

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM CARTHEN,

Defendant-Appellant.

UNPUBLISHED
September 23, 2003

No. 241074
Ingham Circuit Court
LC No. 01-076766-FC

Before: Sawyer, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of assault with intent to rob while armed, MCL 750.89, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to fifteen to twenty-four years' imprisonment for the assault conviction, to run consecutive to two years' imprisonment for the felony-firearm conviction.¹ We affirm.

The sole issue on appeal is whether the trial court erred in denying defendant's pretrial motion to suppress a gun and Halloween mask found in defendant's bedroom during a warrantless search of his mother's home. In essence, defendant contends that the trial court erred in holding that the police officer searched defendant's room pursuant to valid consent because the officer did not have sufficient information to form a reasonable belief that defendant's mother had common authority over defendant's bedroom. We disagree.

"Ordinarily, a trial court's ruling on a motion to suppress evidence is reviewed with deference and will not be disturbed unless clearly erroneous, but where admissibility depends on a question of law, our review is de novo. Clear error exists where the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Callon*, 256 Mich App 312, 321; 662 NW2d 501 (2003) (citations omitted).

Both the United States Constitution and the Michigan Constitution guarantee the right against unreasonable searches and seizures. *People v Taylor*, 253 Mich App 399, 403; 655

¹ Defendant also pleaded guilty to felonious assault, MCL 750.82, and the trial court sentenced him to four to six years' imprisonment for this conviction. Pursuant to a subsequent order, defendant was to be resentenced on the felonious assault conviction. Defendant presents no sentencing issues in this appeal.

NW2d 291 (2002); US Const, Am IV; Const 1963, art 1, § 11. “Searches conducted without a warrant are unreasonable per se, unless the police conduct falls under one of several specifically established and well-delineated exceptions.” *People v Gonzalez*, 256 Mich App 212, 232; 663 NW2d 499 (2003); *People v Wagner*, 114 Mich App 541, 546-547; 320 NW2d 251 (1982). Valid consent is a recognized exception to the search warrant requirement. *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999); *Wagner*, *supra* at 548. Usually, the affected person must give consent; however, a third party may consent to the search under certain circumstances. *People v Goforth*, 222 Mich App 306, 311; 564 NW2d 526 (1997). A search is valid if the third party parent giving consent has common authority, i.e., joint access and control, over a child’s room. *Id.* at 315-316, citing *United States v Matlock*, 415 US 164, 171 n 7; 94 S Ct 988; 39 L Ed 2d 242 (1972). Moreover, a search without a warrant is valid if, based on the totality of the circumstances, a police officer reasonably believes that the consenting third party has common authority over the premises, even if that third party does not. *Goforth*, *supra* at 312-313; *People v Grady*, 193 Mich App 721, 723-726; 484 NW2d 417 (1992). The reasonableness of the officer’s belief must be measured objectively. *Goforth*, *supra* at 312, quoting *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990).

In this case, defendant’s mother testified that she owned the house and defendant’s name was not on the deed. Defendant, who was sixteen years old at the time the instant offenses were committed, did not pay rent and his mother supported him. Defendant did not share his room with anyone. Defendant’s mother did not normally go in the room, even to collect laundry, and neither did anybody else. But when asked if she could go in defendant’s room if she wanted to, defendant’s mother replied, “Oh, yeah.” Further, there were no “keep out” signs on the door and, at the time of the search, the door was wide open. There was nothing about the appearance of the room or its entrance that would suggest that the room was private and should not be entered. Defendant’s mother further testified that she had no problem with the officers searching her son’s room. Under these circumstances, the officer could reasonably believe that defendant’s mother had common authority over the room and thus was able to validly consent to the search. The trial court did not err in denying defendant’s motion to suppress evidence.

Defendant suggests that, because the officer did not adequately inquire into the mother’s mutual access to the room, the officer could not have reasonably believed that defendant’s mother had authority to consent to a search. However, there is no obligation on the police to make further inquiry regarding a third party’s ability to validly consent to a search unless the circumstances are such that a reasonable person would question the consenting party’s power or control over the premises. *Goforth*, *supra*; *Grady*, *supra*. Here, there was nothing to suggest to the officer that defendant’s mother lacked authority to consent. In any event, even if the officer had made further inquiries, he would have simply reaffirmed his initial impressions that defendant’s mother had unfettered access to the room. Given these circumstances, the trial court did not err in finding that the officer’s search of defendant’s bedroom was pursuant to a valid consent.

Affirmed.

/s/ David H. Sawyer
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray