

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER GEORGE SMEDBERG,

Defendant-Appellant.

UNPUBLISHED

May 23, 2000

No. 216294

Menominee Circuit Court

LC No. 97-002281-FH

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and the trial court sentenced him to eighteen months' probation, with the first seven months to be served in jail. Defendant appeals as of right and we affirm.

During a search without a warrant, defendant's female cohabitant led the police to a crawl space located in the basement of defendant's house, where they found a cooler containing marijuana. Defendant contends on appeal that the trial court erred in finding that defendant's cohabitant validly consented to a search of the crawl space. We disagree.

We review a trial court's decision regarding the validity of consent to search an area for clear error. *People v Goforth*, 222 Mich App 306, 310; 564 NW2d 526 (1997). Clear error exists when the reviewing court is left with a definite and firm conviction that the trial court made a mistake. *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996). This Court reviews a trial court's ruling on a motion to suppress evidence de novo. *Goforth, supra* at 310; *People v Mayhew*, 236 Mich App 112, 117; 600 NW2d 370 (1999).

Both the United States and Michigan constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. A search without a warrant is unreasonable per se unless the state can show that the search fits within one of the recognized exceptions to the warrant requirement. *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990); *People v Martinez*, 192 Mich App 57, 61-62; 480 NW2d 302 (1991). Consent

is just such an exception. *Schneckloth v Bustamonte*, 412 US 218, 248; 93 S Ct 2041; 36 L Ed 2d 854 (1973); *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999).

The police may obtain consent from a third party who possessed common authority over the premises or things sought to be inspected. *People v Wagner*, 114 Mich App 541; 547; 320 NW2d 251 (1982). The test is whether, based on the totality of the circumstances, a police officer could reasonably believe that the third party has common authority over the premises. *Goforth, supra* at 309, 315. Common authority rests on mutual use of the property by persons generally having joint access or control for most purposes. *Wagner, supra* at 548, quoting *United States v Matlock*, 415 US 164, 171 n 7; 94 S Ct 988; 39 L Ed 2d 242 (1974), *Rodriguez, supra* at 181.

The consent of one who possesses common authority over the premises searched is valid as against the absent, nonconsenting person with whom the authority is shared. *United States v Matlock*, 415 US at 170. Common authority does not rest upon the law of property or mere ownership interests. *Id.* at 171 n 7. Therefore, the fact that defendant's cohabitant had no ownership interest in the property is irrelevant.

In the present case, defendant's cohabitant testified that she lived with defendant and shared a bedroom with him for at least twelve years, and that she had access to the entire house. Defendant's cohabitant testified that she knew about the existence of the crawl space, that the door to the crawl space did not have a lock on it, and that defendant never told her that any particular area of the house was off limits to her. She also testified that she used the freezer that was located in the same room as the crawl space. The fact that defendant's cohabitant never entered the crawl space for fear of snakes was immaterial. She clearly had access to the crawl space and she could have entered it if she so chose. We conclude, therefore, that the police officers reasonably believed that defendant's cohabitant had common authority over the crawl space. Therefore, her consent was valid and the trial court did not err in denying defendant's motion to suppress the marijuana seized.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell