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**IN THE
COURT OF APPEALS OF INDIANA**

DENNIS J. REEDER,)
)
Appellant-Defendant,)
)
vs.) No. 22A01-0602-CR-71
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan Orth, Judge
Cause No. 22D01-0404-FD-676

November 29, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Dennis Reeder (Reeder), appeals the trial court's denial of his Motion to Suppress.

We affirm.

ISSUE

Reeder raises two issues on appeal, which we consolidate and restate as the following issue: Whether the trial court properly denied Reeder's Motion to Suppress marijuana found in a backpack in Reeder's vehicle when two persons were occupying the vehicle and one gave consent to the search.

FACTS AND PROCEDURAL HISTORY

On September 12, 2004, Officer Darrell Mills (Officer Mills) of the Floyd County Police Department observed a parked SUV and two men walking near the road in an area known for drug activity and crime. Officer Mills called for backup and soon thereafter Officer Russell Wyatt (Officer Wyatt) arrived, at which time the officers approached the two men. Upon inquiry, Officer Wyatt discovered the men were Dennis Reeder and Reeder's nephew. Officer Wyatt also learned that the vehicle belonged to Reeder and his wife, although it was titled in Reeder's wife's name. Reeder and his nephew reported they were checking the tree line for down timber that needed to be removed. After explaining the problems with drugs in the area, Officer Wyatt, in the presence of both men, asked Reeder for permission to search the vehicle. Reeder consented.

While conducting the search of Reeder's vehicle, Officer Wyatt observed a backpack on the passenger side of the backseat. Officer Wyatt opened the backpack and

found a bag of marijuana inside. He went back to the two men to inform them of what he found, and to place them under arrest. Officer Wyatt read both men their *Miranda* rights. Returning to the vehicle, Officer Wyatt subsequently found three more bags of marijuana in the backpack. Officer Wyatt then searched Reeder's person, and discovered in his front pocket a glass pipe containing burnt residue. Reeder told Officer Wyatt that the marijuana, the backpack, and the pipe on his person all belonged to him.

On September 15, 2005, Reeder was charged with two counts of Possession of Marijuana, class D felonies, Ind. Code § 35-48-4-11(1), one count of Dealing in Marijuana, a class D felony, I.C. § 35-48-4-10(a)(1)(b)(1)(B), and one count of Maintaining a Common Nuisance, a Class D felony, I.C. § 35-48-4-13(b)(2). On March 22, 2005, Reeder filed a Motion to Suppress Evidence Unlawfully Seized, and the State, in turn, filed its response on April 22, 2005. After a hearing, the trial court denied Reeder's Motion to Suppress.

Reeder now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Reeder contends that the trial court improperly denied his Motion to Suppress the marijuana found in a backpack in his vehicle when he and his nephew were occupying the vehicle and only he gave consent to search the vehicle. We disagree.

When reviewing a trial court's denial of a motion to suppress, the review is similar to other sufficiency matters. *Masterson v. State*, 843 N.E.2d 1001, 1004 (Ind. App. 2006), *trans. denied*. The record must disclose substantial evidence of probative value

that supports the trial court's decision. *Id.* Further, we do not reweigh the evidence and we consider conflicting evidence most favorably to the trial court's ruling. *Id.*

The Fourth Amendment of the United States Constitution provides:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The fundamental purpose of the Fourth Amendment is to protect the legitimate expectations of privacy that citizens possess in their persons, their homes and their belongings. *Norris v. State*, 732 N.E.2d 186, 188 (Ind. Ct. App. 2000). Thus, for a search to be reasonable under the Fourth Amendment, a warrant is required unless an exception to the warrant requirement applies. *Id.* A consensual search is a well-established exception to the warrant requirement. *Id.* Even in the absence of probable cause or exigent circumstances, a party may validly consent to a warrantless search. *Id.* The theory underlying this exception is that, when an individual gives the State permission to search either his person or property, the governmental intrusion is presumably reasonable. *Polk v. State*, 822 N.E.2d 239, 245 (Ind. Ct. App. 2005), *trans. denied.*

A valid consent to search may be given by either the person whose property is to be searched or by a third party who has common authority over or a sufficient relationship to the premises to be searched. *Norris*, 732 N.E.2d at 188 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 179 (1990)).

The authority which justifies the third-party consent rests on the mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that each of the co-inhabitants has the right to permit the inspection in his or her own right and that the others have assumed the risk that one of their number might permit *the common area* to be searched.

Id. (citing *Brown v. State*, 691 N.E.2d 438, 443 (Ind. 1998)); *see also State v. Friedel*, 714 N.E.2d 1231, 1239 (Ind. Ct. App. 1999). In this light, we have held that a search is lawful if the facts available to the officer at the time would “warrant a man of reasonable caution in the belief” that the consenting party had authority over the premises. *Krise v. State*, 746 N.E.2d 957, 967 (Ind. 2001) (quoting *Terry v. Ohio*, 392 U.S 1, 21-22 (1968)).

Prior to his request to search the vehicle, Officer Wyatt knew the vehicle was titled in Reeder’s wife’s name and that the vehicle belonged to both Reeder and his wife. Since both Reeder and his nephew were standing outside the vehicle when both officers arrived, and the driver was not readily apparent, Officer Wyatt appropriately obtained consent to search the vehicle from Reeder, the third party with common authority over the vehicle.

Reeder argues, however, that his consent to search the vehicle did not extend to the backpack. Parameters of a search are usually defined by the purpose of the search and it is objectively reasonable for police to conclude that general consent to search a car includes consent to search containers within that car which might bear drugs. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991); *Sallee v. State*, 785 N.E.2d 645, 655-56 (Ind. Ct. App. 2003), *trans. denied*. Based on the exchange between Officer Wyatt and Reeder, a

reasonable person could have concluded that the purpose of the search was to look for drugs. After Officer Wyatt explained that they had been having problems with drugs in that area, Reeder consented to a search of his vehicle. Since “[c]ontraband goods rarely are strewn across the trunk or floor of a car,” and drugs are generally carried in closed containers, it was also reasonable to believe that the scope of the search included closed containers in the car. *Jimeno*, 500 U.S. at 251; *Sallee*, 785 N.E.2d at 656.

Nevertheless, in Indiana, “an all encompassing” consent to search the vehicle might not be sufficient to sustain a legally valid search of a container found in a vehicle. *Polk*, 822 N.E.2d at 247. In this regard, our supreme court has held that 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. *Krise*, 746 N.E.2d at 969. The type of container is of great importance in reviewing third-party consent search cases. *Id.* A container which can support a reasonable expectation of privacy may not be searched even on probable cause, without a warrant. *Id.*

Here, based on the facts before us, we conclude that there was no legitimate expectation of privacy with regard to the backpack. Both Reeder and his nephew had left the backpack in the vehicle unattended while they were walking the tree line. The record clearly supports that when Officer Wyatt obtained Reeder’s consent to search the vehicle, he did so in the presence of Reeder’s nephew, who stood silent without making any objections to the search. We have stated consent may not reasonably be implied from a passenger’s silence or failure to object where the officer did not expressly or impliedly

ask the passenger for consent to search. *Polk*, 822 N.E.2d at 247-48. Here, however, although it cannot be conclusively determined who the passenger of the vehicle was, it is of no consequence because not only did neither of the individuals object to the search, but neither Reeder nor his nephew made any effort to retrieve the backpack from the vehicle prior to the commencement of the search.

Further, Reeder had explained to Officer Wyatt that he and his nephew were checking the tree line for trees that needed cut down. Although we have stated “a backpack . . . is *generally* not an object for which two or more persons share common use and authority,” this will not always be the case. *Norris*, 732 N.E.2d at 191 (emphasis added). Based on the circumstances before us, it is reasonable to infer that two people share a backpack to store tools, clothing, or other miscellaneous items. Moreover, a backpack is different from a purse in that it is not a type of container likely to hold “highly personal items,” and, therefore, is less likely than a purse to give rise to a requirement of consent to search of the backpack itself. *Polk*, 822 N.E. at 247. It was reasonable in this case, on the basis of the information gathered by Officer Wyatt during the conversation with the two men, to conclude the backpack could be an object shared by both Reeder and his nephew.

By leaving the backpack in the car while walking the tree line and during the search, Reeder and his nephew had no legitimate expectation of privacy over the backpack; a legitimate expectation of privacy is the very thing the Fourth Amendment exists to protect. Reeder gave consent to search the vehicle and it was reasonable for

Officer Wyatt to believe, based on the exchange with Reeder and the nephew's close proximity, that the consent to search extended to the backpack.

CONCLUSION

Based on the foregoing, we find the trial court was proper in denying Reeder's Motion to Suppress.

Affirmed.

BAILEY, J., and MAY, J., concur.