

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

TYFANY ELANA ALLEN,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3084 EDA 2013

Appeal from the Sentencing September 19, 2013
In the Court of Common Pleas of Monroe County
Criminal Division at No(s): CP-45-CR-0002995-2011

BEFORE: FORD ELLIOTT, P.J.E., BOWES, and SHOGAN, JJ.

MEMORANDUM BY BOWES, J.:

FILED JULY 09, 2014

Tyfany Elana Allen appeals from the aggregate judgment of sentence of three years probation imposed by the trial court after a jury found her guilty of possession with intent to deliver ("PWID") marijuana, conspiracy to commit PWID, and possession of drug paraphernalia. Appellant challenges the propriety of the search that led to the discovery of the items supporting her convictions. We reject that challenge and affirm.

We first recite the pertinent facts. The supervisor of the Monroe County Probation Department (the "Department"), Bernard Sikora, established the following. Each person who is subject to supervision by the Department has a home plan, which is "an approved residence that a probationer or parolee would be either paroled to or allowed to live at while under supervision." N.T. Omnibus Pretrial Motion, 6/18/12, at 4. The

Department needs to be aware of the residence so that the people with whom a supervisee lives can “consent to allowing us in there to do our jobs and supervise them adequately.” **Id.** If the Department becomes aware that someone is not living at their approved home plan, it investigates by going to the un-approved residence. **Id.**

In November 2011, a man named Steven Snyder was on probation under the Department’s supervision for a conviction for driving under the influence. The Department received information that Mr. Snyder was not “living at his correct home plan,” which was his mother’s residence on 5006 Reservoir Road, East Stroudsburg, and was instead residing in a building located on 1129 Mt. Tom Road. **Id.** at 5. Officer Sikora, who was accompanied by two other officers assigned to the Department, travelled to that location on November 30, 2011.

The building on 1129 Mt. Tom Road was separated into different apartments, and there were two driveways leading to it. Upon his arrival, Officer Sikora noticed three vehicles parked in the driveway that was located on the left side of the building. Officer Sikora ascertained that all three vehicles were registered to Steven Snyder. Officer Sikora also knew that the building located on 1129 Mt. Tom Road was owned “by Mr. Snyder’s father and his grandfather[.]” **Id.** at 12. Officer Sikora and Department Officer Gerald Rose approached a screened porch that was on the left of the building and knocked on the door. The third officer stayed behind to watch the building. Appellant, who is the mother of Mr. Snyder’s daughter,

answered the door, and Mr. Snyder was standing next to her. The porch where Appellant and Mr. Snyder met the probation officers was an apartment with the address of 1127 Mt. Tom Road, and Appellant rented that apartment from Mr. Snyder's father. Officer Sikora reported that he only saw the designation 1129 Mt. Tom Road on the building in question.

Officer Sikora informed Mr. Snyder that he was not permitted to live on Mt. Tom Road, and Mr. Snyder responded that he was not residing with Appellant. To ascertain if that information was correct, Officer Sikora asked Mr. Snyder to show him the bedrooms so that Officer Sikora could ascertain if there were indications that Mr. Snyder was living there. Officer Sikora testified that "Mr. Snyder let us into the residence" and that neither probation officer employed force to gain entry. *Id.* at 15. Officer Rose, who was the Department officer who accompanied Officer Sikora to the porch, confirmed that Mr. Snyder "just opened the door and just let us come in." N.T. Continued Omnibus Pretrial Motion Hearing, 7/23/12, at 21.

Mr. Snyder proceeded to show Officer Sikora his daughter's bedroom, but Officer Sikora asked to see the master bedroom. Mr. Snyder then led the two officers through the kitchen and into a narrow hallway that led to a small office and the master bedroom. As he was walking through the apartment, Officer Sikora observed many boxes of belongings, and it was apparent that Appellant and Mr. Snyder were in the process of moving into the residence.

Officer Sikora reported that, "Immediately upon entering that hallway I smelled marijuana, it was very strong. I started to look around and in plain sight on a desk in the office, which you had to walk by to get to the bedroom, was large bags of marijuana." N.T. Omnibus Pretrial Motion, 6/18/12, at 8. The door to the office was opened, and the marijuana was in plain sight. N.T. Trial, 7/16/13, at 27.

When Officer Sikora inspected the master bedroom, there were bills in Mr. Snyder's name as well as his driver's license and Mr. Snyder's clothing. Mr. Snyder's wallet was on the kitchen table, and there was a large amount of tools scattered throughout the apartment. *Id.* at 26. Officer Sikora confirmed that there were numerous items that belonged to Mr. Snyder in Appellant's residence. *Id.*

Police secured a search warrant based upon Officer Sikora's observation of the bags of marijuana on the desk in the office, and seized those items. They also discovered a device that grinds buds of marijuana into finer parts so they it can be smoked as well as a marijuana smoking bong, two digital scales, packaging materials, and \$2,000 in cash. The Commonwealth presented the testimony of an expert witness who opined that the marijuana was possessed with intent to deliver.

Appellant was convicted of the above-described offenses, and sentenced to three years probation. She raises these issues on appeal:

- A. Did the suppression court err in denying Defendant's suppression motion?

- B. Was the search conducted by probation and parole officers valid and lawful pursuant to any exceptions to the warrant requirement?
- C. Was the subsequent search conducted by Monroe County Drug Task Force detectives pursuant to a valid and lawful search warrant?

Appellant's brief at 7.

Initially, we set forth the pertinent standard of review:

"The standard and scope of review for a challenge to the denial of a suppression motion is whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct." When reviewing the rulings of a suppression court, this Court considers only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. When the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Orié, 88 A.3d 983, 1002 (Pa.Super. 2014) (quoting ***Commonwealth v. Johnson***, 33 A.3d 122, 125-26 (Pa.Super. 2011)).¹

¹ In ***In re L.J.***, 79 A.3d 1073 (Pa. 2013), our Supreme Court applied prospectively a new rule regarding the scope of review in suppression matters. Specifically, it clarified that an appellate court's scope of review in suppression matters includes the suppression hearing record, but not evidence elicited at trial. In so doing, it observed that, under established precedent, an appellate court could review both the suppression hearing and the trial transcript to determine the propriety of an interdiction. Since that rule was so well-established, our Supreme Court opined that its holding would not apply to cases that were already decided, as was the case herein. We do note that the suppression court also relied upon the notes of testimony from Mr. Snyder's VOP hearing, which were admitted into evidence but are not included in the record certified to this Court on appeal. However, those notes of testimony are superfluous for purposes of our resolution of this appeal.

Appellant's first two contentions are intertwined. She avers that the Department officers illegally entered her home and searched it without a warrant. Her specific position is that she alone, as the renter of the apartment, had the authority to consent to entry into the residence, and she did not permit the officers to enter into the apartment. Initially, we note our agreement with Appellant's position that Officer Sikora's entry into her home for the purposes of obtaining evidence to determine if Mr. Snyder was in violation of the terms of his probation ("VOP"), and thereby subjecting him to possible criminal prosecution, was a search. As our Supreme Court has ruled, "The term 'search' as applied to searches and seizures is an examination of an individual's house, buildings or person, for the purpose of discovering contraband or some evidence of guilt to be used in the prosecution of a criminal action." **Commonwealth v. Gibson**, 638 A.2d 203, 205 (Pa. 1994). Herein, the officers were clearly attempting to find evidence that would lead to a VOP prosecution against Mr. Snyder. Hence, the officers were conducting a search as they were led through 1127 Mt. Tom Road by Mr. Snyder.

We now review the propriety of the police actions herein. First, the police were permitted to approach Appellant's home and knock on the door without any justification. **Florida v. Jardines**, 133 S.Ct. 1409, 1412 (2013) (citation and quotation marks omitted) ("A police officer not armed with a warrant may approach a home in hopes of speaking to its occupants,

because that is no more than any private citizen might do.”); **Commonwealth v. Gibson**, 638 A.2d 203, 207 (Pa. 1994) (“the police have the power to knock on the doors of the citizens of this Commonwealth for investigatory purposes without probable cause”).

We next ascertain whether the three Department officers were allowed to enter 1127 Mt. Tom Road without a warrant. The law is that, “Warrantless searches and seizures are considered to be unreasonable and therefore, prohibited, except for a few established exceptions pursuant to both the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution.” **Commonwealth v. Hughes**, 836 A.2d 893, 900 (Pa. 2003) (citing **Schneckloth v. Bustamonte**, 412 U.S. 218 (1973)). One of the recognized exceptions to the warrant requirement under both the federal and Pennsylvania constitutions is third party consent to a search. **Hughes, supra** at 900 (citing **Schneckloth, supra**). Thus, if “police officers obtain the voluntary consent of a third party who has the authority to give consent, they are not required to obtain a search warrant based upon probable cause.” **Hughes, supra** at 900 (citing **Schneckloth, supra**).

Not only do co-habitants have the right to permit police inspection of premises, our Supreme Court and the United States Supreme Court have adopted the doctrine of apparent authority. Under this precept, “a warrantless entry is valid when it is based upon the consent of a third party

who the police, at the time of entry, reasonably believe possesses common authority over the premises,” even when the person actually does not have such authority. **Hughes, supra** at 900 (citing **Illinois v. Rodriguez**, 497 U.S. 177 (1990)). The doctrine of apparent authority is employed since “many situations which confront officers in the course of executing their duties are more or less ambiguous” so that “room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability.” **Hughes, supra** at 900 (quoting **Rodriguez, supra** at 186). As with all situations involving searches and seizures, the determination of whether police reasonably believed that the person who gave permission had authority to do so is “judged against an objective standard: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises?” **Hughes, supra** at 901 (quoting **Rodriguez, supra** at 188–89).

Appellant’s position herein is that Mr. Snyder did not have the authority to consent to the entry of the Department officers into the residence in question and that only she could accord them that right. Appellant’s brief at 14-16. We disagree. First, we conclude that the record proves that Mr. Snyder actually was a co-inhabitant of the apartment in question and thus had actual authority to consent to the entry in question. Police were told that Mr. Snyder was in violation of his home plan, was not

residing with his mother, and was living at 1129 Mt. Tom Road. Mr. Snyder's family owned the Mt. Tom Road residence and three cars registered to Mr. Snyder were parked in the driveway. Mail addressed to Mr. Snyder as well as his clothing was discovered in the master bedroom. Various items belonging to the probationer were scattered throughout the home. When the Department officers arrived at Appellant's apartment, Mr. Snyder accompanied Appellant when she answered the door. Mr. Snyder then opened it, without any objection from Appellant, and allowed the two Department officers inside the residence.

We conclude that these facts were sufficient to establish that Mr. Snyder lived in the apartment. Even if Mr. Snyder was not a co-inhabitant of 1127 Mt. Tom Road, the circumstances herein were sufficient to warrant a man of reasonable caution in the belief that Mr. Snyder had apparent authority to permit police to enter the home. Officer Sikora was informed that Mr. Snyder lived at 1129 Mt. Tom Road. His family owned the building, his cars were parked in the driveway leading to it, and he answered the door accompanied by Appellant, his girlfriend and mother of his child, when the officers arrived.

We thus reject Appellant's position that Mr. Snyder could not consent to the search of 1127 Mt. Tom Road and that only she could accord police permission to enter the apartment. **See** Appellant's brief at 16 ("No permission to enter and then search the residence was given by Appellant,

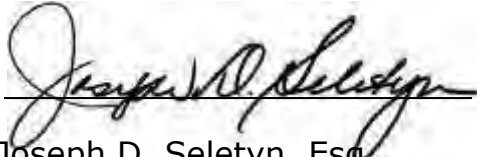
the renter of said premises and, therefore, the Parole Officers did not have the appropriate right or authority to enter the premises.”). Given our determination that Mr. Snyder had authority to consent to the entry into the home, we do not need address Appellant’s secondary assertion, which is that the search cannot be supported based upon Mr. Snyder’s status as probationer and Officer Sikora’s reasonable suspicion that he was in violation of the terms of his probation. **See** Appellant’s brief at 18-25.

Appellant’s third allegation is also premised upon the illegality of the initial entry into her residence. She avers that the marijuana that Officer Sikora observed after Mr. Snyder allowed him to enter the residence to prove that he was not residing therein was the result of an illegal entry. She continues that the marijuana in plain view could not be utilized to obtain the warrant. Appellant’s brief at 25-26. Appellant claims that the observation of the marijuana was based on the illegal warrantless search of her apartment and the warrant upon which observation of the marijuana was based was a fruit of the poisonous tree. **Id.** We have concluded that the warrantless entry into 1127 Mt. Tom Road was allowed since Mr. Snyder had actual or apparent authority to permit it. We further note that the marijuana that supported the issuance of the warrant was in plain view and thus its observation was a valid basis for securing the warrant.

Judgment of sentence affirmed.

J-S38026-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/9/2014