[Cite as *State v. Lawson*, 2010-Ohio-1103.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-08-020
	:	O P I N I O N
- vs -		3/22/2010
	:	
HENRY KELLY LAWSON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 09-CR-10249

Martin P. Votel, Preble County Prosecuting Attorney, Gractia S. Manning, Preble County Courthouse, 101 East Main Street, Eaton, Ohio 45320, for plaintiff-appellee

James W. Thomas, Jr., 112 N. Barron Street, Eaton, Ohio 45320, for defendant-appellant

YOUNG, P.J.

{¶1} Defendant-appellant, Henry Kelly Lawson, appeals from the Preble County Court of Common Pleas decision denying his motion to suppress. For the reasons outlined below, we affirm.

{¶2} On February 21, 2009, Captain Michael Spitler and Deputy Terry Petitt of the Preble County Sheriff's Office were dispatched to 6371 White Water Eldorado Road, New Paris, Preble County, Ohio, to investigate an alleged domestic dispute involving

appellant and Nacole Elswick. Upon arriving at the scene, and after placing appellant within the back of a police cruiser, Captain Spitler and Deputy Petitt entered appellant's home to speak with Elswick who informed them that appellant was hiding illegal narcotics. After learning the whereabouts of the narcotics, Captain Spitler obtained a search warrant that ultimately led to the discovery of a "small amount" of methamphetamine, marijuana, and a backpack containing $6,000 in cash.

{¶3} Appellant was charged with one count of aggravated possession of drugs, one count of possession of marijuana, and one count of possession of drug paraphernalia. After filing a motion to suppress, which the trial court denied, and after pleading no contest, appellant was found guilty and sentenced to serve one year in prison and ordered to pay $100 in fines.

{¶4} Appellant now appeals the trial court's decision denying his motion to suppress, raising one assignment of error.

{¶5} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR AS A MATTER OF LAW BY DENYING THE APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE OBTAINED BY LAW ENFORCEMENT OFFICERS AS A RESULT OF THE UNLAWFUL ENTRY INTO THE APPELLANT'S PLACE OF RESIDENCE AND PRIVATE BEDROOM."

{¶6} In his sole assignment of error, appellant argues that the trial court erred by denying his motion to suppress challenging the validity of Captain Spitler and Deputy Petitt's warrantless entry into his home. We disagree.

{¶7} Appellate review of a trial court's ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8; *State v. Long* (1998), 127 Ohio App.3d 328, 332. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to resolve factual

questions and evaluate the credibility of the witnesses. *State v. Smith,* 80 Ohio St.3d 89, 105, 1997-Ohio-355; *State v. Anderson* (1995), 100 Ohio App.3d 688, 691. In turn, an appellate court must defer to the trial court's factual findings if they are supported by competent, credible evidence. *State v. Bryson* (2001), 142 Ohio App.3d 397, 402; *State v. Retherford* (1994), 93 Ohio App.3d 586, 593. After accepting the trial court's factual findings as true, the appellate court must then determine, "without deference to the trial court, whether the court has applied the appropriate legal standard." *Anderson* at 691; *State v. Cochran,* Preble App. No. CA2006-10-023, 2007-Ohio-3353, ¶12.

{¶8} The "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," and, as a result, a warrantless entry into a residence by the police is considered presumptively unreasonable. *Middletown v. Flinchum*, 95 Ohio St.3d 43, 44, 2002-Ohio-1625; *State v. Hopkins*, Butler App. No. CA2004-03-065, 2005-Ohio-2109, ¶9, citing *State v. Nields,* 93 Ohio St.3d 6, 15, 2001-Ohio-1291; *State v. Gunn*, Madison App. No. CA2003-10-035, 2004-Ohio-6665, ¶19. However, an entry conducted with the consent of one who has common authority over the premises is a well-established exception to the warrant requirement. *State v. Henderson*, Warren App. Nos. CA2002-08-075, CA2002-08-076, 2003-Ohio-1617, ¶20, citing *Schneckloth v. Bustamonte* (1973), 412 U.S. 218, 93 S.Ct. 2041; *Hopkins* at ¶10, citing *Illinois v. Rodriguez* (1990), 497 U.S. 177, 180, 110 S.Ct. 2793. This is true even where the entry is "based upon the consent of a third party whom the police, at the time of the entry, reasonably believe to possess common authority over the premises, but who in fact does not." *State v. Rice*, Licking App. No. 09-CA-0063, 2010-Ohio-531, ¶19; *State v. McCartney*, Clinton App. No. CA2003-09-023, 2004-Ohio-4781, ¶15; *State v. Boland*, Clermont App. Nos. CA2007-01-016, CA2007-01-017, 2008-Ohio-353, ¶15; see, also, *Georgia v. Randolph* (2006), 547 U.S. 103, 121-122, 126 S.Ct. 1515.

{¶9} Initially, we find it appropriate to note that that this case merely involves consent to *enter* the residence, and not consent to *search* the residence. *State v. Rammel* (Sept. 18, 2000), Madison App. No. CA99-10-023, 4; *Gunn* at ¶22. While "[t]his distinction is not always carefully made," there is a distinction between consent to enter into a residence and consent to search a residence. *Rammel*, quoting *State v. Chapman* (1994), 97 Ohio App.3d 687, 689; see, also, *Akron v. Harris* (1994), 93 Ohio App.3d 378, 382; *State v. Pamer* (1990), 70 Ohio App.3d 540, 542-543. "The consent of a third party granted to the police to enter a house is not held to the same standard as consent of a third party to a warrantless search." *State v. Schroeder* (Oct. 26, 2001), Wood App. No. WD-00-076, 2001-WL-1308002, at *2, citing *Chapman* at 690.

{¶10} Turning to the facts of this case, in determining whether Captain Spitler and Deputy Petitt's entry into appellant's residence was valid based upon Elswick's consent, the relevant inquiry is "whether the facts available to the officer at that time would warrant a reasonable belief that the third party had authority over the premises." *State v. Green*, Greene App. No. 2007 CA 2, 2009-Ohio-5529, ¶65, quoting *State v. Harris,* Montgomery App. No. 19479, 2003-Ohio-2519, ¶15; see *State v. Corrado*, Ashtabula App. No. 2004-A-0067, 2005-Ohio-6160, ¶25.

{¶11} The evidence indicates Captain Spitler and Deputy Petitt were dispatched to a Preble County residence in order to investigate an alleged domestic dispute involving appellant and Elswick.[1] Upon arriving at the scene, appellant, who was outside walking through the yard, refused to heed police orders to stop, and, as a result, was ordered to the ground, handcuffed, and secured in the back of Captain Spitler's police cruiser. However, while appellant was being subdued, a blonde woman, later

1. In further explaining this alleged domestic dispute, Deputy Spitler testified that the dispatcher informed him that appellant threatened Elswick with a gun, and that he "was chasing her around the yard."

identified as Elswick, was heard "yelling" at the officers as she stood in the doorway leading inside to the kitchen.

{¶12} Once appellant was detained within the back of the police cruiser, the evidence indicates Elswick, who had yet to identify herself, and who was still standing inside the open doorway, asked Deputy Pettit to "come inside" so she could explain what had happened.[2] After entering the residence, and once Captain Spitler joined them in kitchen, Deputy Pettit testified that Elswick, who simply identified herself as Nacole, asked if she "could go with her to get her stuff" from the bedroom. When asked if she knew how long Elswick had been staying with appellant at that time, Deputy Pettit testified that "[she] thought that's where she lived," and that, because she had a number of personal belongings in the bedroom, she believed Elswick had been there for some time.[3] In addition, neither Captain Spitler nor Deputy Petitt got the impression that they were not welcome within the home, and neither of them were ever told to leave.

{¶13} After a thorough review of the record, we find that the facts available to Captain Spitler and Deputy Pettit were sufficient to warrant a reasonable belief that Elswick had authority over the premises to consent to their entry. As noted above, the evidence indicates Elswick, while standing in the doorway, asked Deputy Petitt, who "didn't know who she was," and who was there to investigate a domestic dispute, to "come inside," and that Captain Spitler entered the residence shortly thereafter. In addition, the evidence indicates Elswick asked Deputy Petitt to follow her into a bedroom to obtain her personal belongings so that she could leave the house. As a result, because Captain Spitler and Deputy Petitt could reasonably believe Elswick had the

2. Specifically, Deputy Petitt testified that Elswick motioned for her to come towards the house, asked if they could talk, and then "stepped back" from the open door allowing her to enter.

authority to consent to their entry into the home and bedroom, we find no violation of appellant's constitutional rights. Therefore, appellant's sole assignment of error is overruled.

{¶14} Judgment affirmed.

POWELL and RINGLAND, JJ., concur.

3. Captain Spitler and Deputy Petitt subsequently learned that Elswick had been staying with appellant for "approximately three weeks or better" so that she could "get back on her feet" while her "baby's daddy was in prison in Kentucky."