

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOM ALLEN MANUEL,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 215677

Eaton Circuit Court

LC No. 98-020182-FC

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Defendant appeals as of right his convictions following a jury trial of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to four to fifteen years' imprisonment for the armed robbery conviction and a consecutive two years' imprisonment for the felony-firearm conviction. We affirm.

During a search without a warrant, the police found in defendant's bedroom in his grandmother's house an application for employment at a convenience store with the same name as the one robbed. Before trial, defendant moved to suppress this evidence as the product of a search conducted without valid consent. The trial court ruled that defendant's grandmother had common authority over the bedroom in her house where defendant lived and that she had a sufficient relationship with the bedroom to consent to the search. The court also ruled that defendant's grandmother had apparent authority to consent to the search and that the officer's actions were reasonable. Thus, the trial court denied defendant's motion to suppress the employment application because based on the totality of the circumstances, the officer reasonably believed defendant's grandmother had authority to consent to the search and defendant no longer had a reasonable expectation of privacy. Defendant contends on appeal that the trial court erred in holding that the officer searched defendant's bedroom pursuant to valid consent because the officer did not have sufficient information to form a reasonable belief that defendant's grandmother had common authority over his bedroom. We disagree.

This Court reviews a trial court's decisions regarding the validity of consent to search an area for clear error. *People v Goforth*, 222 Mich App 306, 310; 564 NW2d 526 (1997). Clear error

exists when the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996). However, if the trial court's decision involves a question of law, this Court reviews the decision de novo. *People v Mayhew*, 236 Mich App 112, 117; 600 NW2d 370 (1999); *Goforth, supra* at 310.

In order to satisfy the mandates of the Fourth Amendment of the United States Constitution and article 1, § 11 of the Michigan Constitution, a search by police officers must be reasonable. *Goforth, supra* at 309. A search without a warrant is unreasonable per se unless the state can show the search fits within one of the recognized exceptions to the warrant requirement. *People v Wagner*, 114 Mich App 541, 546-547; 320 NW2d 251 (1982). A search without a warrant is constitutionally permissible if it is conducted pursuant to a valid consent. *Id.* at 548. A search is valid if the permission to search was obtained from a third party who possessed common authority over, or other sufficient relationship to, the premises or things sought to be inspected. *Id.* The test is whether, based on the totality of the circumstances, a police officer could reasonably believe the third party has common authority over the premises. *Goforth, supra* at 309, 315. Common authority rests on mutual use of the property by persons generally having joint access or control for most purposes. *Wagner, supra* at 548, quoting *United States v Matlock*, 415 US 164, 172 n7; 94 S Ct 988; 39 L Ed 2d 242 (1974); see also *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990).

This case is similar to *Goforth, supra*. In that case, the defendant's mother allowed the police officers to enter her house to search for a missing girl and the officers found incriminating evidence in the eighteen-year-old defendant's bedroom. *Id.* at 307-308. The trial court ruled that the mother's consent was invalid because the officers did not act reasonably in believing the defendant's mother had common authority over the defendant's bedroom. *Id.* at 308-309. The trial court cited the mother's testimony that the defendant had a "keep out" sign on his door, that the door was closed, and that the defendant never allowed anyone in his room. *Id.* at 309. This Court reversed, finding that the defendant's mother consented to the officers' search of the house and there was no indication that she lacked access to the defendant's bedroom or that the defendant had exclusive access to the room. *Id.* at 316-317.

In this case, the police officer testified that prior to his search of defendant's bedroom, defendant's grandmother told him that she owned the home and that defendant lived upstairs, and she then gave him permission to search the room. The officer further testified that defendant's grandmother went upstairs before him to straighten the room. The officer did not see any sign on the door that the room was private and should not be entered, he did not see a lock on the door, and the door to the room was open when he entered. Under these circumstances, the trial court did not err in holding that the officer could have reasonably believed defendant's grandmother had common authority over the bedroom and thus was able to validly consent to his search. As in *Goforth*, there was no indication that defendant's grandmother lacked access to or control of the bedroom in which defendant lived. *Id.* at 316.

Defendant contends that this case is more analogous to *United States v Whitfield*, 291 US App DC 243; 939 F2d 1071, 1074 (1991), where the court held that government agents could not have reasonably believed that the defendant's mother had authority to consent to a search of the

defendant's bedroom because, although she had common access to the room, the agents did not ask any questions that established that the defendant's mother mutually used the room. However, this Court has declined to impose an obligation on the police to make a further inquiry regarding a third party's ability to validly consent to a search unless the circumstances are such that it would cause a reasonable person to question the consenting party's power or control over the premises or property. *Goforth, supra* at 312. As discussed above, under the circumstances of this case, the police officer had sufficient information to reasonably believe defendant's grandmother had control over the bedroom in her house in which defendant lived. Therefore, the trial court did not err in finding the officer's search of defendant's bedroom was pursuant to a valid consent.

Affirmed.

/s/ Donald S. Owens

/s/ William B. Murphy

/s/ Helene N. White