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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000206-MR

RACHEAL HACK

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KEN M. HOWARD, JUDGE
ACTION NO. 09-CR-00011

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, LAMBERT AND THOMPSON, JUDGES.

ACREE, JUDGE: Appellant, Racheal Hack, entered a conditional guilty plea in Hardin Circuit Court to Complicity to Commit Manufacturing in Methamphetamine; Controlled Substance Endangering the Welfare of a Minor, Fourth Degree; Complicity to Commit Tampering with Physical Evidence; and Possession of Drug Paraphernalia. The question before us is whether the Hardin

Circuit Court properly denied Racheal's motion to suppress evidence. Following a careful review of the record, we find no error and affirm.

I. Background

In 2007, the Cabinet for Health and Family Services' (CHFS) Grayson County office opened a case against resident Lee Anne Graham. At that time, Graham was living with Timothy Hack, Racheal's current husband. Consequently, the CHFS also opened a separate case against Timothy. In 2008, Jane Maeser, a social services worker with the CHFS, was directed by her supervisor to close the open case against Timothy. In order to do so, Maeser needed to conduct a home visit at Timothy's current residence.

On December 9, 2008, Maeser called the Greater Hardin County Narcotics Task Force to request that a police officer accompany her to the Hacks' residence. Maeser spoke to Detective Rex Allaman. Maeser explained to Detective Allaman that the purpose of her visit was to close the case against Timothy but, because of Timothy's past drug concerns, she desired a police escort. Because Detective Allaman was a plain-clothes detective, he contacted Deputy Robert Dover with the Hardin County Sheriff's Office for assistance.

On December 10, 2008, Maeser, Detective Allaman, Deputy Dover, and an "Officer Thompson"¹ met at the Hacks' residence in Hardin County slightly before 3:45 p.m. Upon arrival, Maeser and Deputy Dover proceeded to the front door of

¹ Officer Thompson is a law enforcement officer; the record is unclear as to his agency affiliation.

the residence, while Detective Allaman and Officer Thompson continued around back to ensure that no one would run from the house. Deputy Dover knocked on the front door, but received no answer. Shortly thereafter, Deputy Dover noticed that the front door did not have a door knob. Consequently, Deputy Dover and Maeser went to the back door where they were met by Racheal. Racheal explained that the back door was blocked, but if they went back around to the front door she would meet them there.

After some delay, Racheal opened the front door. Maeser introduced herself as a social services worker with the Grayson County CHFS. Maeser explained to Racheal that she was there to close an open case against Timothy. Deputy Dover testified that he informed Racheal that he was there to accompany Maeser. Additionally, Maeser testified that she explained to Racheal that she asked the police officers to accompany her because of Timothy's past drug use. Racheal invited Maeser and Deputy Dover into the residence's front living room.²

Shortly thereafter, Detective Allaman and Officer Thompson returned to the front door. Before entering the residence, Detective Allaman introduced himself to Racheal, and asked permission to enter, which Racheal granted. Upon entering, Detective Allaman noticed what appeared to be a methamphetamine pipe in plain view. Consequently, Deputy Duffey advised Racheal and Timothy of their *Miranda* rights; Racheal and Timothy both signed a written form waiving their rights and authorizing the police to search the residence. The search resulted in the

² Detective Allaman explained at the evidentiary hearing that the front door opened into the living room area of the house.

discovery of chemicals and equipment used in the manufacturing of methamphetamine.

On January 14, 2009, Racheal was charged with manufacturing methamphetamine, fourth-degree controlled substance endangering the welfare of a minor, tampering with physical evidence, and possession of drug paraphernalia. On September 29, 2009, Racheal filed a motion to suppress the evidence seized from her home claiming the search was unconstitutional. Specifically, Racheal argued Maeser and the police officers entered her home under false pretenses resulting in an unlawful warrantless search of her home. The circuit court conducted an evidentiary hearing on November 3, 2009. At the suppression hearing, Detective Allaman, CHFS' worker Jane Maeser, and Deputy Dover testified regarding the entrance and eventual search of Racheal's home, as described above. The circuit court subsequently overruled Racheal's motion to suppress, finding that the search was conducted with Racheal's voluntary consent.

On December 4, 2009, Racheal entered a conditional guilty plea to complicity to commit manufacturing in methamphetamine, fourth-degree controlled substance endangering the welfare of a minor, complicity to commit tampering with physical evidence, and possession of drug paraphernalia. As part of her guilty plea, she reserved the right to appeal the circuit court's denial of her suppression motion.

On appeal, Racheal argues the police used a ruse to gain entry to her home rendering her consent to search involuntary. Racheal contends that a ruse is

evident because the police officers did not escort Maeser to provide assistance, but instead were present simply to search for evidence and make an arrest.³ In effect, Racheal asserts that the police officers deceived her regarding their purpose for accompanying Maeser. She argues that, because of the police officers' ruse, her verbal consent permitting the police officers to enter her home with Maeser was involuntary. Thus, the sole issue on appeal is whether the police employed a ruse that negated the voluntary nature of Racheal's consent for the police officers to enter her residence.⁴

We review the trial court's findings of fact under a clearly erroneous standard. *Commonwealth v. Banks*, 68 S.W.3d 347 (Ky. 2001). Next, the appellate court must undertake a *de novo* review to determine if the law was properly applied to the facts. *King v. Commonwealth*, 302 S.W.3d 649, 653 (Ky. 2010). In the present case, the trial court found no credible evidence indicating that the police employed a ruse. We agree.

As noted, we must first determine whether the Hardin Circuit Court's factual findings are supported by substantial evidence. In doing so, we reviewed the testimony provided at the evidentiary hearing by Jane Maeser, Detective Allaman, and Deputy Dover, the only testifying witnesses. The factual findings adopted by the circuit court in its order tracks the testimony provided by the witnesses. Thus,

³ It was undisputed at the evidentiary hearing that the Hacks had been under investigation by law enforcement for the manufacturing of methamphetamine.

⁴ Racheal does not contest that, if the police officers were granted voluntary consent to enter the residence, Detective Allaman found the alleged methamphetamine pipe in plain view and Racheal provided voluntary written consent for the police officers to search the residence.

we conclude that the circuit court's findings of fact are supported by substantial evidence, and are therefore conclusive.⁵

Next, we undergo a *de novo* review of the law as applied to the circuit court's findings of fact. Fundamentally, a warrantless entry into a person's home violates the Fourth Amendment of the United States Constitution. Thus, a search without a proper search warrant is *per se* unreasonable unless the search falls into "one of the exceptions to the rule" *Cook v. Commonwealth*, 826 S.W.2d 329, 331 (Ky. 1992). It is well settled in this Commonwealth that consent is an exception to the warrant requirement. *Id.* "All that [is] required to establish consent [is] that the consent was voluntarily given in view of all the circumstances." *Id.*; *see also Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (explaining that the Fourth Amendment requires that consent not be implicitly or explicitly coerced). The query of whether the defendant's consent was voluntary is a question of fact to be determined by a careful scrutiny of all the surrounding circumstances of the particular case. *Cook*, 826 S.W.2d at 331. Thus, we must defer to the circuit court's finding if it is supported by substantial evidence. *Krause v. Commonwealth*, 206 S.W.3d 922, 924 (Ky. 2006). The circuit court found Racheal's consent to be voluntary. We agree.

⁵ In her brief, Racheal disputes whether Detective Allaman introduced himself before or after receiving permission to enter the residence. However, the circuit court specifically found that Racheal invited Detective Allaman into the residence and Racheal does not dispute this finding. Thus, whether Detective Allaman introduced himself to Racheal before or after he entered the residence is immaterial.

The record reflects that Maeser was directed to close Timothy's open CHFS case and, in order to do so, she needed to conduct a final home visit at Timothy's residence. Additionally, because of Timothy's past drug use Maeser requested a police-escort. At the evidentiary hearing, Maeser explained that she was trained to always have a police officer present during a home visit if there was suspected drug use in the home in order to protect the worker's safety. There was no evidence presented that Detective Allaman or Deputy Dover contacted Maeser seeking to assist Maeser during her home visit in order to look for methamphetamine at Racheal's residence, nor was any evidence presented that law enforcement asked Maeser to conduct a home visit simply so she herself could search for evidence of drugs and report back to law enforcement.

Additionally, it is undisputed that, upon arrival at Racheal's residence, Deputy Dover and Maeser identified themselves to Racheal and explained their purpose for the visit, and that Racheal invited them into the residence. It is also undisputed that Racheal invited Detective Allman into the residence. Accordingly, based on the testimony provided at the evidentiary hearing, the circuit court's finding that there was no credible evidence indicating that the police officers and Maeser's entry into Racheal's residence resulted from false pretenses or a ruse, thus rendering Racheal's consent involuntary, is supported by substantial evidence. Because Racheal provided voluntary consent for Maeser and the accompanying police officers to enter her residence, no Fourth Amendment violation occurred. *See Cook*, 826 S.W.2d at 331.

The Hardin Circuit Court's denial of Racheal's motion to suppress is affirmed.

ALL CONCUR.

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