STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2390

State of Minnesota,
Respondent,

vs.

Anthony George Masieniec,
Appellant.

Filed December 23, 2008
Reversed
Klaphake, Judge

St. Louis County District Court
File No. CR-06-1324

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Brian D. Simonson, 1810 12th Avenue E., 107 D Courthouse, Hibbing, MN 55746 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Davi Elstan Forte Axelson, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Klaphake, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Appellant Anthony George Masieniec challenges the district court's denial of his pretrial motion to suppress evidence obtained by an allegedly illegal entry, search, and

seizure. After a Lothenbach proceeding, the district court found appellant guilty of possession of a controlled substance, methamphetamine, in the second degree in violation of Minn. Stat. § 152.022, subd. 2(1) (2006). Because we conclude that the police officers could not reasonably rely on the apparent authority of a third party to consent to entry into the home of appellant's father, the seizure of appellant and the evidence obtained through a subsequent search warrant, which was based on facts obtained during the illegal entry, were in violation of appellant's Fourth Amendment rights. Accordingly, we reverse.

D E C I S I O N

This court reviews a pretrial order on a motion to suppress evidence by independently reviewing the facts and by determining whether, "as a matter of law, the district court erred in suppressing or not suppressing the evidence." *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). Both the United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, searches without a warrant are unconstitutional, except under "certain narrow exemptions." *State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000). The state bears the burden of establishing the reasonableness of a search under one of the exceptions to the warrant requirement. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001).

A third party possessing common authority over the premises may give valid consent for police to make a warrantless entry into a dwelling. *State v. Hummel*, 483 N.W.2d 68, 73 (Minn. 1992). The United States Supreme Court has stated that common

authority rests "on mutual use of the property by persons generally having joint access or control for most purposes." *United States v. Matlock*, 415 U.S. 164, 172, 94 S. Ct. 988, 993 n.7 (1974). If common authority does not actually exist, consent to enter still can be valid when, "under an objective standard, an officer reasonably believes the third party has authority over the premises and could give consent to enter." *State v. Thompson*, 578 N.W.2d 734, 740 (Minn. 1998) (citing *Illinois v. Rodriguez*, 497 U.S. 177, 188, 110 S. Ct. 2793, 2801 (1990)). A guest who is more than a casual visitor and is actually inside the dwelling has sufficient authority "to render that limited consent effective." *Id.*

Here, the district court determined that the entry was constitutionally permissible because the officers entered the home of appellant's father pursuant to consent. Specifically, the district court found that the officers observed a young woman, Carrie Anderson, tending flowers near the front door of the residence. The officers first asked Anderson if appellant was there; she responded that she did not know. The officers then asked if appellant's father was home, and she told the officers that he was inside and that they could go inside to speak to him.

The validity of consent must be determined from this point in the fact situation—whether the officers had a reasonable and objective belief that Anderson had authority to provide consent to their entry into the trailer home. The apparent authority test for determining whether an officer's belief was objectively reasonable focuses on the following question: "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?" *State v. Licari*, 659 N.W.2d 243, 253 (Minn. 2003) (quoting *Rodriguez*,

497 U.S. at 188, 110 S. Ct. at 2793) (other quotation omitted) (emphasis added). A police officer should evaluate the surrounding circumstances to determine whether a reasonable person would act upon the invitation to enter "without further inquiry." *Rodriguez*, 497 U.S. at 188, 110 S. Ct. at 2801.

We conclude that the facts available to the officers here did not afford them reasonable grounds to believe that Anderson had common authority over the premises. Anderson was not inside the trailer home, but was merely picking weeds by the front door. The officers had observed a man enter the home as they were driving up the driveway, but Anderson said she did not know if appellant was home, indicating that she did not know who, other than appellant's father, was even in the trailer home. Further, officers had been at the trailer before, but had never encountered Anderson.[1] These facts are insufficient to establish the officers' reasonable belief that Anderson had mutual use of the trailer home. Based on these facts alone, the officers could not reasonably believe she had sufficient common authority or control over the premises.

At the very least, the ambiguity of Anderson's relationship to the trailer home invoked a need on the part of the officers to make reasonable inquiries as to the scope of her authority. *See id.* (stating that "law enforcement officers may [not] always accept a person's invitation to enter premises"). If, under the objective standard, a person of reasonable caution would not be warranted in the belief that the consenting party had authority over the premises, "then the warrantless entry without further inquiry is

[1] We note that the officers were in plain clothes and did not actually announce their identity until they were inside the premises, giving Anderson no notice that she was speaking with law enforcement officers.

unlawful unless authority actually exits." *Id.* at 188-89, 110 S. Ct. at 2801; *see, e.g.*, *State v. Kieffer*, 577 N.W.2d 352, 360-61 (Wis. 1998) (finding no apparent authority to search loft above father-in-law's garage where defendant lived, given insufficient inquiry of police into the surrounding circumstances and the father-in-law's relationship to the premises).

We therefore hold that the seizure of appellant does not fit within the apparent authority exception to the warrant requirement. Under all the circumstances, it was not objectively reasonable for the officers to believe that Anderson had apparent authority to give them limited consent to enter the trailer for the purpose of talking with appellant's father or with appellant. Accordingly, the resulting seizure of appellant and the evidence ultimately obtained after execution of a search warrant, which was based upon facts obtained after the illegal entry into the home, are constitutionally invalid and must be suppressed.

In light of this determination, we do not address appellant's remaining arguments raised on appeal.

Reversed.