

## ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR12-483

RONNEY BRIGGS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 12, 2012

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. CR-2-10-186-1]HONORABLE JOHN HOMER  
WRIGHT, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

The question presented in this criminal case is whether a handyman present in appellant's home had authority, actual or apparent, to permit entry into the home by police officers who were conducting a warrantless "knock and talk." The appellant pled guilty to possession of a controlled substance and possession of drug paraphernalia with intent to manufacture a controlled substance. His plea was conditional, reserving in writing his right to appeal the denial of his motion to suppress evidence obtained in an assertedly illegal search. Ark. R. Crim. P. 24.3(b). On appeal, appellant argues that the trial court erred in finding that the handyman, Calvin Looper, had apparent authority to give law-enforcement officers permission to enter appellant's house; that a subsequent consent to search obtained from appellant was tainted by the illegal entry; that the initial entry and ensuing warrantless search were thus nonconsensual; and that the trial court therefore erred in denying appellant's

motion to suppress the fruits of the search. Because the arguments made in this appeal<sup>1</sup> provide no grounds for reversal, we affirm.

We review a trial court's denial of a motion to suppress evidence *de novo* based on the totality of the circumstances, recognizing that the trial court has a superior opportunity to determine the credibility of witnesses and reversing findings of historical fact only if they are clearly erroneous. *Cain v. State*, 2010 Ark. App. 30, 373 S.W.3d 392. Viewed in that light, the record shows that Investigators Greathouse and Wilson, who were Drug Task Force narcotics officers, went to appellant's residence to investigate reports about drug activity at that location. The investigators knocked on the door. Investigator Greathouse testified that, after they knocked, they could see Calvin Looper through a window waving for them to come in, and that they therefore entered the residence. Greathouse stated that it was immediately apparent from the odor and the presence of certain paraphernalia associated with methamphetamine production that drug activity had been conducted there. Because of the chemical odor, the investigators asked Looper and appellant to step outside, which they agreed to do. At that time, appellant told the officers that everything inside belonged to him. Greathouse testified that the investigators then asked appellant for consent to search the home for drugs and drug-related items and that appellant gave his verbal consent. A search revealed methamphetamine and paraphernalia used in the manufacture of methamphetamine.

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<sup>1</sup>Under the Arkansas Constitution, as interpreted by our supreme court, police conducting a "knock and talk" *must* inform the occupant that he is not obligated to talk to police or consent to a search of the dwelling. *State v. Brown*, 356 Ark. 460, 156 S.W.3d 722 (2004). Appellant makes no argument based on *State v. Brown* or the Arkansas Constitution in this appeal.

Greathouse further testified that he did not draw his weapon and that he identified himself to Mr. Looper before Looper invited them in.

Investigator Wilson's testimony was substantially identical, with the addition that, before entering, Wilson saw Looper come from the back of the house, turn around and start to return to the back of the house, then stop and return to the front of the house to wave the investigators in. Wilson also heard Looper say, "Come on in."

Calvin Looper testified that he had known appellant for several years and was employed by him to do handyman work on the day the search was conducted. Looper said that he heard the knock, told appellant that someone was at his door, and that appellant, from a back room, said, "Well, I'm in bed, don't let 'em in." Then, Looper testified, the officers burst through the door with pistols drawn, one of them striking him several times, telling him, "Next time I come to the door, if you don't let me in I'm gonna shoot you." Looper admitted that on the day of the search he signed a statement saying that "they knocked on the door, I went and told [appellant] they were at the door, and he told me to let them in," but Looper further said that he did not remember that statement because he had "had some trauma" resulting in "brain loss."

Trooper Scotty Dodd of the Arkansas State Police testified that he had known Looper for years, that he interviewed Looper on the day of the search, that Looper appeared nervous but otherwise normal, that he read Looper his rights, that Looper signed the rights form, and that Looper gave the following statement:

I came to Ronney's today, 3/16/10, around 8 or 9 a.m. I was going to work on his house. I was inside looking for a tape when someone was knocking on

the door. I told Ronney that someone is knocking on the door. Ronney was in the back bedroom. Ronney told me to let them in. I went back to the front door. It was police officers at the door.

Finally, Dodd testified that Looper had no marks on him and made no reference to the trooper that any investigator had laid hands on him or threatened him in any way.

A warrantless entry is valid if based on a third party's consent whom the police, at the time of entry, reasonably believe to possess common authority but who in fact did not do so. *Illinois v. Rodriguez*, 497 U.S. 177 (1990). Therefore, where someone who reasonably appears to have control of the premises in question consents to the search, there is no constitutional violation. In order for the State to overcome the presumption of unreasonableness that attaches to a warrantless search, it must either demonstrate that the facts available to the officer at the moment would warrant a person of reasonable caution in the belief that the consenting party had authority over the premises or, alternatively, that the consenting party had actual authority to grant the consent. *Goodman v. State*, 74 Ark. App. 1, 45 S.W.3d 399 (2001). Relying on a line of cases based on the federal constitution, appellant argues that the trial court erred in finding that the handyman had "apparent authority" to answer the door and allow the police to enter the house. Here, however, there was considerable evidence that Looper had been given *actual* authority by appellant to permit the officers' entry. Although Looper later recanted this statement, the trial court was better positioned to resolve the conflicting evidence, and, on this record, we cannot say that the trial court could not have reasonably concluded that Looper was authorized by appellant to permit the police officers' entry into the home.

Affirmed.

WYNNE and BROWN, JJ., agree.

Rosalyn A. Watts, P.A., by: Rosalyn A. Watts, for appellant.

Dustin McDaniel, Att'y Gen., by: Nicana C. Sherman, Ass't Att'y Gen., for appellee.