STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 13, 2004
v	No. 244147 Washtenaw Circuit Court
KENNETH FERRELL, Defendant-Appellant.	LC No. 00-001301-FH

Before: O'Connell, P.J., and Jansen and Murray, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession of 50 or more but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii), possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii), and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent prison terms of two years each for the felony-firearm convictions, to be served prior to and consecutive to prison terms of ten to twenty years for the possession of cocaine conviction and one to four years for the possession with intent to distribute marijuana conviction. We affirm.

On appeal, defendant challenges the trial court's denial of his motion to suppress evidence seized during a warrantless search of his apartment. Defendant and his co-occupant, Charletta Van Hoose, who was his fiancé, separately gave written consent to search the apartment. Defendant argued below, as he does on appeal, that the consents were not voluntarily given and, therefore, were invalid.

"The consent exception to the warrant requirement allows a search and seizure when consent is unequivocal, specific, and freely and intelligently given." *People v Goforth*, 222 Mich App 306, 309; 564 NW2d 526 (1997). Third parties who possess common authority over the premises may provide consent to a search of the defendant's premises. *Id.* at 311. A person's right to be free from unreasonable search and seizure "may be implicated where a person, under particular circumstances, does not feel free to leave or where consent to search is coerced." *People v Frohriep*, 247 Mich App 692, 698; 637 NW2d 562 (2001). A trial court must review the totality of the circumstances to decide if the consent to search was valid. *People v Marsack*, 231 Mich App 364, 378; 586 NW2d 234 (1998).

This Court reviews a trial court's decision regarding the validity of a consent to search for clear error. *Goforth*, *supra* at 310. The trial court's resolution of facts at a suppression

hearing "is entitled to deference," particularly "where a factual issue involves the credibility of the witnesses whose testimony is in conflict." *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999) citing *People v Burrell*, 417 Mich 439, 448-449; 339 NW2d 403 (1983). However, the ultimate decision on a motion to suppress evidence is reviewed de novo. *Frohriep, supra* at 702; *Goforth, supra* at 310.

Defendant argues that the trial court clearly erred in relying on Charletta Van Hoose's consent to search the apartment, maintaining that she was subjected to harassment and humiliation, rendering her "consent" invalid. Defendant maintains that Van Hoose did not consent to the officers entering her apartment and was detained and not allowed to leave, although she was not arrested. Further, defendant points out, Van Hoose was not allowed any privacy to nurse her newborn child, was not permitted to go to the bathroom to attend to her personal hygiene needs, and was very concerned about the other three children who were present in the apartment. Defendant also maintains that State Trooper Christopher Harris testified that Van Hoose was "probably told" that it was police policy to remove children and place them in foster homes when all adults in a home are taken away.[1]

Conflicting testimony was presented at the evidentiary hearing regarding the officers' entrance into the apartment. Trooper Harris testified that the officers conducted surveillance on defendant's apartment building, which was located in an apartment complex containing a number of buildings. After seeing defendant leave the building in which he lived and then return to the building, the officers ran to catch the door before it latched shut. The officers found themselves in a small landing at the bottom of a staircase, saw defendant at the top of the stairs, and took defendant into custody without incident. Trooper Harris testified that Van Hoose and some children were present in the apartment. Van Hoose testified that the officers put a hole into the wall of her apartment from the force of opening the door. Van Hoose further testified that, when the officers first arrived, she stood at the top of the stairs, "screaming and hollering," and told them to get out of her house. Van Hoose testified that did not believe that she could leave the apartment, and her testimony in this regard was substantiated by the testimony of Lieutenant Steven Schook, who stated that "everyone's detained while we're doing a search" and that Van Hoose was not free to leave "during the investigation."

The trial court did not clearly err in finding that Van Hoose voluntarily consented to the search of her apartment.[2] The trial court opted to believe Trooper Harris' testimony that the officers peaceably entered the apartment over the conflicting testimony of Van Hoose. We defer to the trial court's resolution of this credibility dispute. While the situation may have been

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[1] The record discloses that Trooper Harris acknowledged that it was "standard protocol" to take children into custody under such circumstances. Asked if it was "possible" that this was stated to Van Hoose, Trooper Harris testified, "Could have been yes."

[2] We note that defendant does not dispute that Van Hoose had authority, both apparent and actual, to consent to the search of the apartment. Van Hoose's name was the only name on the apartment's lease, and she testified that there were no areas of the apartment that were personal to defendant.

uncomfortable for Van Hoose, who was not charged with any offense stemming from the search of her apartment, there was no evidence that the officers were aware of the full extent of her physical and emotional discomfort. Further, there was evidence that a female officer took the older children into another room and entertained them. Finally, Van Hoose signed a written consent form, which stated that she gave her consent to the search "freely and voluntarily" and that she had "not been coerced or threatened in any manner."

Furthermore, apart from the question of Van Hoose's consent to search, there was undisputed evidence that defendant consented to the search. Lieutenant Schook testified that, when defendant learned that Van Hoose had signed a consent form, he stated, "She's not involved. I'll show you where the stuff is at." Lieutenant Schook told defendant that he would need to sign a consent form, read the form to defendant, and asked him to read it as well. Defendant then signed the form. Although defendant argues that he consented only because he had no right to resist the search after Van Hoose consented, defendant not only did not resist the search but, also, actually cooperated with the officers during the search, showing them where drugs and guns were located. We find no clear err in the trial court's determination that there was no evidence of threats or promises made to defendant before he consented to the search, and that his consent was voluntarily given.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Christopher M. Murray