

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SCOTT R. FARROW,

Defendant-Appellee.

UNPUBLISHED

February 19, 1999

No. 211127

Oakland Circuit Court

LC No. 97-156108 FH

Before: Gribbs, P.J., and Saad and P.H. Chamberlain*, JJ.

MEMORANDUM.

Plaintiff People of the State of Michigan appeals of right the circuit court order granting defendant Scott Farrow's motion to suppress and dismiss. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). At a hearing on the issue of whether defendant's consent to the search of his residence was voluntarily given, police officers testified that they went to defendant's residence to conduct an investigation. After they identified themselves, defendant admitted them to the residence. In response to a question regarding marijuana, defendant retrieved marijuana from the residence and surrendered it to the officers. Defendant testified that when one of the officers opened a folder to retrieve a business card, he observed a search warrant. He assumed that the officers had a warrant to search his home, and that he cooperated based on that assumption.

The trial court granted defendant's motion to suppress and dismiss, finding that defendant's consent had not been freely given because he assumed that the officers had a search warrant. The trial court did not address defendant's acknowledgment that he was not told that a warrant existed and that he had not observed his name or address on the warrant.

* Circuit judge, sitting on the Court of Appeals by assignment.

A trial court's factual determinations regarding the validity of consent are reviewed for clear error, while its decision regarding suppression of the evidence is reviewed de novo. *People v Goforth*, 222 Mich App 306, 310; 564 NW2d 526 (1997).

On appeal, plaintiff argues that no search of defendant's residence occurred because defendant simply produced the marijuana in response to an inquiry. *Coolidge v New Hampshire*, 403 US 442; 91 S Ct 2022; 29 L Ed 2d 564 (1971). Alternatively, plaintiff argues that assuming a search occurred, defendant's consent to same was freely given. Defendant admitted the officers to his residence without hesitation or expression of any fear.

The consent exception to the warrant requirement allows search and seizure when consent is unequivocal and specific, and freely and intelligently given. *People v Kaigler*, 368 Mich 281, 294; 118 NW2d 406 (1962). The validity of a consent depends on the totality of the circumstances. *Goforth, supra*, at 309.

We reverse the trial court's decision, and remand for further proceedings. While accepting the trial court's finding that a search occurred, we hold that the trial court's finding that defendant's consent was not valid was clearly erroneous. Defendant admitted that the police did not tell him that they had a search warrant, and that the search warrant form he claimed to have observed did not contain his name or address. The instant case is distinguishable from the authority relied on by defendant below, *Bumper v North Carolina*, 391 US 543; 88 S Ct 1788; 20 L Ed 2d 797 (1968), in which entry was allowed and consent to search was given only after the police falsely represented that they had a search warrant. While valid consent cannot be found to exist if a person opens a door in response to a police command, *Bumper, supra*, 391 US at 548-550, defendant did not do so in this case. He readily admitted the officers to his residence. His expressed consent was unequivocal. *Kaigler, supra*. He demonstrated no fear, and at no time indicated that he was cooperating because he was afraid or because he thought that a warrant existed. Fear that is not manifested and that does not put the police on notice that consent is not freely given will not render a search invalid. *People v Waskowski*, 23 Mich App 60, 63; 178 NW2d 113 (1970). The trial court clearly erred in finding that defendant did not voluntarily consent to the search.

We reverse the order suppressing the evidence and dismissing the case, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain