[J-65-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	NO. 125 MAP 2002
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court dated March 25, 2002 at No. 320
	:	MDA 2001 affirming the Judgment of
v.	:	Sentence of the Court of Common Pleas
	:	of Dauphin County, Criminal Division,
	:	dated October 27, 2000 at No. 3045 CD
JEROME JASON HUGHES,	:	1999.
	:	
Appellant	:	
	:	
	:	ARGUED: MAY 14, 2003
	:	
	:	

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY **Decided: November 25, 2003**

Unequivocal, specific, and voluntary consent will validate an otherwise illegal search. Commonwealth v. Gibson, 638 A.2d 203 (Pa. 1994). I join with the majority in recognizing that a third party with apparent authority over the area to be searched may provide the police with consent to conduct a search. United States v. Matlock, 415 U.S. 164, 171 (1974). Third-party consent is valid when a police officer reasonably believes a third party has authority to consent, even if the belief was mistaken. Illinois v. Rodriquez, 497 U.S. 177 (1990). Where I depart from the majority is in its conclusion that on the facts of this

case, the officers, at the time of entry, reasonably believed that the group of 12- to -14 -year-old girls standing on the porch had authority to provide unequivocal, specific, and voluntary consent to conduct an otherwise illegal search. Thus, because the majority finds that the facts justify the search in this case under the doctrine of "apparent authority," I am compelled to dissent.

Third-party consent is a derivative of the generally recognized concept of consent, which permits police to conduct warrantless searches after obtaining voluntary consent from a third party possessing common authority over a premise. Matlock, supra. This "apparent authority" exception turns on whether the facts available to the police officer at the moment would lead "a man of reasonable caution" to believe that the consenting third party had authority over the premises. Rodriquez, 497 U.S. at 188 (1990) (citing Terry v. Ohio, 392 U.S. 1 (1968)).[1] As the majority notes, if a reasonable person would question the consenting party's actual authority, a police officer is required to establish whether the consenting party has authority. (Majority slip opinion at 14).

[1] Although this Court has not previously addressed this exception, the Superior Court has addressed it in Commonwealth v. Blair, 575 A.2d 593 (Pa. Super. 1990) and Commonwealth v. Quiles, 619 A.2d 291 (Pa. Super. 1993). In Blair, a police officer knocked on the door of Mrs. Blair's residence. A woman inside answered the door. 575 A.2d at 596. After the officer inquired whether "Mrs. Blair" was home, the woman invited him into the residence. Id. The court in Blair held that when an individual answers the door at a residence it is reasonable for a police officer to assume the individual has the authority to consent to entry into the residence. Id at 598. In Quiles, police officers arrived at a residence known for drug activity. Quiles, 619 A.2d at 293. They knocked on the door, and an unknown woman inside responded "come in." Id. The court held that it is reasonable for a police officer to assume that an individual who responds "come in" to a knock at a door has the apparent authority to consent to entry into the premises. Id. at 297.

In this case, the officers approached the residence at night and saw two or more young girls standing on the porch.[2] The officers asked the girls whether Appellant was home. When told "no," the officers asked if they could enter the home to look for Appellant. The girls responded, "no problem," opened the door for the officers, and followed them in. (Suppression hearing, 4/28/2000 at 10 and 27).

The majority relies on the actions of the girls as providing the officers with a reasonable belief that the girls possessed the authority to consent to the officers' entry into the residence. The majority holds the girls' actions of opening the door for the officers and following them in as justifying the officers' mistaken belief of authority. (Majority slip opinion at 11).

I disagree with the majority. I believe that under these circumstances, a reasonable person would question whether the girls had actual authority to consent. First, the individuals who provided consent in this case were minors. Second, upon the arrival of the officers, the individuals were outside the residence. Additionally, one of the officers was Appellant's parole officer who had been to the residence on at least four prior occasions and had never seen these or any other young girls at the residence. The officer testified that to his knowledge Appellant, his girlfriend, and his girlfriend's mother, the owner of the house, were the only residents living there. Moreover, as the majority acknowledges, the officers halted their search of the residence prior to entering Appellant's bedroom to await consent from the owner of the residence.

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[2] The officers were unsure of how many young girls were on the porch at the time. The first officer testified only that there was more than one girl, while the second officer testified that there were three. The second officer also testified that he thought the girls were between the ages of 12 and 14. (Suppression hearing, 4/28/2000 at 18 and 32, 33).

Contrary to the majority, I would find that the officers did not obtain unequivocal, specific, and voluntary consent to search the premises, as they could not reasonably believe that 12- to 14-year-old girls, hanging out on a summer evening, had apparent authority to provide valid consent. At the very least, the officers had an obligation to make further inquires of the young girls before they blithely accepted the "consent" that was offered and entered a private residence. Accordingly, I would reverse the Superior Court's order affirming the trial court's denial of Appellant's suppression motion.[3]

Mr. Justice Nigro joins this dissenting opinion.

[3] Further, I do not accept the position of Mr. Justice Lamb as set forth in his concurring opinion. This search was not justified under the reduced expectation of privacy afforded parolees. On this point I join in the majority's conclusion that Appellant's status as a parolee does not impact the decision in this case as it does not appear that the parole officers possessed reasonable suspicion that Appellant committed a parole violation sufficient to justify a parole search. (Majority slip opinion at 7-8).