

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY L. MATHIS,

Defendant-Appellant.

UNPUBLISHED

April 15, 2014

No. 313752

Wayne Circuit Court

LC No. 12-006770-FH

Before: DONOFRIO, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of felonious assault, MCL 750.82, possession of a firearm by a felon (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a third habitual offender, MCL 769.11, to prison terms of one to five years for the felon-in-possession conviction, one to four years for the felonious assault conviction, and two years for the felony-firearm conviction. We affirm.

Defendant argues that the trial court erred by denying his motion to suppress the gun seized during a warrantless search of a home. We disagree.

This Court reviews de novo the trial court's ultimate decision to suppress evidence on the basis of an alleged constitutional violation. *People v Dagwan*, 269 Mich App 338, 342-343; 711 NW2d 386 (2005). This Court "reviews the trial court's findings of fact for clear error, deferring to the trial court's special opportunity to determine the credibility of witnesses appearing before it." *Id.* at 343. A finding of fact is clearly erroneous if, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

The United States Constitution and the Michigan Constitution guarantee to the people the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Generally, searches or seizures conducted without a warrant are unreasonable per se, and evidence seized in violation of this constitutional prohibition must be excluded from trial. *Dagwan*, 269 Mich App at 342. One of the exceptions to the warrant requirement is voluntary consent. *Id.* at 390. "To validate an otherwise unreasonable search or seizure, the consent must be unequivocal, specific, and freely and intelligently given." *Id.* "The validity of a consent depends on the totality of the circumstances." *People v Galloway*, 259 Mich App 634, 648; 675 NW2d 883 (2003).

“Generally, that consent must come from the person whose property is being searched or from a third party who possesses common authority over the property.” *People v Brown*, 279 Mich App 116, 131; 755 NW2d 664 (2008). “[A] third party without actual authority to consent to a search may render a search valid if the police officer’s belief in the authority to consent was objectively reasonable.” *Id.* The prosecution bears the burden of proving that the consent was freely and voluntarily given. *People v Chowdhury*, 285 Mich App 509, 524; 775 NW2d 845 (2009).

In the present case, defendant testified during cross-examination that he permitted the police to enter the home:

Ms. Moslamani (Prosecutor): And why did you not come out of the house when the police got there?

Defendant: I did. I’m the one that let the police in.

Ms. Moslamani: You let the police in the house?

Defendant: Yes.

This was corroborated by Rebecca Gibson (Rebecca), who testified that before she returned to the home, defendant had given the police permission to enter the house. Thus, defendant voluntarily consented to the search of the home. See *Brown*, 279 Mich App at 131; see also *Dagwan*, 269 Mich App at 342-344.

Moreover, Officer Eric Richards testified that while on the front porch of the home, he asked Rebecca if he could enter and search the home for the weapon. Rebecca gave Officer Richards permission to enter the home; Officer Richards recovered the weapon in a closet of an upstairs bedroom. Therefore, Rebecca voluntarily consented to the search of the home as well. See *Brown*, 279 Mich App at 131 (consent may come from a third party who possesses common authority over the property); see also *Dagwan*, 269 Mich App at 342. We perceive no error in the police officers’ search of the home or the trial court’s denial of defendant’s motion to suppress.

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen