[Cite as *State v. Green*, 2017-Ohio-7757.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 16 CO 0023
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
CHARLES D. GREEN	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Court of Common Pleas of Columbiana County, Ohio Case No. 2015 CR 194
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellee:	Atty. Robert Herron Columbiana County Prosecutor Atty. Ryan P. Weikart Assistant Prosecuting Attorney 105 South Market Street Lisbon, Ohio 44432
For Defendant-Appellant:	Atty. Coleen Hall Dailey 323 East Main Street Alliance, Ohio 44601

JUDGES:

Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: September 18, 2017

[Cite as *State v. Green*, 2017-Ohio-7757.]
WAITE, J.

{¶1} Appellant Charles D. Green appeals a February 5, 2016 Columbiana County Common Pleas Court decision to deny his motion to suppress. Appellant argues that the members of the Columbiana County Drug Task Force ("drug task force") entered his premises through an enclosed porch without permission. He also argues that the officers obtained his consent to search the premises by means of coercion. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Detective Brett Grabman of the drug task force received an email alleging that Appellant was growing marijuana on his front porch. (1/20/16 Supp. Hrg. Tr., p. 3.) The email provided Appellant's name, street address and noted that the premises had an enclosed porch, but did not provide the apartment number. Det. Grabman conducted surveillance on the apartment over the course of ten to eleven days. He observed a red truck registered to Appellant drive up the street and park in front of an apartment with an enclosed porch. From his parked car on the roadway, Det. Grabman could see a metal rack that was covered with black plastic and held planting pots inside the area of the porch. He testified that this indicated to him that someone inside the apartment was trying to grow plants.

{¶3} On January 9, 2015, Det. Grabman and four members of the drug task force approached the apartment to conduct a "knock and talk." *Id.* at p. 5. Det. Grabman testified that the only entrance to the premises was on the front of the apartment. He explained that there are two doors in the front of the building, one to

the enclosed porch and an interior door, which he believed lead into the apartment. The officers opened the porch door, which was unlocked, and crossed the porch. The officers noted that the porch appeared to be used for storage, particularly potting soil, grow lights, and tools. *Id.* at p. 8. The officers knocked on the door to the apartment and a child around the age of five opened the door. The officers asked the boy if his father was home and the officers heard a male voice in the background ask the boy who was at the door. The officers identified themselves as members of the drug task force and asked the man if he was Charles. He responded that he was, and that he had just gotten out of the shower and was not dressed. Det. Grabman asked for permission to enter the apartment and he heard the man say "yeah." *Id.* at pp. 9-10. The officers allowed Appellant to get dressed.

{¶4} When the officers entered the apartment, they observed drug paraphernalia and other contraband in plain view. *Id.* at p. 12. The officers informed Appellant that they had received a complaint that he was growing marijuana in the apartment. The officers asked Appellant for permission to search the premises and he refused. Det. Grabman then told Appellant that he would seek a warrant. He informed Appellant that officers would stay at the residence while the warrant was sought to ensure that evidence was not destroyed. Det. Grabman testified that as he turned to leave the apartment, Appellant changed his mind and consented to a search of the apartment. After Det. Grabman explained the consent form, both Appellant and his girlfriend signed this form. *Id.* at pp. 15-16.

{¶5} All five officers took part in the search. *Id.* at p. 18. Appellant told officers that there were marijuana plants in the master bedroom closet. The officers found twenty-one marijuana plants in the closet. The officers also found acacia root (a schedule I hallucinogen), a scale, and other drug paraphernalia. Appellant initially cooperated with the search but began questioning officers and became less cooperative after his girlfriend's mother arrived. Appellant was arrested a few months later.

{¶6} Appellant was indicted on one count of possession of drugs, a felony of the second degree in violation of R.C. 2925.11(A), one count of cultivation of marijuana, a misdemeanor of the fourth degree in violation of R.C. 2925.04(A), and one count of child endangering, a felony of the third degree in violation of R.C. 2919.22(B)(6). On November 12, 2015, Appellant filed a motion to suppress based on arguments that the officers did not have the right to enter the enclosed porch and that his consent was obtained through coercion. After a hearing, the trial court denied the motion. On May 20, 2016, Appellant pleaded no contest to all three counts. The court sentenced him to an aggregate sentence of two years of incarceration, a $7,500 fine, and a six-month driver's license suspension. His sentence was stayed pending appeal. This timely appeal follows.

Suppression Hearing

{¶7} A motion to suppress presents mixed issues of law and fact. *State v. Lake*, 151 Ohio App.3d 378, 2003-Ohio-332, 784 N.E.2d 162, ¶ 12, (7th Dist.), citing *State v. Jedd*, 146 Ohio App.3d 167, 171, 765 N.E.2d 880 (4th Dist.2001). If a trial

court's findings of fact are supported by competent, credible evidence, an appellate court must accept them. *Id*. The appellate court must then determine whether the trial court's decision met the applicable legal standard. *Id*.

ASSIGNMENT OF ERROR NO. 1

> THE SEARCH OF DEFENDANT'S RESIDENCE WAS NOT CONSENSUAL AS THE DEFENDANT/APPELLANT AND HIS GIRLFRIEND WERE CLEARLY COERCED INTO SIGNING THE CONSENT TO SEARCH.

{¶8} In order to be valid, a search must be supported by a warrant or be based on a recognized exception to the warrant requirement. *State v. Ambrosini*, 7th Dist. Nos. 14 MA 155, 14 MA 156, 2015-Ohio-4150, ¶ 8, citing *Katz v. U.S.*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). In Ohio, there are seven recognized exceptions to the warrant requirement: (1) a search incident to a lawful arrest, (2) consent, (3) the stop-and-frisk doctrine, (4) hot pursuit, (5) probable cause plus the presence of exigent circumstances, (6) the plain view doctrine, and (7) administrative searches. *State v. McGee*, 7th Dist. No. 12 MA 123, 2013-Ohio-4165, 996 N.E.2d 1048 ¶ 17, citing *State v. Akron Airport Post No. 8975*, 19 Ohio St.3d 49, 51, 482 N.E.2d 606 (1985).

{¶9} Appellant argues that the officers obtained his consent through coercion. Appellant contends that the mere presence of five officers constitutes coercion, particularly as these events took place in a small environment. Additionally, he argues that the officers “threatened” that they would obtain a warrant and that it

"would get worse for him" if they were forced to do so. (1/20/16 Supp. Hrg. Tr., p. 42.) Appellant asserts that Det. Grabman told him that four officers would wait at the apartment while the detective obtained the warrant.

{¶10} The state responds that both Det. Grabman and Lieutenant Brian McLaughlin testified that Appellant reconsidered his decision to give consent on his own. The state asserts that Appellant was not threatened or promised anything in return for his consent. The officers did inform Appellant that they would seek a warrant but also said a warrant would not necessarily be granted by a judge. Further, Det. Grabman reviewed the consent form with Appellant and his girlfriend and fully explained the consequences of providing consent. The state argues in the alternative that Appellant lacks standing to challenge his girlfriend's consent, and that since she did consent, his arguments should fail on that basis.

{¶11} The officers in this matter searched the apartment pursuant to a consent form signed by both Appellant and his girlfriend. Consent is a well-recognized exception to the warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). "Generally, consent to search a person's residence may be obtained from a third party who possesses common authority over, or other sufficient relationship to, the premises." *State v. Telshaw,* 195 Ohio App.3d 596, 2011-Ohio-3373, 961 N.E.2d 223, ¶ 16 (7th Dist.), *U.S. v. Matlock,* 415 U.S. 164, 171, 94 S.Ct. 988, 39 L.Ed.2d 242.

{¶12} Appellant concedes that his girlfriend signed the consent form. He did not object to the fact that she signed the document at the time it was signed or at any

stage of this case. There is nothing within this record to suggest that her consent was invalid. It appears she resided in the apartment. Thus, the officers properly searched the residence pursuant to the girlfriend's valid consent.

{¶13} This record also demonstrates that Appellant's consent was not obtained through coercion. "Whether consent to search was voluntary or was the product of duress or coercion, either express or implied, is a question of fact to be determined from the totality of the circumstances." *State v. Riley,* 7th Dist. No. 13 MA 180, 2015-Ohio-94, ¶ 19, citing *State v. Fasline,* 7th Dist. No. 12 MA 221, 2014-Ohio-1470, ¶ 24. As such, the question of whether consent was obtained by coercion is left to the trier of fact and will not be reversed unless it is not supported by competent, credible evidence. *Id.*

{¶14} There is nothing within this record to suggest that Det. Grabman obtained Appellant's consent through coercion. The record demonstrates that the officers were honest in explaining the procedures to Appellant. First, the officers informed him that they would seek a warrant but that a judge may not necessarily grant their request. Second, they explained to him that, as standard practice, several officers would remain at his residence to prevent the destruction of evidence while the warrant was sought. Third, they reviewed the consent form with both Appellant and his girlfriend and explained the consequences of providing consent. The officers wore plain clothes and did not display a weapon at any point. At no time during the encounter did any of the officers restrain or handcuff Appellant or his girlfriend.

{¶15} Appellant claims that he felt coerced as a result of Det. Grabman's alleged statement that matters would be worse for him if the officers were forced to seek a warrant. Det. Grabman denied making such statement. This issue presents a factual dispute that is largely dependent on witness credibility. The trial court was in the best position to determine the witnesses' credibility and there is nothing within this record to show that Det. Grabman lacked credibility. We note that even if Det. Grabman made such a statement, it does not rise to the level of coercion.

{¶16} This record reflects that the officers properly searched the residence pursuant to valid consent from both Appellant and his girlfriend. Accordingly, Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

> THE ENTRY INTO THE ENCLOSED PORCH WAS NOT PERMISSIBLE AND THE COURT ERRED WHEN IT SUGGESTED THAT THE DRUG TASK FORCE HAD A LEGITIMATE REASON TO ENTER ONTO SAID PORCH TO GAIN ENTRY TO THE RESIDENCE.

{¶17} Appellant contends that the officers entered his enclosed porch without first obtaining permission. Appellant attempts to contrast his case with one relied on by the trial court, *State v. Fuller,* E.D.Michigan No. 10-20630-BC, 2011 WL 4708841 (Oct. 7, 2011). In *Fuller,* the defendant testified that guests typically entered the enclosed porch to knock on the interior door. Also, the *Fuller* officer had previously been to the house and entered the enclosed porch without objection. Here,

Appellant argues that there was no such testimony and that the court's reliance on this case was misplaced.

{¶18} In response, the state argues that it was necessary for the officers to enter the porch in order to knock on the interior door, which was the threshold to the apartment's interior, and this is reflected in the evidence. The state notes that the porch door was unlocked, and the windows did not have blinds or curtains, clearly exposing its contents to the public. The porch appeared to be used solely for storage.

{¶19} "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton v. New York,* 445 U.S. 573, 590, 100 S.Ct 1371, 63 L.Ed.2d 639 (1980).

{¶20} Curtilage is defined as the area "to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.' " *State v. Albright,* 7th Dist. No. 14 MA 0165, 2016-Ohio-7037, ¶ 24, citing *Oliver v. U.S.,* 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984). It is described as the area "so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Albright* at ¶ 24, citing *U.S. v. Dunn,* 480 U.S. 294, 301, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987). Factors to consider when determining if property is curtilage include: "(1) the proximity of the area to the home; (2) whether the area is included within an enclosure surrounding the home; (3)

the nature of the uses to which the area is put; and (4) the steps taken to protect the area from observation by passersby." *Albright* at ¶ 25, citing *Dunn,* 480 U.S. at 301.

{¶21} The front porch has been labeled "a classic example of curtilage." *Albright* at ¶ 25, citing *Florida v. Jardines,* 569 U.S. 1, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013). However, even if an area of the home qualifies as curtilage, an officer is not per se prohibited from entering the area without a warrant. *Jardines,* 133 S.Ct. at 1414-1415. For instance, an officer is permitted to enter a person's porch to knock on their door. *Id.* at 1415-1416. The question, here, is whether officers could enter this enclosed porch.

{¶22} The trial court relied on *Fuller*, *supra*. In *Fuller,* an officer went to a suspect's house to speak with him about a recent crime. *Id.* at *1. The house had an enclosed porch with a door leading to the interior of the premises inside the porch. The officer entered the porch and approached the interior door where he observed ammunition on the floor. The officer left and obtained a search warrant for the premises. During the search, officers found weapons. The defendant filed a motion to suppress the weapons based on the argument that the officer did not have the right to enter the enclosed porch in the first instance.

{¶23} The court denied the defendant's motion for the following reasons. First, although the windows surrounding the porch had curtains, they were open during the day. *Id.* at *2. The porch had several steps leading to it but did not have a landing to give visitors a place to wait for the resident to open the door. The porch door had a latch lock but it was unlocked when the officer approached the house.

The defendant and his girlfriend admitted that visitors typically entered the porch to knock on the interior door. *Id.* at *3. They also acknowledged that the officer had walked through the porch and knocked on the interior door on previous visits to the residence. Based on the totality of the circumstances, the court determined that the interior door was the threshold entrance to the house and denied the motion to suppress.

{¶24} In another case, the court held that the determination of whether an officer can enter the door to an enclosed porch to knock on an interior door "hinges upon whether the totality of the circumstances reveal that it was reasonable to expect that an ordinary visitor would have entered the area that the officers did in order to gain access to the entrance of the residence." *U.S. v. Renteria-Lopez,* D.Kansas, Nos. 10-10152-01-EFM, 10-10152-02-EFM, 10-10152-03-EFM, 10-10152-04-EFM, 2011 WL 3880899 (Sept. 2, 2011). In determining that the threshold door was the interior door, not the door to the enclosed patio, the court found that there was no indication that the residents intended to keep others out of the enclosed porch. The court noted that the screen door to the patio did not have a doorbell or a nearby landing. The court also noted that there was nothing inside the patio to suggest that it was not an entrance. *Id.* at *3.

{¶25} Two Ohio appellate courts have also ruled on this issue. In a Twelfth District case, the court was presented with the issue of whether officers improperly entered the appellant's back patio when no one answered the front door. *State v. Young,* 12th Dist. No. CA2014-05-074, 2015-Ohio-1347, 31 N.E.3d 178. The *Young*

Court utilized the curtilage factors and found that the patio was part of the curtilage. The Court weighed the lack of evidence regarding the nature of the use of the room against the state, as it bore the burden of proof. Although the porch was considered curtilage, the Court held that it was reasonable for officers to enter the patio when it was obvious that someone was home and no one answered the front door.

{¶26} In a Fifth District case, officers received a call that minors were consuming drugs and alcohol at the appellant's residence. *In Matter of Lallo,* 5th Dist. No. 1997CA00426, 1998 WL 525561 (Aug. 17, 1998). The officers entered an enclosed porch for purposes of a knock and talk. After speaking with several nonresidents, the officers then entered the house looking for the appellant. The Court found that the porch was part of the curtilage and that under the circumstances it was not reasonable for the officers to enter. The Court rationalized that the porch was completely enclosed and contained indoor furniture, including lamps and a telephone. The court found the fact that the room was used to store a few items did not change the private nature of its use.

{¶27} Based on this record, the facts and circumstances demonstrate that it was reasonable for the officers to believe that the interior door was the threshold door. Appellant claims that a padlock is used to lock the porch door, however, he concedes that the porch door was unlocked and there is no evidence that any padlock could be observed by the officers. Although the officers did not knock on the porch door, they did knock on the interior door. Importantly, the officers asked Appellant for permission before they entered the interior door into the apartment. At

no time did Appellant or his girlfriend object to the officers' presence on the porch. It is also significant that the officers did not conduct a search of or seize evidence from the porch. Furthermore, unlike *Lallo,* there was no furniture in the porch. The porch was used solely to store boxes, tools, and a plant rack. Additionally, the windows surrounding the porch did not have curtains or blinds and the porch and its contents were open to be easily viewed.

{¶28} Based on the totality of circumstances, the officers reasonably believed that the interior door was the threshold door to this premises. Accordingly, Appellant's second assignment of error is without merit and is overruled.

Conclusion

{¶29} Appellant argues that the task force members entered his enclosed porch without permission. The record demonstrates that it was reasonable for the officers to believe that the interior door was the threshold door. He also argues that the officers obtained his consent to search his apartment through coercion. The record shows that the officers conducted the search pursuant to Appellant and his girlfriend's valid consent. Appellant's arguments are without merit and the judgment of the trial court is affirmed.

DeGenaro, J., concurs.

Robb, P.J., concurs.