

IN THE COURT OF APPEALS OF IOWA

No. 1-600 / 10-1748
Filed September 8, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ORNANDES RASHAWN BENNETT,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler (suppression) and Stephen C. Clarke (bench trial), Judges.

Defendant appeals the trial court's denial of his motion to suppress evidence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Brad Walz, Assistant County Attorney, and Ernie Rose, Student Legal Intern, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

EISENHAUER, P.J.

Ornandes R. Bennett appeals his convictions for possession of marijuana with intent to deliver and a drug tax stamp violation. The court denied Bennett's pretrial motion to suppress evidence. Bennett asserts a violation of his Fourth Amendment rights and argues the suppression court "erred in concluding he had authority to consent to the search of the apartment." We affirm.

I. Background Facts and Proceedings.

On October 16, 2008, Cedar Falls police officers executed an arrest warrant for Bennett for a probation violation. A hearing on Bennett's subsequent motion to suppress evidence was held in June/July 2009. Officer Briggs testified the police had information Bennett was staying at an apartment with his mother. The officers went to the apartment at 9:00 a.m. Ms. Cobbs answered the door and told the officers she was Bennett's cousin and Bennett "stayed there, but he wasn't there at the time." The officers then met with the apartment manager and maintenance workers and requested they watch for Bennett and call the police if Bennett arrived.

Around 3:00 p.m., Bennett arrived at the apartment complex, and the apartment management notified the police. The police dispatcher advised the officers Bennett had carried weapons in the past. Officer Briggs met with the maintenance workers who described Bennett's clothing and identified the van Bennett exited and the apartment he entered. It was the same apartment the officers had approached earlier in the day. The officers knocked on the apartment door, but no one answered. Officer Briggs then examined the van and smelled a very strong odor of burnt marijuana. The police again knocked on the

door, and Officer Briggs looked in the apartment's window and saw a sweatshirt matching the maintenance workers' description of Bennett's clothing thrown over a kitchen chair. No one responded to the knocking. Officer Briggs described the subsequent events:

Q. Did you obtain a key from maintenance at that time and use that key to get into the residence to arrest Mr. Bennett?

A. Yes.

Q. At the time that you did go into that apartment to arrest Mr. Bennett, was the information that you had that Mr. Bennett was in fact staying at that residence? A. Yes.

Q. What happened when you got the key to go into the residence? A. We unlocked the door and since there had been information that he has carried weapons before, we swung the door open and stayed outside the door and hollered in.

Bennett and Cobbs came out of the back bedroom area. Bennett, who was shirtless, was arrested for the probation arrest warrant. Officer Briggs asked Bennett about the odor of marijuana in the van and asked whether there was anything illegal in the apartment or the van. Bennett told Officer Briggs "he had been smoking marijuana in the van earlier," and consented to a search of the apartment and the van. During the search of the bedroom Bennett had exited, the police found a small plastic bag containing four other bags of marijuana in a dresser. Subsequent testing revealed the marijuana had a net weight of ninety-three grams. On cross-examination, Officer Briggs testified:

Q. . . . Do you recall Mr. Bennett saying it wasn't his apartment and you had to get permission from his mother in order to conduct the search? A. No.

Q. Do you recall Mr. Bennett saying that you could search the van, but not the apartment? A. No, sir.

. . . .
Q. Do you have any idea why [Lieutenant McCallum's report describes this as a search incident to arrest] if there was consent? A. I don't other than I would have searched that bedroom incident to arrest regardless, but I did get consent from [Bennett].

Officer Ladage testified Officer Briggs told him the search was both a consent search and a search incident to arrest. Officer McCallum's report does not mention a consent search, but he testified the primary officers who spoke to Bennett were Officer Briggs and Officer Moore.

Bennett testified he was living with his mother in the apartment the officers entered and his mother is the person on the lease. Further:

Q. Do you recall officers after they entered the apartment asking you for consent to search the apartment? A. Yes.

Q. And what was your response? A. I said "I can't give you permission for that because it is not my apartment."

Q. They also asked you for permission to search your van? A. Yes.

Q. And what was your response to that? A. I gave them permission to search my van.

In July 2009, the court denied Bennett's motion to suppress, ruling:

The matter turns on an issue of credibility. The state asserts consent. [Bennett] asserts he did not consent to a search of the apartment because he believed that the apartment was his mother's and that he, for that reason, could not give consent. The contraband found was in [Bennett's] bedroom, an area of the apartment to which he clearly had authority to consent.

The court places credibility with the state and finds that [Bennett] did consent to a search of the apartment. [Bennett] is facing a substantially serious charge and has two felony convictions in his past. The court finds that his credibility lacks when compared to the testimony of officer Briggs.

[Bennett] having given consent to search an area of the apartment to which he had authority to consent, the Motion to Suppress is OVERRULED.

At the bench trial, both the State and Bennett agreed to have the case tried on the minutes of testimony. Bennett was found guilty and now appeals.

II. Standard of Review.

“When assessing an alleged constitutional right, we review de novo the totality of the circumstances as shown by the entire record.” *State v. Grant*, 614 N.W.2d 848, 852 (Iowa Ct. App. 2000).

III. Error Preservation.

The State first argues Bennett did not preserve error on the issue of whether Bennett had the authority to consent to the search of the apartment. We agree the issue was not specifically identified in Bennett’s motion to suppress. However, Bennett’s testimony and the court’s ruling show Bennett’s authority to consent was an issue raised and resolved during the suppression proceedings.

IV. Merits.

Bennett argues because he and Cobbs were both in the bedroom, “the circumstances raise reasonable doubts as to the authority of Bennett to consent to the search of the bedroom.” Citing *Grant*, 614 N.W.2d at 854-55, Bennett claims the officers had an obligation to make further inquiries.

We conclude Bennett’s reliance on *Grant* is misplaced. In *Grant*, the homeowner, Dollison, consented to a search, and Grant, an overnight guest/defendant, asserted a privacy interest in (1) the bedroom and (2) her jacket found in the bedroom. *Id.* at 852-55. In discussing the search of the bedroom, the court ruled:

A consent search of a home is only proper if the police reasonably believed the person granting the police permission to search had the authority to do so.

Grant, as an overnight guest, did have a legitimate expectation of privacy in the Dollison home. Dollison’s consent, however, countermands that privacy interest. It is undisputed that Dollison granted the officers permission to search his apartment.

. . . Under the totality of the circumstances, we find Dollison had the authority to consent to the search of the bedroom in which Grant was located.

Id. at 853 (citations omitted).

In discussing Grant's expectation of privacy in her jacket located in the bedroom, the court stated:

Guests in a home retain a privacy interest in their personal items that cannot be waived by their host's consent to search the premises. . . . Therefore, Grant retained a privacy right in her jacket, and Dollison did not have actual authority to consent to the search of the jacket.

Determining whether a party's consent to a search is valid, however, is not driven solely by whether the party has actual authority to consent to the search. Law enforcement officers may also rely on the apparent authority of the consenting party. For officers to rely on a claim of apparent authority, they must 'reasonably (though erroneously) believe that the person who has consented to their' search had authority to do so. However, if the surrounding circumstances raise reasonable doubts as to the authority of the consenting party, officers have an *obligation to make further inquiries* into the precise nature of the situation. Without further inquiry, the search is unlawful.

Id. at 854 (citations omitted).

Unlike *Grant*, here the defendant/houseguest/Bennett consented to the search. "A warrantless search conducted by free and voluntary consent does not violate the Fourth Amendment." *State v. Reinier*, 628 N.W.2d 460, 465 (Iowa 2001). Further, the Constitution is not violated when "voluntary consent has been obtained, either from the individual whose property is searched or from a third party who possess common authority over the premises." *Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S. Ct. 2793, 2797, 111 L. Ed. 2d 148, 156 (1990) (citations omitted). The officers were told Bennett was staying with his mother prior to their morning visit. During the morning visit, Bennett's cousin

confirmed Bennett was staying in the apartment. Bennett was ultimately located in the locked apartment under circumstances indicating he was hiding and not responding to the officers' knocking. At the suppression hearing Bennett testified he lived in the apartment with his mother. Under these circumstances, we find no merit to Bennett's claim he lacked authority to consent to the search.

AFFIRMED.