

[Cite as *State v. Dozier*, 2015-Ohio-2175.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 2014-CA-105
	:	
v.	:	Trial Court Case No. 2013-CR-832
	:	
PAUL DOZIER	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 5th day of June, 2015.

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HALL, J.

{¶ 1} Paul Dozier appeals from his conviction and sentence on one count of

cocaine possession, a fifth-degree felony.

{¶ 2} In his sole assignment of error, Dozier contends the trial court erred in overruling a pretrial motion to suppress the evidence against him.

{¶ 3} Testimony at Dozier's suppression hearing reflects that Dozier, a parolee, was on post-release control in September 2013. At that time, his parole officer learned that he had been arrested and released in connection with an unspecified offense of violence. The parole officer decided to have him arrested and jailed for a parole violation. Although Dozier's whereabouts were unknown, an informant advised police that he could be found at 462 East Cecil Street in Springfield. Police and a parole officer responded by going to that residential address around 12:30 a.m. on September 30, 2013 and knocking on the door. A person who appeared to be Dozier peered out through window blinds. The parole officer identified himself and told Dozier he needed to open the door. Dozier responded by moving to the right beside the window and waiting five to ten seconds. He then opened the door and surrendered to police.

{¶ 4} As he was being arrested, Dozier asked for his shoes. Police and the parole officer went inside the house to retrieve them. While doing so, they shined a flashlight on a candleholder in the area to the right of the window where Dozier had moved. There they saw a small baggie of suspected cocaine. They also saw a pair of shoes in close proximity to the candleholder. While inside, police observed several juvenile males. Police did not determine the owner of the residence at 462 East Cecil Street before or after entering.

{¶ 5} Following his indictment for possessing the cocaine found in the candleholder, Dozier filed a motion to suppress. Based on the suppression-hearing testimony, the trial court overruled the motion in an August 27, 2014 entry. (Doc. #38). It

found that Dozier had no reasonable expectation of privacy in the residence at 462 East Cecil Street and, therefore, no standing to challenge the discovery of cocaine inside the home. The trial court reached this conclusion for two reasons. First, it saw no evidence that Dozier was a resident or an overnight guest at the house. Second, it concluded that R.C. 2967.131(C), which addresses search of offenders released on post-release control supervision, authorized police to enter and search the home even if Dozier was a resident or overnight guest. Following the trial court's ruling, the case proceeded to trial. A jury found Dozier guilty, and the trial court imposed a one-year prison term.

{¶ 6} The only issue on appeal is whether the trial court erred in overruling Dozier's suppression motion. Dozier frames the issue as "whether someone who is on parole has a right to privacy in the residence or home of another where he is present." (Appellant's brief at 5). Dozier claims the evidence supports an inference that he was an overnight guest at 462 East Cecil Street. In support, he cites the late hour, the presence of juveniles without any other adult being seen, and the fact that he had his shoes off. Therefore, he claims the warrantless entry into the home that resulted in discovery of cocaine was unlawful and that he had standing to challenge it. Finally, Dozier claims R.C. 2967.131(C) did not authorize the warrantless entry into the home because the parole officer knew it was not his "stated home." (*Id.* at 5-6).

{¶ 7} Upon review, we see no error in the trial court's suppression ruling. It is beyond dispute that overnight guests in a home "have standing to challenge the legality of a search of that place." (Citations omitted.). *State v. Peterson*, 166 Ohio App.3d 112, 2006-Ohio-1857, 849 N.E.2d 104, ¶ 11 (2d Dist.). As the person challenging the legality of the entry, however, Dozier bore the burden of establishing standing by virtue of being an

overnight guest. *State v. Glover*, 2d Dist. Montgomery No. 20692, 2005-Ohio-4509, ¶ 9 (“[I]n order to challenge a search as violative of the Fourth Amendment, a defendant must demonstrate (1) that he personally had an expectation of privacy in the place searched and (2) that his expectation of privacy was reasonable.”); see also *State v. Grose*, 5th Dist. Richland No. 12CA109, 2013-Ohio-4387, ¶ 40 (defendant’s burden to prove overnight-guest status); *State v. Smith*, 8th Dist. Cuyahoga No. 96348, 2011-Ohio-6466, ¶ 16-17 (same); *State v. Draper*, 6th Dist. Fulton No. F-04-026, 2005-Ohio-920, ¶ 14 (same).

{¶ 8} Here we agree with the trial court that the evidence fails to establish Dozier’s status as a resident or overnight guest. Dozier himself did not testify. The only witnesses were a parole officer and two police officers. The testimony of those witnesses failed to demonstrate Dozier’s status as a resident or overnight guest. The hour was not exceptionally late, Dozier apparently was awake with others when police arrived, and the fact that he had his shoes off does not reasonably suggest that he was an overnight guest. The record is devoid of evidence that Dozier ever had stayed overnight at the residence or that he kept any personal items there. Nor are we persuaded by the argument that he likely was an overnight guest because juveniles were seen inside the house. The inference Dozier wants us to draw is that he was the only responsible adult present and, therefore, must have been staying overnight. The record reflects, however, that police did not search the house and did not venture beyond the living room during their short time inside. (Hearing Tr. at 25, 36). We note too that police initially believed at least one of the juveniles was old enough to be an adult. (*Id.* at 28-29).

{¶ 9} Having reviewed the record, we agree with the trial court that the record fails

to establish Dozier's status as a resident or overnight guest at 462 East Cecil Street. That being so, the trial court correctly found that he had no reasonable expectation of privacy and no standing to challenge the warrantless entry into the home. In light of that conclusion, we need not address the trial court's alternative finding that the warrantless entry was permissible under R.C. 2967.131(C), which addresses searches of felons on post-release control.

{¶ 10} Dozier's assignment of error is overruled, and the judgment of the Clark County Common Pleas Court is affirmed.

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DONOVAN, J., and WELBAUM, J., concur.

Copies mailed to:

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