

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

S. A. P.,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

) **NOT FOR PUBLICATION**
) **APPROVED FOR RELEASE**
) **TO THE PUBLIC**
)

) **No. J-2016-989**
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FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 17 2017

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LEWIS, VICE PRESIDING JUDGE:

The Appellant, S. A. P., appeals to this Court from an order entered by the Honorable Michelle Kirby-Roper, Associate District Judge, adjudicating him delinquent in Case No. JDL-2016-13 in the District Court of Beckham County. On May 10, 2016, Appellant was charged by juvenile delinquency petition with Count 1: Possession of Controlled Dangerous Substance (marijuana); and Count 2: Unlawful Possession of Drug Paraphernalia. The crimes allegedly occurred on or about May 4, 2016, when Appellant was 16 years, 3 months old. Prior to trial, Appellant filed a motion to suppress the evidence in this case, arguing it was obtained as a result of an illegal search and seizure, and the State filed a response. On October 24, 2016, a non-jury trial on the delinquency petition was held before Judge Kirby-Roper. Appellant's motion to suppress the evidence was denied based upon a valid consent to search. Judge Kirby-Roper found that Appellant was guilty of Count 2, possession of paraphernalia, and adjudicated him delinquent. Judge Kirby-Roper reserved a ruling on Count 1, possession of

marijuana based upon insufficient testing evidence.

At the start of the non-jury trial, Appellant announced that he had no parent or guardian present because his grandmother and guardian who was subpoenaed, Carla Pruitt ("Ms. Pruitt"), had broken her leg and was in a nursing home. Counsel for Appellant also asked that Count 1 be dismissed because the State intended to offer a lab report identifying a seized substance as marijuana, and had not endorsed as a witness the lab tech who performed the test. Judge Kirby-Roper allowed the State additional time to research the issue and ruled that she would not admit the lab report that day.

The State first called Nan Moyer ("Moyer"), a counselor at the ninth grade center for the Elk City Public Schools. Moyer testified that Appellant was absent from mandatory end of instruction testing on May 4, 2016. Moyer said she asked Vanessa Cole ("Cole"), who worked with the Elk City Police Department and served as the school resource officer, if she could go to Appellant's house to see why he couldn't come to finish his end of instruction test. The State then called Cole who testified she went with Dustin Fuller ("Fuller"), a Lieutenant with the Elk City Police Department, to Appellant's home to see why he was absent from state testing. Appellant opened the door when Cole knocked, and Cole and Fuller smelled what they believed to be burnt marijuana. Appellant let them into the house just as Ms. Pruitt pulled up outside. Cole stayed inside with Appellant while Fuller went outside to talk with Ms. Pruitt. Fuller then came back inside and told Cole and Appellant to go outside with Ms. Pruitt. Cole testified that after they stood outside for a few moments Fuller came back outside with some

drug paraphernalia and maybe a marijuana joint.

The State then called Fuller who testified that when Appellant opened the front door of his residence there was a strong odor of marijuana coming from inside. Fuller said he and Cole followed Appellant into the house and Appellant went into a bedroom in the southwest portion of the house. When Ms. Pruitt pulled up outside, Fuller went out and spoke with her and got her consent to search the house. Fuller went back inside, while the others waited outside, and first did a walk through to ensure nobody else was in the house. Fuller testified he went into the bedroom that Appellant had been in and found what looked like a freshly rolled marijuana joint and a marijuana pipe under a blanket, and found another marijuana pipe on a shelf. Fuller said the room didn't look like a normal bedroom because it had a couch and a TV on one wall, but he didn't remember seeing a door or anything to it. Fuller said he took the things he had collected outside the house, and Appellant said he had just found those things. Fuller field tested the joint and the two pipes and all three tested positive for marijuana. The State's final witness was Vicky Reis ("Reis"), a juvenile justice specialist with OJA, who testified that Appellant had already been placed on OJA probation and had previous problems with school attendance. After Reis' testimony, the State rested.

Appellant presented no evidence during his trial, and based his defense on the argument that his motion to suppress the evidence should be granted. Appellant argued that the State did not show a legitimate basis to support Ms. Pruitt's consent to search, and that Appellant had a legitimate expectation of

privacy in his room that had not been forfeited. The State argued there was valid consent, and other reasons, to search the house and Appellant's room. Judge Kirby-Roper concluded that a parent or guardian who has authority over a home can consent to a search. Judge Kirby-Roper noted case law allowing a juvenile to object to a search of their room or personal possessions, but found no evidence that Appellant had objected to the search. Judge Kirby-Roper found that the evidence established consent to search and concluded that the search should be upheld. Judge Kirby-Roper found that Appellant was guilty of Count 2, possession of paraphernalia, but reserved a ruling on Count 1, possession of marijuana.

Appellant appeals Judge Kirby-Roper's decision asserting one proposition of error:

I. AS THE EVIDENCE AGAINST APPELLANT WAS UNLAWFULLY OBTAINED, THE TRIAL COURT ERRED IN DENYING S. A. P.'S MOTION TO SUPPRESS AND DISMISS.

Pursuant to Rule 11.2(A)(3), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), this appeal was automatically assigned to the Accelerated Docket of this Court. The proposition was presented to this Court in oral argument on February 16, 2017, pursuant to Rule 11.2(E). After hearing oral argument and considering the briefs and record in this case, this Court found that the order of the District Court adjudicating Appellant delinquent should be **AFFIRMED.**

ANALYSIS

Appellant is correct that Fuller conducted a warrantless search of the

residence in this case, which is per se unreasonable. *Burkham v. State*, 1975 OK CR 150, ¶5, 538 P.2d 1121, 1122 (adopting *United States v. Matlock*, 415 U.S. 164, 94 S.Ct. 988 39 L.Ed.2d 242 (1974)); *Riggle v. State*, 1978 OK CR 121, ¶19, 585 P.2d 1382, 1386. When a search is conducted without a warrant, the burden is upon the State to establish the reasonableness of the search by showing it falls within one of the few specifically established and well-defined exceptions to the warrant requirement. *Riggle, supra*. A familiar exception to the warrant requirement is that a search is not unreasonable where preceded by a free and voluntary consent. *Burkham, supra; Riggle*, 1978 OK CR 121 at ¶20, 585 P.2d at 1386. When two or more persons have equal rights of mutual use, joint access or control, or common authority over premises, any one of them is capable of consenting to a search that is valid against a co-occupant. *Riggle*, 1978 OK CR 121 at ¶¶ 20, 21, 585 P.2d at 1386; *Burkham*, 1975 OK CR 150 at ¶ 5, 538 P.2d at 1123; *Nelson v. State*, 1977 OK CR 173, ¶ 12, 564 P.2d 254, 256. Such consent does not extend to areas and property personal to the non-consenting individual and not under joint possession or control. *Smith v. State*, 1979 OK CR 142, ¶3, 604 P.2d 139, 140.

Appellant challenges neither Ms. Pruitt's authority to consent to a search of the residence, nor the evidence showing she did consent. Appellant argues that Ms. Pruitt did not have authority to consent to a search of Appellant's room, where the contraband in this case was found, because the room was not under joint possession or control of Ms. Pruitt.

Appellant presented no evidence in this matter and thus the only evidence

in this record concerning possession and control of the room is found in Fuller's testimony. Fuller's testimony indicated the room did not look like a normal bedroom and he did not "remember seeing a door or anything to [the room]." Fuller's testimony did not establish either that Appellant had a personal right to use of the room, or that Ms. Pruitt did not have mutual use, joint access or control, or common authority over the room. *Riggle*, 1978 OK CR 121 at ¶¶ 20, 21, 585 P.2d at 1386; *Burkham*, 1975 OK CR 150 at ¶ 5, 538 P.2d at 1123; *Nelson v. State*, 1977 OK CR 173, ¶ 12, 564 P.2d 254, 256; *Smith v. State*, 1979 OK CR 142, ¶3, 604 P.2d 139, 140.

This case is similar to a decision where this Court found to be valid a stepfather's consent to search the stepson's bedroom in a one room house beside the main residence. *Nelson*, 1977 OK CR 173 at ¶ 13, 564 P.2d at 257. The defendant's stepfather owned the property including the main residence and the small one room house containing a bed, a refrigerator, a cook stove, a television, etc. *Nelson*, 1977 OK CR 173 at ¶ 4, 564 P.2d at 255. The defendant was the only person staying in the small one room house but he paid no rent. *Id.* The defendant kept the door locked but his mother and stepfather occasionally entered after knocking, or yelling or calling. *Id.* The stepfather gave police consent to search his property, including the small one room house in which stolen property was found. *Nelson*, 1977 OK CR 173 at ¶ 7, 564 P.2d at 256. This Court held that the stepfather had sufficient relationship to the one room house to give valid consent for a warrantless search. *Nelson*, 1977 OK CR 173 at ¶ 13, 564 P.2d at 256-57. This Court noted that the small one room house

was used no differently from an extra bedroom to the stepfather's residence, and that the defendant slept in the small house but paid no rent and owned none of the building's contents. *Id.* This Court concluded that the defendant had no more control or exclusive right over the small house than he did over a bedroom in the large house when he stayed there, and that the stepfather still had access and control for most purposes over the small house such that his consent to search was valid. *Id.*

As in *Nelson*, there is nothing to indicate that Appellant paid rent or that he had an ownership interest in his 'bedroom.' The record in this case shows that Ms. Pruitt had at least as much relationship to, and access and control over, Appellant's bedroom as the stepfather did in *Nelson*. Because the stepfather's consent in *Nelson* was valid to search a small one room house detached from the main residence, then Ms. Pruitt's consent to search a bedroom of her primary residence must also be valid.

Appellant argues that he was present during the search in this case and never consented to the search the bedroom. There is generally no recognized superior or inferior authority among co-tenants, and a co-tenant's consent to search the premises or property cannot prevail over another present co-tenant's objection and refusal to consent to the search. *Georgia v. Randolph*, 547 U.S. 103, 113-14, 126 S.Ct. 1515, 1523, 164 L.Ed.2d 208 (2006). As previously addressed, Ms. Pruitt had sufficient authority to consent to a search of the residence including Appellant's 'bedroom' and Appellant never objected to the consent to search given by Ms. Pruitt or refused to allow the search. Appellant

has not established that Judge Kirby-Roper erred or abused her discretion in denying Appellant's motion to suppress the evidence.

DECISION

This Court finds that the order of the District Court of Beckham County adjudicating Appellant delinquent in Case No. JDL-2016-13 should be, and is hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules, supra*, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BECKHAM COUNTY
THE HONORABLE MICHELLE KIRBY-ROPER, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LEWIS, V. P. J.
LUMPKIN, P. J.: Concur
JOHNSON, J.: Concur
SMITH, J.: Concur
HUDSON, J.: Concur

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