

NOT DESIGNATED FOR PUBLICATION

**HOUSING AUTHORITY OF
NEW ORLEANS**

*

NO. 2000-CA-0338

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COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

BIANCA NEVILLE

*

STATE OF LOUISIANA

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**APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 99-21177, SECTION "B"
Honorable Angelique Reed, Judge**

Judge Dennis R. Bagneris, Sr.

(Court composed of Judge Patricia Rivet Murray, Judge Dennis R. Bagneris, Sr., and Judge Max N. Tobias, Jr.)

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IN PROPER PERSON DEFENDANT/APPELLEE

REVERSED AND RENDERED

This is an appeal from a trial court judgment denying the Rule for Possession filed by the Housing Authority of New Orleans (“HANO”), thereby refusing to evict defendant-appellee, Bianca Neville (“Ms. Neville”), from the leased premises. HANO appealed the trial court judgment. We reverse.

FACTS AND PROCEDURAL HISTORY

On July 14, 1999, police officers found illegal drugs in Ms. Neville’s apartment and arrested her for possession of marijuana, a violation of LSA-R.S. 40:966. These drugs belonged to George Grayhouse (“Grayhouse”), the father of at least one of Ms. Neville’s children. Grayhouse was not a member of Ms. Neville’s household at that time.

HANO subsequently filed a Rule for Possession of Ms. Neville’s rented apartment. The hearing took place on October 29, 1999. At the

hearing, Officer Wellington Beaulieu (“Officer Beaulieu”) testified that he had been employed as a police officer with the New Orleans Police Department for the past fifteen years. He stated that he specialized in drug investigations.

With regard to the instant case, Officer Beaulieu testified that on July 14, 1999, he and another police officer were working surveillance in the 2600 block of Independence Street. Officer Beaulieu further testified that during this time, they observed an unknown male go into a third-floor apartment in the Florida Housing Development. The officers later learned that this male was Grayhouse and that the apartment belonged to Ms. Neville. Grayhouse returned from the apartment and then gave a female an object. Officer Beaulieu testified that they later learned that this female was Ms. Neville, and the object was marijuana. After observing this transaction, Officer Beaulieu and his fellow officer went to Ms. Neville’s apartment, and they noticed that Grayhouse was standing in the hallway. When Grayhouse saw them, he took off running. They caught him. After this, they went back to Ms. Neville’s apartment and knocked on the door.

Officer Beaulieu testified that when Ms. Neville opened the door, they

advised her that they had a search warrant for her apartment. Officer Beaulieu stated that at this point, Ms. Neville ran to the rear room of the residence, which was Ms. Neville's bedroom. He followed her. They got into a brief "scuffle," and he later placed handcuffs on her. After he handcuffed her, he brought her back to the living room. Officer Beaulieu testified that he then brought Grayhouse into Ms. Neville's apartment. He then explained to Ms. Neville that she needed to sign the search warrant, which she did.

After Ms. Neville signed the search warrant, the officers searched the residence. In her bedroom, they found a large box containing twenty-five bags of marijuana. Officer Beaulieu claimed that when Ms. Neville ran to the rear room, she was attempting to destroy this evidence.

On cross-examination, Officer Beaulieu testified that Grayhouse told the officers that the drugs belonged to him and that Ms. Neville did not even know that the drugs were in her apartment.

Corey Hall was tendered as an expert witness. He testified that he was employed by the NOPD Crime Lab. He further verified a crime lab report and noted that the twenty-five bags contained a vegetable-like substance that

tested positive for marijuana.

Ms. Neville testified that she did not have any knowledge that the marijuana was in her apartment. She stated that the marijuana belonged to Grayhouse, her “baby’s father”. She denied that her baby’s father lived on the premises with her, but she did acknowledge that Grayhouse did “come around”. She stated that on the day in question, she could not get her regular babysitter. Because of this, she called Grayhouse to babysit her children while she went to work. Ms. Neville noted that the charges stemming from this matter were “thrown out” in September.

LAW AND DISCUSSION

The record reveals that on July 29, 1999, HANO issued a Notice to Vacate to Ms. Neville for an alleged lease violation. The reason stated by HANO for the notice to vacate was as follows:

On July 14, 1999, members of the New Orleans Police department arrested you for possession for [sic] marijuana after the officers entered your apartment in conjunction with a drug related arrest of one George Greathouse. The officers knocked on your door in order to search the apartment at 2620 Alvar Street, only to have you run into the bedroom and attempt to destroy 26 bags of the illegal drug marijuana. You were stopped from destroying the evidence, detained, arrested and transported to Central Lock-Up where you were charged with

violating La. R.S. 40:966, relative to the possession of marijuana.

HANO further noted that these facts constituted violations of Part 13, Section (1) of her Housing Authority Dwelling Lease which provides:

Part 13: Tenant's Obligation

Section (1) reads: To assure that Tenant, any member of the household, **a guest or another person under Tenant's control, shall not engage in:**

- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of HANO's public housing premises by other residents or employees of HANO; or
- (2) **Any drug-related criminal activity on or off the premises.** [Emphasis Added.]

In her oral reasons, the trial court judge noted that she realized that drugs were found in the apartment, but she was reluctant to evict Ms. Neville because she had six young children. The judge further noted that she did not know where Ms. Neville was going to move herself and all of her children if she was evicted. The judge denied HANO's Rule for Possession, thereby allowing Ms. Neville to stay in her apartment. However, she ordered that Grayhouse could not go near Ms. Neville or her premises. The judge stated that if Grayhouse ever went to the premises again, she would then evict Ms.

Neville from her apartment.

On appeal, HANO argues that the trial court erred in failing to evict Ms. Neville under the circumstances. HANO argues that the police officer's testimony proved that Ms. Neville had knowledge that the drugs were in apartment. In the alternative, HANO argues that even if the officer's testimony did *not* prove that Ms. Neville had this knowledge, it is of no moment because the lease expressly prohibits drug-related misconduct and makes the violation of that lease provision grounds for eviction, regardless of whether or not the tenant had knowledge of the violation.

HANO also argues that in addition to violating her lease, the tenant's conduct violated LSA-R.S. 40:506, which states in pertinent part as follows:

A. Except as expressly provided herein, the landlord tenant relationship, and the termination thereof, is governed by state law applicable to privately owned, residential property.

B. Without limiting the foregoing, a local housing authority may terminate the tenancy of a household or a resident or terminate any other assistance provided by the authority for either:

(1) Any unlawful drug-related activity or other criminal behavior on the part of a recipient or head of household or any member of the household, including any child who is a member thereof, or on the part of any guest or invitee of a member of the household, notwithstanding that the head of household or

any other member of the household either:

- (a) Was unaware of the misconduct constituting the ground for termination of tenancy.
- (b) Did not approve or participate in such misconduct.
- (c) Was not personally at fault in connection with such misconduct.

In a handwritten letter to this Court, Ms. Neville argues that the trial Judge's ruling should be upheld because she did not know that the drugs were in her apartment. She states that she only went to the back of the apartment to get a diaper for her baby. She denies that she signed a search warrant for the police officers. She states that she did not sign anything until the next night.

This Court dealt with a very similar fact scenario in *HANO v. Green*, 94-1650 (La. App. 4 Cir. 6/7/95), 657 So.2d 552.

In *Green, supra*, the defendant-appellant, Virgie Green ("Ms. Green") leased a public housing apartment from HANO for approximately twelve years. Akisha Martin ("Akisha") was an acquaintance of Ms. Green's daughter and was not a member of Ms. Green's household. HANO did not prove that Ms. Green had any knowledge of the presence of drugs in her apartment.

Akisha testified that she brought drugs into Ms. Green's apartment in

the pocket of her pants when she went one evening to spend the night at Ms. Green's apartment. Akisha stated that she spent that night in the master bedroom of the apartment. The following evening, at approximately 8:00 p.m., she placed the drugs inside a closed shoebox in the closet of the master bedroom while she took a bath. Akisha testified that neither Ms. Green nor any of the other inhabitants of Ms. Green's apartment had any knowledge that she possessed the drugs either on her person or that she had placed them anywhere in Ms. Green's apartment. According to the record, the drugs were apparently in the closet for less than one hour.

Officer Felix Joseph testified that a confidential informant had notified the police of drug activity at that location. With money supplied by the police, this confidential informant purchased drugs from Akisha inside the apartment. The record revealed that Akisha made more than one sale of drugs during her time in Ms. Green's apartment.

Ms. Green testified that on the day the drugs were discovered in her apartment, she left early that morning and did not return home until late that evening after Akisha had been arrested. Ms. Green stated that Akisha was a casual acquaintance of her daughter who seldom came to her apartment and had never before this incident spent the night at her apartment. Ms. Green further stated that she had not slept in the master bedroom in the apartment

for over five years. Further, she had never seen Akisha with drugs, and she was unaware that Akisha was involved in any drug activity.

The record revealed that Ms. Green had been an exemplary tenant of her housing complex. She served as a volunteer on the Resident Council Board for the complex. At the time of this case, Ms. Green was attending the Business and Management School at HANO, which is where she was on the night Akisha was arrested.

On May 9, 1994, because drugs were found in Ms. Green's apartment, HANO issued a Notice to Vacate to Ms. Green for an alleged lease violation. HANO argued that the activities of Akisha and her arrest violated several sections of Ms. Green's lease, specifically Section 15 of the lease, which provided:

In accordance with the anti-drug abuse act of 1988 the following provision is included:

The tenant, any member of the tenant's household, **or a guest or other person under the tenant's control** shall not engage in criminal activity, including drug-related criminal activity, on or near the Housing Authority's premises, while the tenant is a tenant in public housing, and such criminal activity shall be cause of termination of tenancy. [Emphasis added.]

The trial court ordered that Ms. Green be evicted. Ms. Green appealed, arguing that the trial court erred because HANO failed to prove that she had knowledge of the illegal drugs in her apartment or that she had

control over the actions of her daughter's overnight guest, Akisha Martin. Ms. Green also argued that the circumstances presented warranted an exercise of the Fourth Circuit's equitable discretion. Finally, Ms. Green contended that the trial court's eviction violated her due process rights.

HANO contended that under Section 15 of Ms. Green's lease provisions, Ms. Green was responsible for the criminal activity which took place inside of her public apartment, and such criminal activity was cause for termination of the lease.

This Court affirmed the trial court's eviction. With regard to the "control" and "knowledge" aspect of Ms. Green's argument, the Court reasoned as follows:

Thus, where Section 15 of the lease refers to "a guest or other person under the tenant's control" it means that the tenant "controls" who has access to the premises. The lease makes the tenant responsible for the drug activities of those persons given access to the apartment by the tenant. **"Control" as used in the lease in no way implies that the tenant knew or should have known of the drug activity, and there is no other provision in the lease that would make tenant knowledge of drug activity a necessary precondition of eviction.....**

The same "control" language is found in the federal Anti-Drug Abuse Act of 1988, as amended in 1990. 42 U.S.C.A. 1437d(l). **Knowledge requirements in statutes are so common in general and so obviously relevant to this particular issue that we reject the argument that Congress either failed inadvertently to include a knowledge requirement, somehow included it by implication, or said "control" but really meant knowledge. That a Congressional committee may not have intended for tenant evictions to take place in the**

absence of knowledge, does not change the fact that when the Congress as a whole enacted this law it did so without the imposition of a knowledge requirement. [Emphasis Added].

Id. at p. 4-5, 657 So.2d at 554.

This Court also addressed the importance of HANO's public policy objective of ridding the housing developments of drugs, drug activity and the danger usually associated with both:

HANO has the responsibility for maintaining a safe environment for its tenants who are being victimized by drug users and dealers. HANO in furtherance of its responsibilities has chosen to strictly enforce **a zero tolerance approach to drugs on the premises. We do not find that policy to be unreasonable, nor do we find the lease provisions in question to be unlawful.** For the foregoing reasons the judgment of the trial court is affirmed. [Emphasis Added]. *Id.* at p. 7; 657 So.2d at 555.

In summary, the *Green* case revealed that Ms. Green was an exemplary tenant of her housing development who had, before this incident, lived in the same housing development for twelve years without any problems. The person arrested for the possession and distribution of the drugs was a "casual" acquaintance of one of Ms. Green's daughters. Ms. Green testified that Akisha seldom came to her apartment, and this was Akisha's first time ever spending the night there. Both Akisha and Ms. Green testified that Ms. Green had no knowledge that any drugs were even

in the apartment, much less that Akisha was selling drugs from the apartment during her visit.

In the instant case, the record revealed that, like Ms. Green, Ms. Neville had been exemplary tenant of her housing development. However, unlike Ms. Green, Ms. Neville had only lived there for a little over seven months before the arrest involving the drugs. Additionally, unlike the *Green* case, the person arrested was more than just a “casual” acquaintance of Ms. Neville’s. Grayhouse is the father of at least one of Ms. Neville’s children. Additionally, unlike Akisha who spent only one night in Ms. Green’s apartment, resulting in Ms. Green’s ultimate eviction, Grayhouse, according to Ms. Neville’s own testimony, often does “come around”. Like the situation in *Green*, Grayhouse stated that Ms. Neville did not know about the drugs in her apartment. However, according to our prior reasoning in *Green*, this is of no moment.

Although this Court is sympathetic to Ms. Neville and her children, the question is this: Why should the treatment of Ms. Neville be different from that of Ms. Green? We find that it should not. Even though this is a difficult decision, we find that we must follow the precedent set for us in *Green*, a case that was *not* reversed by the Louisiana Supreme Court. Additionally, we note that we still strongly support HANO’s public policy

objective of maintaining a safe environment for its tenants who are being victimized by drug users and dealers. We still do not find HANO's zero tolerance approach to drugs to be unreasonable, nor do we find that the lease provisions in question are unlawful. Further, like the *Green* Court, we note that there is no constitutionally protected right to public housing. HANO's rules should be followed.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed and rendered in favor of the plaintiff-appellant, HANO.

REVERSED AND RENDERED