agent Schultz had begun searching room 222,[2] starting in the bathroom where he found two rocks of crack cocaine before

> [o]ne of the agents came back to the room and stated there was an issue with somebody giving consent. I believe it was Mr. Bell giving consent, and we just all decided after discussion to stop the search and go ahead and apply for a search warrant.

The officers then applied for and secured a search warrant.[3] The police found a receipt with Bell's name on it, 4.4 grams of crack cocaine, two additional rocks of crack cocaine, plastic baggies, baking soda, razors, Chore Boy pads, and a spoon with burn marks.

On February 3, 2009, the State filed a three-count trial information, charging Bell with: (1) possession with intent to deliver crack cocaine, (2) a drug tax stamp violation, and (3) possession of drug paraphernalia. The district court

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[2] Agent Winslow provided a similar account when he testified at the bench trial that after speaking with Bell about his relationship to room 222, he "left the vehicle and approached the officers on the second floor." He testified that the officers had already begun to search room 222, based on the consent obtained from Westbrook and Shariff, and he "told them to stop because [he] felt there was a conflict in standing that [he] was not comfortable with."

[3] On appeal, the parties do not differentiate between evidence found during the initial, disputed search and evidence found during the warranted search. Likewise, the record on appeal does not reveal whether the search warrant application referred to evidence found during the initial search or whether probable cause existed for obtaining a warrant without the evidence discovered pursuant to the occupants' consent.

granted the prosecutor's motion to dismiss the drug tax stamp violation. Bell entered a not-guilty plea.

On June 24, 2009, Bell moved to suppress "all evidence in this case pursuant to Iowa Rule[ ] of Criminal Procedure 2.12," arguing that the search "was unlawful [because] police officers did not have a lawful right to be in the room." On November 10, 2009, the district court denied the motion, concluding "the police officers reasonably believed the person who gave them permission to search the room—Westbrook, who said he was staying there and appeared to be staying there—had apparent authority to consent to the search." The court also stated that "Westbrook had common authority over the room since he was the person who was staying in the room, and his consent gave the police the apparent authority to search the room until they found Bell and Bell refused permission."

On January 29, 2010, the court held a bench trial, which was continued and completed on February 12, 2010.[4] In the court's March 2, 2010 ruling and order, the court found Bell guilty of possession with intent to deliver a schedule II controlled substance in violation of Iowa Code sections 124.401(1)(c)(3), 124.206(2)(d), and 703.1, and not guilty of possession of drug paraphernalia. On May 26, 2010, the court sentenced Bell to an indeterminate ten-year prison term with credit for time served.

Bell appeals the court's denial of his motion to suppress all evidence gathered from the motel room.

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[4] Bell waived his right to a jury trial.

II. Scope and Standard of Review

We review de novo a district court's ruling on a claim that the State violated a defendant's constitutional rights to be free of unreasonable searches and seizures. *State v. Reinders*, 690 N.W.2d 78, 82 (Iowa 2004). When analyzing alleged violations of constitutional rights, we independently evaluate the totality of the circumstances appearing in the record. *Id.* And, we give the district court's findings of fact deference "'due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings.'" *Id.* (citation omitted). When the State relies upon an exception to the warrant requirement, such as consent, as a means to validate a search, it must establish the exception by a preponderance of the evidence. *State v. Folkens*, 281 N.W.2d 1, 3 (Iowa 1979).

III. Merits

On appeal, Bell argues the district court erred when it overruled his motion to suppress the evidence obtained by searching room 222. As an initial matter, Bell asserts the officers encountered a situation "fraught with ambiguity"[5] when they found Westbrook and Shariff in the room, that they failed to discharge their duty "to make further inquiries into the precise nature of the situation" before searching, and their failure to do so rendered the search illegal. He also maintains that Westbrook and Shariff did not have common authority with Bell over room 222 because they "did not pay for the room and did not spend the night in the room." Bell further argues that the officers could not reasonably

[5] The defendant borrows this phrase from our court's analysis in *State v. Grant*, 614 N.W.2d 848, 854 (Iowa Ct. App. 2000).

conclude Westbrook and Shariff had authority to consent to a search of room 222—and therefore could not justify the search under the apparent authority doctrine—in light of the officers' knowledge that Bell paid for that room.

The State contends Westbrook had common authority over room 222 and therefore could validly consent to a search. It argues alternatively that "the search remains valid under the apparent authority doctrine," citing *Illinois v. Rodriguez*, 497 U.S. 177, 179, 110 S. Ct. 2793, 2796, 111 L. Ed. 2d 148, 155 (1990). The State asserts that the "statements Bell and Westbrook gave at the scene confirm law enforcement's understanding that the room was for Westbrook's use. As far as law enforcement knew, Bell was not staying there and Westbrook was."

The State also argues the search was valid because "Bell was not present at the door of the hotel room to object," as required by *Georgia v. Randolph*, 547 U.S. 103, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006).

A. Consent to Search Principles

"'The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect persons from unreasonable searches and seizures.'" *Reinders*, 690 N.W.2d at 81 (citation omitted). Bell does not treat the federal and state provisions differently and does not argue the state provision affords him more protection than its federal counterpart. *See State v. Lewis*, 675 N.W.2d 516, 522–23 (Iowa 2004). We generally interpret the Iowa Constitution's protection against unreasonable searches and seizures as having the same scope and effect as its federal counterpart and because Bell does not argue

otherwise in this case, we find federal caselaw "persuasive in our interpretation of the state provision." *See Reinders*, 690 N.W.2d at 81–82; *Lewis*, 675 N.W.2d at 522–23.

"A warrantless search violates the Fourth Amendment 'unless it falls within a recognized exception.'" *Reinders*, 690 N.W.2d at 83 (citation omitted). A valid consensual search is an exception to the warrant requirement. *State v. Reinier*, 628 N.W.2d 460, 464–65 (Iowa 2001). In determining the validity of a person's consent to search, we address two questions: did the consenting party have authority to consent; and was the consent voluntary? *Folkens*, 281 N.W.2d at 3. The resolution of this case focuses on the first question: whether Westbrook and Shariff had authority to consent.

A third party who possesses common authority over or other sufficient relationship to the premises may validly consent to a search. *State v. Bakker*, 262 N.W.2d 538, 546 (Iowa 1978); *State v. Knutson*, 234 N.W.2d 105, 107 (Iowa 1975) ("When the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof consent was given by the defendant, but may show permission to search was obtained from a person who possessed common authority over or other sufficient relationship to the premises."). Common authority "stems from 'mutual use of the property by persons generally having joint access or control for most purposes.'" *State v. Don*, 318 N.W.2d 801, 804 (Iowa 1982) (quoting *United States v. Matlock*, 415 U.S. 164, 170–71, 94 S. Ct. 988, 993, 39 L. Ed. 2d 242, 249 (1974)). The joint access or control renders reasonable the "recogni[tion] that any of the co-inhabitants has the right

to permit the inspection in [their] own right and that the others have assumed the risk that one of their number might permit the common area to be searched." *Matlock*, 415 U.S. at 171 n.7, 94 S. Ct. at 993 n.7, 39 L. Ed. 2d at 250 n.7.

Authority to consent includes not only actual, but also apparent authority. *Rodriguez*, 497 U.S. at 186–87, 110 S. Ct. at 2799–2801, 111 L. Ed. 2d at 159–60. Apparent authority will validate a search where officials "enter without a warrant because they reasonably (though erroneously) believe that the person who has consented to their entry" had the authority to do so. *Id.* at 186, 110 S. Ct. at 2800, 111 L. Ed. 2d at 160. We apply an objective standard when analyzing consent and ask "'would the facts available to the officer at the moment . . . warrant a [person] of reasonable caution in the belief' that the consenting party had authority over the premises?" *Id.* at 188, 110 S. Ct. at 2801, 111 L. Ed. 2d at 161 (citation omitted).

When officers encounter an ambiguous situation that "raise[s] reasonable doubts as to the authority of the consenting party, officers have an *obligation to make further inquiries* into the precise nature of the situation." *State v. Grant*, 614 N.W.2d 848, 854 (Iowa 2000). If the officers faced with an ambiguous situation fail to inquire further, their search is unlawful. *Id.*

B. Police Duty to Inquire

We recognize that the officers who approached room 222 encountered a somewhat ambiguous situation: they knew Bell had rented the room but found two other occupants. Contrary to Bell's assertions, however, the record reflects that the officers who met Westbrook and Shariff at the door did in fact ask

questions in an effort to understand the situation—in particular, the nature of the occupants' relationship with room 222 and with Bell. Specifically, the officers pointed out to the occupants that room 222 was registered in Bell's name. In response, Westbrook and Shariff explained to the officers that the room was theirs. They stated that Bell had signed for it because Westbrook did not have cash or identification to rent the room. These explanations were corroborated by the officers' observation of intermingled men's and women's clothing in room 222[6] and the officers' experience that it is "not uncommon" for one person to rent a room for another.

On the record before us, we are satisfied that the officers in this case discharged their duty under *Grant* to inquire further. Like the officers in *Grant*, the officers in this case entered a room after confirming only one person was the rightful "tenant," and they encountered a couple, neither one of whom was the record "tenant." In both cases, the officers "did not know the relationship between [the tenant] and the occupants of the room." *See id.* at 854. The court in *Grant* decided the officers failed to discharge their duty to clarify the uncertainty before charging ahead with a search, recognizing that the officers

> did not make further inquiry into the circumstances surrounding [the occupant's] stay or the extent of her belongings. Rather, the officers proceeded to remove both [the occupant] and her companion from the room and began searching. It was only after an officer discovered the crack cocaine did officers inquire into who

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[6] Agent Winslow testified that both Westbrook and Shariff's "stuff was in the room" and he saw "comingled items of male and female clothing, some of it, Mr. Westbrook said belonged to Mr. Bell." At trial, when Westbrook was asked, "Now, Preston Bell had clothes in [room 222] that belonged to him?" Westbrook responded as follows: "No, ma'am, he didn't have no clothes. It was just [Shariff's] and mine's."

> owned the jacket [in which the crack cocaine was found]. Such inquiry was too late.

Id. at 854–55.

In contrast, the officers in this case immediately inquired into the relationship between the occupants and Bell, and between all three parties and room 222. They specifically inquired into the "circumstances surrounding [the occupants'] stay." *Contra id.* at 854. The officers in this case, unlike *Grant*, made sufficient inquiries before they began searching.

C. Occupants' Common Authority to Consent

After reviewing the totality of the circumstances, we conclude the record supports the district court's conclusion that Westbrook and Shariff had common authority with Bell over the premises or, at least, apparent authority to consent to a search. The situation the officers encountered is consistent with an understanding that Westbrook and Sherriff were the rightful occupants of room 222. Westbrook, Shariff, and Bell provided uniform explanations at the scene that Bell had paid for the room and allowed Westbrook and Shariff to stay there without him. And the officers encountered Westbrook and Shariff in the room along with their personal belongings. Even if we consider Westbrook and Shariff to be guests of Bell, they enjoyed an expectation of privacy in the motel room. *See Minnesota v. Olson*, 495 U.S. 91, 98, 110 S. Ct. 1684, 1689, 109 L. Ed. 2d 85, 94 (1990). As invited occupants, they had joint access to and mutual use of

room 222,[7] which supports the conclusion that Westbrook and Shariff had common authority with Bell and the ability to validly consent to a search of room 222.[8]

Bell argues Westbrook, who was homeless, did not have common authority over room 222 because he did not pay for the room. But the authority to consent is not based on one's property rights. *See Matlock*, 415 U.S. at 171 n.7, 94 S. Ct. at 993 n.7, 39 L. Ed. 2d at 250 n.7 ("The authority which justifies the third-party consent does not rest upon the law of property."); *see also Folkens*, 281 N.W.2d at 4 (finding teen daughter of defendant's live-in girlfriend had authority to consent to search). Once Bell allowed Westbrook and Shariff to move themselves and their belongings into his rented room, they acquired authority over the premises. Contrary to Bell's argument, we do not find Westbrook and Shariff lacked authority to consent because they had not yet spent the night in the motel room. *Cf. State v. Lovig*, 675 N.W.2d 557, 564 (Iowa 2004) (finding that guest in apartment had reasonable expectation of privacy despite lack of clarity in the record that she intended to stay overnight). Having occupied the motel room for most of the day, Westbrook and Shariff had sufficient connection with the premises to either grant or deny access to the authorities.

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[7] Bell argues Westbrook and Shariff lacked authority to consent by virtue of not having a key to room 222. There is nothing in the record to establish that the couple either did or did not have a key. Accordingly, we place no weight on that fact.

[8] Bell indicated that Westbrook and Shariff had authority to consent when he directed the officers to Westbrook in response to an inquiry whether Bell would consent to search.

Even if the record did not show the occupants possessed actual authority, the police properly concluded Westbrook and Shariff had apparent authority to consent to a search because the facts "would warrant a [person] of reasonable caution in the belief that [Westbrook and Shariff] had authority over the premises." *See, e.g.*, *United States v. Almeida-Perez*, 549 F.3d 1162, 1171 (8th Cir. 2008) (discussing cases and observing that: "[W]e held police acted permissibly in letting the defendant's sister-in-law admit them to his house, even though she had no key and had to crawl in the window. They were entitled to rely on her statement that she lived at the house and had left her bedroom window unlocked, which was corroborated when she was able to open that window."); *see also Brown v. State*, 212 S.W.3d 851, 868 (Tex. Ct. App. 2006) (concluding third party had apparent authority to consent to search of hotel room that police believed two men were staying in where police knocked on the hotel-room door, "asked her if she was staying in the room, and she told him that she was"). We also believe the relatively high level of foot traffic the officers observed coming and going from room 222 contributed to a reasonable belief on their part that Bell had shared his room and assumed the risk that occupants with common authority would permit the officers' entry.

D. Impact of Defendant's Refusal to Consent

We do not believe Bell's eventual refusal to consent rendered the initial search unlawful. In *Randolph*, the United States Supreme Court decided that "a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant." 547 U.S.

at 122–23, 126 S. Ct. at 1528, 164 L. Ed. 2d at 227. In *Randolph*, the court observed that it was

> drawing a fine line; if a potential defendant with self-interest in objecting is in fact *at the door and objects*, the co-tenant's permission does not suffice for a reasonable search, whereas *the potential objector, nearby* but not invited to take part in the threshold colloquy, loses out.

Id. at 121, 126 S. Ct. at 1527, 164 L. Ed. 2d at 226 (emphasis added).

This case is unlike *Randolph* in an important aspect: in *Randolph*, the non-consenting party was physically present at the door of the home and expressly refused consent before officers began their search; the non-consenting party in this case, Bell, was not physically present at the door and was not "invited to take part in the threshold colloquy" where the police asked for consent to search.

Instead, this case is more like *Matlock*, where the defendant was "arrested in the yard of a house where he lived with a Mrs. Graff . . . and was detained in a squad car parked nearby," and where "Mrs. Graff admitted [the police] and consented to a search of the house." *Id.* at 109–10, 126 S. Ct. at 1520–21, 164 L. Ed. 2d at 219 (discussing *Matlock*, 415 U.S. at 166, 94 S. Ct. at 988, 39 L. Ed. 2d at 247, and contrasting its facts with those in *Randolph*). In *Matlock*, the Supreme Court stated that "'the consent of one who possesses common authority over premises or effects is valid as against the absent, non-consenting person with whom that authority is shared.'" *Id.* at 109, 126 S. Ct. at 1521, 164 L. Ed. 2d at 219 (citation omitted) (contrasting facts in *Matlock* with those in *Randolph*). In this case, Bell was the absent, non-consenting party because he was not physically present to object to the search; and the defendant does not

argue that the police removed him "from the entrance for the sake of avoiding a possible objection." *See id.* at 121, 126 S. Ct. at 1527, 164 L. Ed. 2d at 227. Accordingly, Bell's refusal to consent did not override the consent to search already given by the occupants of the motel room.

AFFIRMED.