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IN THE COURT OF APPEALS OF INDIANA

Christy Cinamon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 25, 2022

Court of Appeals Case No. 22A-CR-390

Appeal from the Greene Superior Court

The Honorable Dena A. Martin, Judge

Trial Court Cause No. 28D01-2004-F6-82

Altice, Judge.

Case Summary

[1] In this interlocutory appeal of the denial of her motion to suppress evidence obtained during the search of her purse, Christy Cinamon raises two issues, one of which we find dispositive: Did the search violate her right to be free from

unreasonable search and seizure under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

[2] We reverse.

Facts and Procedural History[1]

[3] On April 3, 2020, at approximately 3:50 p.m., Greene County Sheriff's Detectives Shawn Cullison and David Elmore and Indiana State Police Trooper Richard Klun executed a search warrant at Donald Stelzel's residence in Newberry, Indiana. The warrant authorized the officers to enter the residence to search for Stephanie Hawkins, who lived in Stelzel's home. When the officers arrived, Stelzel was outside mowing his lawn. Stelzel told the officers that Hawkins was inside the house.

[4] When Detectives Cullison and Elmore entered the home, Hawkins and a male walked out of the back bedroom. There were also two male and two female guests, including Cinamon, who were "hanging out" in the living room. *Transcript* at 24. Those individuals were asked to step outside the residence. Before they left the living room, one of the male guests asked an officer, with whom he was acquainted, if he could retrieve his personal items. The officer

[1] We held oral argument at DeKalb High School in Waterloo, Indiana on October 4, 2022. We thank the staff and attendees for the warm welcome and commend counsel on the quality of their written and oral advocacy.

allowed him to do so, and that guest then gathered his personal belongings before exiting the residence.

[5] The officers arrested Hawkins and found syringes during a pat-down search. Hawkins also consented to a search of her bedroom. The officers found methamphetamine and paraphernalia in that room. Detective Cullison then asked Stelzel for permission to search the rest of the residence, and Stelzel consented to the search.

[6] While searching the living room, Detective Cullison located "a white with block dots purse sitting on the floor next to a couch." *Appellant's Confidential Appendix* at 17; *Transcript* at 20. The "purse" or "little bag" had one zipper and no handles or straps. *Transcript* at 21. Cullison could not recall whether it was zipped shut before he searched it. Cullison also did not know who the item belonged to until after he searched it. Inside he found a rolled-up washcloth that, given the shape and size, appeared to be wrapped around a methamphetamine pipe. He then found a debit card that had been issued to Cinamon.

[7] While the home was being searched, Cinamon asked to use the bathroom and she was permitted to enter the home. When she exited the bathroom, Detective Cullison, who had already searched the purse/bag and found the pipe and debit card, asked Cinamon if she knew who owned the purse. Cinamon stated that it belonged to her and volunteered that there was a methamphetamine pipe inside. In a probable cause affidavit completed after the search of Stelzel's

home, Detective Cullison referred to the item he searched as a "purse." *Appellant's Confidential Appendix* at 17.

[8] On April 17, 2020, the State charged Cinamon with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. On September 16, 2021, Cinamon filed a motion to suppress the evidence found in her purse and her statements to Detective Cullison. At the October 21, 2021, suppression hearing, Detective Cullison repeatedly used the term "purse" to describe the item he searched. *See e.g.*, *Transcript* at 28. However, he also gave the following testimony:

> Q: When you first noticed the purse and we are calling it a purse did you know if it was a purse?
>
> A: I or it was just a little bag, a one zipper bag as I recall.
>
> Q: Okay when you first saw that item laying there did you have any idea who it belonged to?
>
> A. I did not.
>
> Q: Did you think it could have been Stephanie Hawkins?
>
> A: It could have been.
>
> Q: Does it even necessarily have to be a females [sic]?
>
> A: No.
>
> Q: Did you find males storing especially drug paraphernalia in female purses and bags and things like that in your experience?
>
> A: I don't recall a specific time, but usually there are male and females, or bags that look like female bags and stuff mixed around people's houses pretty regularly.

Q: Would you agree that you don't have to be a female to carry a purse?

A: Yes.

Id. at 21-22.

[9] On December 17, 2021, the trial court issued an order denying the motion to suppress. The trial court specifically addressed Cinamon's argument that the officer should have known that a male homeowner did not have authority to consent to the search of a female's purse. The court concluded that the bag was not necessarily a purse and there was nothing on the outside of the bag to indicate that the bag belonged to a female. The court also determined that Cinamon was not in custody when Detective Cullison asked her if she owned the purse.

[10] Cinamon requested that the trial court certify its order for interlocutory appeal, which motion the trial court granted on January 21, 2022. This court accepted jurisdiction over Cinamon's interlocutory appeal on April 4, 2022. Additional facts will be provided as needed.

Discussion & Decision[2]

[11] Cinamon appeals the trial court's denial of her motion to suppress evidence.

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[2] Given our resolution under the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution, we need not address whether Detective Cullison's questioning of Cinamon violated her Fifth Amendment right against self-incrimination.

> Trial courts enjoy broad discretion in decisions to admit or exclude evidence. When a trial court denies a motion to suppress evidence, we necessarily review that decision deferentially, construing conflicting evidence in the light most favorable to the ruling. However, we consider any substantial and uncontested evidence favorable to the defendant. If the trial court's decision denying a defendant's motion to suppress concerns the constitutionality of a search or seizure, then it presents a legal question that we review de novo.

Marshall v. State, 117 N.E.3d 1254, 1258 (Ind. 2019) (citations and quotations omitted).

Constitutional Claims

1. Fourth Amendment

[12] The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. U.S. CONST. amend. IV; *Mapp v. Ohio*, 367 U.S. 643, 650 (1961). Warrantless searches and seizures inside the home are presumptively unreasonable "subject only to a few specifically established and well delineated exceptions." *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (citations omitted). The State bears the burden of proving that an exception to the warrant requirement existed at the time of the warrantless search. *Berry v. State*, 704 N.E.2d 462, 465 (Ind.1998) (citing *Brown v. State*, 691 N.E.2d 438, 443 (Ind.1998)). One well-recognized exception to the warrant requirement is a voluntary and knowing consent to search. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

[13] Here, the homeowner, Stelzel, gave the officers general consent to search his residence.[3] The question is thus whether Stelzel's consent extended to the officer's warrantless search of Cinamon's purse.

[14] An individual may consent to the search of a premises and the scope of a consent search is measured by objective reasonableness. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). This is a factually sensitive determination and does not solely depend on the express object to be searched. *Krise v. State*, 746 N.E.2d 957, 964 (Ind. 2001). Another layer presented by the facts of this case is that of third-party consent. Where a third party has consented to the search, the third party's either actual or apparent authority to consent to the search of a non-consenting party's property must be established. *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990).

[15] Under the apparent authority doctrine,[4] a search is lawful if the officer is presented with circumstances from which he or she reasonably believed that the consenting party had authority over the premises. *Id*. at 188-89. The State bears the burden of proving that the third party possessed the authority to consent. *Id*. at 181.

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[3] Hawkins, who also lived in the residence, only consented to a search of her bedroom. Cinamon's purse was found in the living room of the home.

[4] There is no dispute that Stelzel did not have actual authority to consent to the search of Cinamon's personal belongings.

[16] In *Krise*, our Supreme Court observed that under the Fourth Amendment, consent to search a premises generally includes consent to search containers within that space where a reasonable officer would construe the consent to extend to the container. 746 N.E.2d at 968. Cinamon relies heavily on *Krise* to support her argument that the search of her purse violated her Fourth Amendment rights.

[17] In that case, the defendant Krise lived with Charles Tungate. Law enforcement officers arrived at their home to serve a civil writ of body attachment on Krise. While in the home, an officer saw a pipe he suspected was used to smoke marijuana. Krise denied knowledge of the pipe. Tungate then ordered the officers to leave his home. The officers did not leave but asked repeatedly if they could search the home. Tungate initially refused their requests but ultimately gave the officers consent to search the home. In the bathroom, an officer found a purse lying on top of a toilet. The officer opened the purse and found a small leather pouch. Inside the pouch, the officers discovered a substance later identified as methamphetamine. Krise's driver's license was inside the purse. After Krise was charged with possession of a controlled substance, she filed a motion to suppress all evidence obtained during the search of the home. The motion was denied and Krise was convicted as charged.

[18] On appeal, our Supreme Court considered whether the warrantless search of Krise's purse violated her Fourth Amendment rights, i.e., whether Tungate's consent to search extended to Krise's purse. After reviewing United States

Supreme Court opinions concerning consent searches, the Court concluded that "the issue is not only whether the purse was within the scope of the consent search, but also whether the third party had actual or apparent authority to consent to the search of the purse." *Id*. at 967 (citing *State v. Friedel*, 714 N.E.2d 1231, 1239 (Ind. Ct. App. 1999)).

[19] The Court observed that as a co-owner and resident, Tungate had actual authority to consent to the search of the home. *Id*. Next, the Court observed

> that the inspection of closed containers that normally hold highly personal items requires the consent of the owner or a third party who has authority—actual or apparent—to give consent to the search of the container itself. . . [Therefore,] the type of container is of great importance in reviewing third-party consent search cases. Absent one of the well-delineated exceptions to the warrant requirement, "[a] container which can support a reasonable expectation of privacy may not be searched, even on probable cause, without a warrant." An expectation of privacy gives rise to Fourth Amendment protection where the defendant had an actual or subjective expectation of privacy and the claimed expectation is one which society recognizes as reasonable.

Id. at 969 (citations omitted).

[20] Applying these principles to Krise, our Supreme Court observed that while her purse was found in a bathroom that Tungate also had access to, a bathroom is a private area of the home and her purse was not accessible to the general public. *Id*. at 970. "Krise's expectation of privacy in her home and bathroom in general, and her purse in particular was [not] diminished simply because it was readily accessible to one joint occupant." *Id*. Furthermore, the court concluded

that "society accepts as objectively reasonable that persons have a legitimate expectation of privacy in their purses and other closed containers that normally hold highly personal items." *Id*.

[21] Finally, as pertinent here, although the Court ultimately found that Tungate had actual authority to consent to the search of the house, the Court concluded that "the State failed to justify the search [of the purse] on the basis of apparent authority." *Id*. at 971. The Court explained that at the time Officer Underhill decided to search Krise's purse, he knew that the handbag was a woman's purse and that Krise was the only woman living in the house. The Court therefore held that the officers did not have a reasonable belief that Tungate had authority to consent to the search of Krise's purse simply because the purse was found in a common area of the house.

[22] Likewise, in *Halsema v. State*, 823 N.E.2d 668 (Ind. 2005), our Supreme Court concluded that Whiteley, the homeowner, lacked apparent authority to consent to a search of a dresser drawer that was being used exclusively by defendant Halsema, who was an overnight guest in her home. The court observed that a dresser drawer is analogous to a purse, "a closed container normally holding highly personal items." *Id*. at 676. The Court concluded:

> Because Ritchie Halsema enjoyed the exclusive use of at least one of the dresser drawers in Whiteley's bedroom and because Whiteley specifically advised the officers of that fact, Whiteley did not have actual authority to consent to a search of the drawer where the methamphetamine was found, nor could an officer reasonably believe that she had such authority.

Id. at 677; *see also Godby v. State*, 949 N.E.2d 416, 421 (Ind. Ct. App. 2011) (holding that the defendant's wife had actual authority to consent to the search of their residence but lacked actual or apparent authority to search a locked box in their garage for which she did not have a key).

[23] In *Lee v. State*, 849 N.E.2d 602, 608 (Ind. 2006), our Supreme Court clarified that even though "an object might be characterized as a 'container' because it conceals its contents from view does not compel the conclusion that the 'container' cannot be opened by another occupant."

> The relevant question is whether co-occupants exercise joint control and mutual use of the object for most purposes such that any occupant could permit inspection "in his own right." If so, the nonconsenting occupant assumed the risk of such inspection. A co-occupant may deny joint access over an object by keeping it in a place devoted to the owner's exclusive use *or* where the object is one over which only one person normally exercises control and authority or which "normally hold[s] highly personal items." *Krise*, 746 N.E.2d at 970. Similarly, a nonconsenting co-occupant may take steps to deny access to co-occupants to a designated area or object. But in the absence of any such steps, a co-occupant may have mutual use and joint access to many items in the premises.

Id. at 608-09 (footnotes omitted) (emphasis supplied).

[24] Cinamon argues that Stelzel's consent to search the residence did not extend to her purse. To support her argument that Stelzel lacked apparent authority to consent to the search of her purse, Cinamon relies solely on *Krise*, and claims that the facts of this case are "almost identical." *Appellant's Brief* at 16. The State argues that Stelzel had apparent authority to consent to the search of

Cinamon's "bag" because "a reasonable person would conclude that [Stelzel] owned the bag and consented to its search when he consented to the search of the home." *Appellee's Brief* at 11.

[25] We begin by addressing the parties' disagreement as to whether the item searched was a "purse" or simply a "bag". Cinamon argues Detective Cullison searched her "purse," which pursuant to *Krise*, he was not authorized to do by virtue of Stelzel's consent to search the residence. The State, on the other hand, argues that the item was simply a bag and that Stelzel had apparent authority to consent to the search of Cinamon's bag because a reasonable person could conclude that the bag belonged to Stelzel.

[26] In this case, the label given to the item is not dispositive. We do note, however, that in his probable cause affidavit, Detective Cullison referred to the item he searched as a "purse," and he testified at the suppression hearing that the item was a "purse". *Appellant's Confidential Appendix* at 17; *Transcript* at 28. Even though he later described the item searched as a "little bag, a one zipper bag," Detective Cullison indicated that at the time of the search he believed the item he was searching was a purse or at least something in that realm. *Transcript* at 21.

[27] While in *Krise* the search involved a purse, the Court noted that persons also have "a legitimate expectation of privacy in . . . *closed containers that normally hold highly personal items*." 746 N.E.2d at 970. A few years after *Krise*, our Supreme Court held in *Halsema* that a dresser drawer used exclusively by the

defendant while a guest in another's home was analogous to a purse—a closed container normally holding highly personal items—and thus, the officer could not have reasonably believed that the homeowner had authority to consent to a search of the dresser drawer. 823 N.E.2d at 676. Here, we recognize that the item searched could be labeled as several things, including a purse, a small bag, a clutch, or even a makeup bag. Nevertheless, and notwithstanding the label, we conclude that the item searched, which had a zipper, is of the type one would use to carry items of a highly personal nature. We therefore conclude that the item searched was a container that can support a reasonable expectation of privacy.

[28] Next, we address whether the State established that Stelzel had apparent authority to consent to the search of Cinamon's purse. First, we note that Stelzel was outside when the officers arrived to execute the arrest warrant for Hawkins. Upon entry into the home, the officers immediately encountered Hawkins but also discovered that there were four guests in the living room. The officers told the guests, including Cinamon, to step outside. The guests were not advised to gather their personal belongings.[5] It is not clear from the record if Stelzel knew that there were guests in his home when he consented to the search or if the guests were aware that Stelzel consented to a search of his

[5] The State points out that one of the guests was permitted to gather his personal belongings and take them with him. What the State does not acknowledge is that the guest who requested to gather his belongings was familiar with Detective Cullison. The State also did not establish that Cinamon or any of the other guests were aware that one of the guests made such a request and was permitted to gather his belongings before going outside at the direction of the officers.

home. It is clear, however, that Detective Cullison knew that there were four guests, including Cinamon, who had been "hanging out" around the living room couch shortly before he conducted his search. *Transcript* at 24.

[29] This, taken with the fact that the item searched could support a reasonable expectation of privacy, leads us to conclude that Detective Cullison could not have reasonably believed that Stelzel had apparent authority to consent to the search of the item he found next to the couch. Therefore, the search of Cinamon's purse violated her Fourth Amendment right to be free from unreasonable search and seizure.

2. Article 1, Section 11

[30] Although the language and structure of Article 1, Section 11 is similar to the Fourth Amendment, the clause has an independent interpretation and application from the Fourth Amendment. The constitutionality of a search turns on an evaluation of police conduct under the totality of the circumstances. The reasonableness of a search or seizure is determined by balancing "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

[31] To evaluate the "degree of concern, suspicion, or knowledge that a violation has occurred, we consider the facts known to the officer at the time of the search and seizure." *Hardin v. State*, 148 N.E.3d 932, 943 (Ind. 2020). Here,

the officer went to the home armed with an arrest warrant for Hawkins. Upon entering the home, the officers immediately came into contact with Hawkins and placed her under arrest. Although the officers located contraband on Hawkins during a pat-down search and methamphetamine in Hawkins's bedroom after she consented to the search thereof, there is no evidence that Detective Cullison reasonably suspected that there was contraband inside Cinamon's purse or that Cinamon had committed a crime. Indeed, Detective Cullison testified at the suppression hearing that when they entered the house, they did not observe any criminal behavior.

[32] The degree of intrusion is considered from the defendant's point of view. *Id*. at 944. We also consider the citizen's physical movements and privacy. *Id*. And "how officers conduct a search or seizure matters." *Id*. at 944-45. As we concluded above, the item searched was a container with a zipper that one would reasonably believe contained highly personal items. While the record does not establish whether the purse was zipped shut, we note that Detective Cullison had to remove the item and unwrap it to determine that it was a methamphetamine pipe. The degree of intrusion does not weigh in favor of the State.

[33] Finally, with regard to the extent of law enforcement needs, we look both at the officer's need to act in a general way (e.g. the need to enforce traffic-safety laws) and the officer's need to act in a particular way at a particular time (e.g. whether a suspect is a flight risk or whether the suspect might drive away in the vehicle possibly containing contraband). *Hardin*, 148 N.E.3d at 946-47. Here,

there was no immediate need for the detective to search Cinamon's personal belongings and there was no risk that evidence would be destroyed.

[34] Our Supreme Court recently reiterated the competing interests that underlie the "totality of the circumstances test." *Hardin*, 148 N.E.3d at 942. The *Hardin* Court stated:

> On one hand, Hoosiers want to limit excessive intrusions by the State into their privacy. . . . On the other hand, Hoosiers are interested in supporting the State's ability to provide 'safety, security, and protection from crime.' . . . By employing a totality-of-the-circumstances test, we aim to strike the proper balance between these competing interests in light of Article 1, Section 11's protection from unreasonable searches and seizures.

Id. at 942-43 (internal citations omitted). Based on the totality of the circumstances, we conclude that it was unreasonable for Detective Cullison to search Cinamon's purse. The search therefore violated her rights under Article 1, Section 11 of the Indiana Constitution.

[35] Judgment reversed.

May, J. and Weissman, J., concur.