[J-10-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 43 WAP 2006
	:	
Appellee	:	
	:	Appeal from the Order of the Superior
	:	Court entered June 12, 2006 at No. 1769
v.	:	WDA 2004, affirming the Judgment of
	:	Sentence of the Court of Common Pleas
	:	of Allegheny County entered September
VINCENT JVANNA STRADER, A/K/A	:	15, 2004 at CP-02-CR-0014693-2003.
VINCENT JUANNO STRADER,	:	
	:	
Appellant	:	ARGUED: March 6, 2007

DISSENTING OPINION

MADAME JUSTICE BALDWIN **DECIDED: SEPTEMBER 26, 2007**

To the extent that the majority recognizes the apparent authority doctrine as a viable exception to the Fourth Amendment, I agree. The critical inquiry in this case, therefore, should simply be one into the reasonableness of the police's belief that the individual named Thornton had the apparent authority to consent to a search of Appellant's home. Based on all of the facts in this case, in my view, this belief cannot fairly be characterized as reasonable. The majority finds otherwise, and I am compelled to dissent.

In United States v. Matlock, 415 U.S. 164, 94 S.Ct. 988 (1974), the United States Supreme Court found that the Fourth Amendment is not violated where a third party consents to the search of a residence over which he or she has common authority. In Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990), the Court addressed the question left open by Matlock, "[w]hether a warrantless entry is valid when 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 do so." Rodriguez, 497 U.S. at 179, 110 S.Ct. at 2793. In an opinion by Justice Scalia, the Court held that the relevant inquiry under the Fourth Amendment is whether the officer's judgment, whether factually accurate or not, is reasonable. Id. at 185, 110 S.Ct. at 2800.

In Rodriguez, police officers were dispatched to a residence where they found the victim to be severely beaten. Id. at 179, 110 S.Ct. at 2796. She told the police that the Respondent, Edward Rodriguez, was the culprit. The victim agreed to take the police to Rodriguez's residence, where he was supposedly sleeping. Id. at 179, 110 S.Ct. at 2797. The victim had a key to the residence and repeatedly referred to the residence as "our" apartment. She also informed the officers that she had clothes and furniture there. The record was unclear as to whether she claimed that she currently lived there, or that she used to live there. Id. Nevertheless, the victim let them into the apartment with a key that she had and gave the officers permission to enter. Id. at 180, 110 S.Ct. at 2797. While inside, the officers found a large quantity of narcotics and related paraphernalia. As it turned out, however, she no longer lived there and had no actual authority to consent to entry into Rodriguez's home. Id.

The Court first found that the State had failed to prove that the victim had the actual authority to consent to police entry. Thus, Matlock was facially inapplicable to the case. Rodriguez, at 181-82, 110 S.Ct. at 2797-98. The Court then proceeded to address whether the Fourth Amendment prohibits searches where the police reasonably believed, at the time of entry, that the consenting party had the requisite authority, when it later turns out that the police's judgment was factually incorrect.

The Court initially rejected Rodriguez's argument that permitting a reasonable belief in common authority would result in a vicarious waiver of a person's Fourth Amendment rights. Justice Scalia drew a distinction between rights that protect a fair criminal trial, i.e.,

those rights which require a knowing and intelligent waiver, and those rights guaranteed under the Fourth Amendment, which the Court held requires no such waiver. Indeed, the Court stated that "[w]hat [a person] is assured by the Fourth Amendment itself, however, is not that no government search of his house will occur unless he consents; but that no search will occur that is 'unreasonable.'" Id. at 183, 110 S.Ct. at 2799. Accordingly, the Court held that reasonableness does not necessarily require the government to be factually correct. "Because many situations which confront officers in the course of executing their duties are more or less ambiguous, 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." Id. at 186, 110 S.Ct. at 2800 (citing Brinegar v. United States, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311 (1949).

In parting, the Court noted that its holding is not unlimited and that a police officer cannot always accept an invitation into someone else's home. The Court stated:

> Even when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry. As with other factual determinations bearing upon search and seizure, determination of consent to enter must "be 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?" If not, then warrantless entry without further inquiry is unlawful unless actual authority exists. But if so, the search is valid.

Id. at 188-89, 110 S.Ct. at 2801 (citations omitted). Despite this directive from the Court, the majority in the instant matter reaches the conclusion that the police officers' judgment that Thornton had the authority to consent to police entry into Appellant's home was reasonable, relying primarily and nearly exclusively on Thornton's unsubstantiated

statement that he was in control of the apartment at the time. This bare assertion cannot justify the police entry in this case, particularly where all other relevant facts militate towards the conclusion that either Thornton did not have the authority to consent to a search or, at minimum, further inquiry was necessary under the Rodriguez analysis.

The facts of the instant case demonstrate, as Justice Scalia envisioned, a situation where a reasonable person would conclude that Thornton had no authority to consent. A review of these facts demonstrates this point.

Timothy Wolfe, an agent with the Pennsylvania Board of Probation and Parole, received anonymous information that Cecil Shields, a parole violator, was staying at 400 Swissvale Avenue, Apartment 15, in Wilkinsburg, Pennsylvania. Wolfe contacted Detective Knox of the Wilkinsburg Police Department and requested that he check the apartment for Shields. Commonwealth v. Strader, No. 1769 WDA 2004, slip op. at 2 (Pa. Super. Ct. June 12, 2006).

Knox, along with other Wilkinsburg officers, went to the residence and knocked on the door. Based on previous contacts, Detective Knox knew that Appellant, Vincent Strader, resided at this address. However, a man named Thornton answered the door and Appellant was not present in the residence at the time. There was also another unidentified man in the apartment. Id. Detective Knox showed Thornton a poster of Shields and asked if he knew him and whether he was in the apartment. Thornton responded "no" to each question. Id.

Thornton informed Detective Knox that he had only been there for about a day after arriving from Tennessee. He further indicated that the unidentified man arrived shortly before the police arrived. Detective Knox then asked Thornton if he was in charge of the apartment, to which Thornton responded "yes." Id. Thornton also informed the detective that he was responsible for the apartment until Appellant returned. Detective Knox

requested permission to search of the apartment for Shields. Thornton consented and allowed the officers into Appellant's home. Id.

While in the home searching for Shields, the officers observed what they believed to be heroin in plastic baggies sitting in plain view on a shelving unit. Id. at 3. The officers also found two scales, one of which had white residue on it. The suspected heroin and scales were seized and tested for the presence of narcotics. The tests yielded positive results. Based on this information, a search warrant was obtained and executed on the apartment. The search resulted in the seizure of cocaine, more heroin, a handgun, and paraphernalia typically associated with the packaging of illegal drugs. Id.

The majority states that "[t]he totality of the circumstances in each case controls whether police have a reasonable belief the person consenting to the search has apparent authority to do so." Majority Opinion, slip op. at 6-7. However, the majority relies not on the totality of the facts, but rather only on two of them: (1) Thornton was inside the apartment; and (2) Thornton told the police that he was in control of the apartment. Id. The majority seemingly ignores the remainder of the facts, each of which militates against their conclusion.

First, the officers knew that the apartment was Appellant's residence. When the officers arrived, Appellant was not there. However, they were told by Thornton that "he would be back shortly." N.T. Suppression Hearing, 6/30/04 at 62. Next, they learned that Thornton was not a permanent resident, but an individual who arrived the day before from Tennessee. Reasonable minds would not disagree that, with just these facts, Thornton lacked the authority to consent to police entry into Appellant's home. This is quite different from the facts in Rodriguez where the person admitting the police officers into the home referred to it as "our" home and used her own key to admit the police into the property.

Nonetheless, the police, however, did not end their inquiry. They proceeded to ask whether Thornton was in control of the apartment. Thornton stated that he was. The police

officers, apparently ignoring what would clearly be a reasonable judgment that Thornton lacked the requisite authority, chose to believe Thornton's bare statement that he was in control. They conducted no further inquiry as to the extent of his control, or whether he possessed that control at all. They simply chose to disregard what was obvious, and take the word of Thornton, a man who arrived at the home less then twenty-four hours prior to the police themselves. These officers did not act reasonably. Even if it could be demonstrated that Thornton was "in charge" of the apartment, I would nonetheless conclude that the officers' judgment was unreasonable here. There is a material distinction between being in charge of a residence and having the authority to consent to a police search of it. Being in charge of a residence may constitute nothing more than having the responsibility to answer the phone, take out the garbage, make sure the door is locked, and ensure that the oven is turned off. In fact, there are numerous examples of people that would be considered in charge of a residence including baby sitters, nannies, house-sitters, and house cleaning personnel, who would be responsible for the above duties, but not necessarily vested with the further authority to grant police entry into their employers' homes. Consistent with the facts in the instant case, I am assuming that the person answering the door would identify their role to the officer. The expectation of privacy at issue here belongs to the homeowner, not any of the above individuals. Without more, it is unreasonable to believe that this type of individual is clothed with the apparent authority to consent to a breach of that expectation by state officials. Certainly, a bare statement by any of these individuals that, while they are occupying the residence, they are in charge should not end the inquiry as to whether they possess the authority to consent to police entry into the dwelling. Having the authority to consent to a police search constitutes an entirely different responsibility. Indeed, it seems unlikely that an individual would leave his residence in the control of another, where that person's authority included permitting the police to pierce the sanctity and privacy of the home. This may be because it was never

contemplated between the parties. I believe that it would be unreasonable to assert that when people leave their homes, they anticipate, or consent to, governmental authorities entering and seeing what the homeowner expects to be kept private. Without a more concrete basis to conclude that this authority was transferred to Thornton in this case, it is unreasonable to believe that this individual from Tennessee, having had only arrived the day before, possessed even the apparent authority to consent to police entry.

To be clear, I am not suggesting that a babysitter or houseguest, or other temporary resident responding to a police request to enter the home can never lead to a reasonable conclusion that that person had the "apparent authority" to make that decision. Nor do I suggest that actual authority must have been delegated to these individuals for the police conclusion to be reasonable. However, where an individual who the police *know* is not the owner or permanent resident of the home answers the door, and asserts only that he or she is "in charge," I would find that more investigation is required and additional information is needed before a reasonable conclusion can be reached as to the individual's "apparent authority."

For these reasons, I dissent.

Mr. Justice Baer joins this dissenting opinion.