

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA

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ATHENS-CLARKE COUNTY, GEORGIA

SU22CR0739- H
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BEVERLY LOGAN, Clerk

STATE OF GEORGIA

v.

NIGEL BURKE BROWN,
Defendant.

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CASE NO. SU-22-CR-0739-H

ORDER DENYING DEFENDANT’S AMENDED MOTION TO SUPPRESS

This matter is before the Court on Defendant’s Motion to Suppress. A hearing on the motion was held March 21, 2023. For the reasons that follow, Defendant’s motion should be **DENIED**.

I. Findings of Fact

During the evening of June 4, 2022, the alleged victim of a sexual assault contacted the Athens-Clarke County Police Department. She informed Athens-Clarke County Police Detective Hilton Cooper where Defendant could be located and what personal items were at his apartment. Athens-Clarke County Police Lieutenant Enrique Rivera also spoke with the alleged victim, and based on information he received from Dispatch, he proceeded to Defendant’s apartment located at 225 Appleby Drive in Athens, Georgia.

After Det. Cooper, Lt. Rivera, and a third officer, identified at the hearing as Officer Williams, arrived at the apartment, Det. Cooper directed Defendant to come outside. Defendant eventually came out, and he sat on the stairs near the apartment with Lt. Rivera and Officer Williams standing near him.

Defendant’s mother, Tammy Johnson, also came out of the apartment. Ms. Johnson told Det. Cooper that she had just come “home.” Ms. Johnson gave Det. Cooper permission to enter the apartment, and she led him through the front of the apartment, bathroom, and the apartment’s single bedroom.

Based on the description given by the alleged victim, Det. Cooper directed Ms. Johnson to give him a certain cellphone that was in the bathroom. Ms. Johnson and Det. Cooper then went into the bedroom. Det. Cooper saw a black trash bag and black duffel bag that matched the description and

location given by the alleged victim. Det. Cooper looked in the already open black trash bag and saw female clothing. Det. Cooper took the bags and the cellphone out of the apartment.

According to Ms. Johnson, the apartment “belonged” to Defendant’s friend, but she considers the apartment her home. Ms. Johnson sometimes stays there 4-5 days a week, and when not living at the apartment, she stays with her boyfriend. Ms. Johnson sleeps on a mattress in the front of the apartment, and she has access to all the rooms in the apartment. In fact, the bedroom door is typically left open. Ms. Johnson does not pay rent, but she was not asked whether Defendant pays rent. Ms. Johnson said that Det. Cooper pointed out everything he was taking, but he did not ask permission to take the alleged victim’s bags and cellphone.

II. Analysis

Defendant maintains that Det. Cooper did not obtain the requisite consent to search the apartment or to seize any of the items. The State counters that, based on Ms. Johnson’s reference to the apartment being her home, Det. Cooper reasonably believed he had consent to search the apartment and seize the items.

“It is well settled that a valid consent to a search eliminates the need for either probable cause or a search warrant.” *Brooks v. State*, 285 Ga. 424, 425 (2009). Consent may be “obtained from a third party who possessed common authority over or other sufficient relationship to the premises sought to be inspected.” *Montgomery v. State*, 353 Ga. App. 66, 69 (2020) (internal quotation omitted). The test for determining whether a third party has a sufficient relationship to the property or common authority over it states:

In a case such as this involving a third party’s consent to search, the State has the burden to prove not only that consent was voluntary but that the third party had authority over, and other sufficient relationship to, the premises sought to be inspected. To resolve the issue of third party consent, we must determine whether the objective facts available to the officer at the time would warrant a person of reasonable caution to conclude that the third party had authority over the premises. The officer’s belief that the third party has authority

over another person's property to consent to the search thereof should be based on information previously obtained in his investigation as well as facts and circumstances existent at the time of the search.

State v. Holtzclaw, 341 Ga. App. 639, 642 (2017) (internal quotation omitted). "As with other factual determinations bearing upon search and seizure, determination of consent to enter must be judged against an objective standard: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises? If not, then warrantless entry without further inquiry is unlawful unless authority actually exists. But if so, the search is valid."

State v. Rucker, 337 Ga. App. 875, 882 (2016) (internal quotation omitted).

Here, Ms. Johnson called the apartment her home, had full access to all of the rooms in the apartment, and had unfettered access to enter the apartment. By all outward appearances, Ms. Johnson had the authority to consent to the search of the apartment.

Defendant relies on a United States Supreme Court case that held "a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant." *Georgia v. Randolph*, 547 U.S. 103, 122-23 (2006). While Counsel for Defendant maintained that Defendant was questioning what the police were doing and did not want the police to take the cellphone, there was no evidence presented at the hearing to support Counsel's assertion.

Another case relied on by Defendant held that police did not have consent for the following reasons:

[I]t is undisputed that the officers did not know who owned the home or resided there before knocking on the door and had made no effort to make such a determination before embarking on their knock and talk. After arriving at the residence, it is undisputed that they made no effort to determine whether Hutchinson had authority to give consent before asking if they could enter. Indeed, the record shows that they may have known *before* entering the home that Hutchinson did not have sufficient authority.

Hunt v. State, 302 Ga. App. 578, 582 (2010) (italics in original). Unlike *Hunt*, Ms. Johnson told Det. Cooper that the apartment was her home, and he had no reason to doubt her representation. Given Ms.

Johnson’s representation, Det. Cooper did not have a duty to inquire further. *See Rucker*, 337 Ga. App. at 882 (“woman’s claim that she was living there with Rucker, which was never disputed or disproved, distinguishes this case from *Hunt*”); *Niles v. State*, 325 Ga. App. 621, 623 (2014) (“Given that Grant had a key and access to the residence and use of a bedroom at the residence, it is reasonable to conclude that he had joint access with Niles to the common areas in the residence; authority to permit police entry into those areas. . . .”).


Defendant maintains that consent to search, did not mean Det. Cooper had consent to seize suspected evidence in the apartment. Defendant does not develop this argument. In any event, absent a showing that Ms. Johnson withdrew her consent to search the residence, law enforcement had authority to seize potential evidence. *Winslow v. State*, 315 Ga. 133, 137-38 (2022).

III. Conclusion and Order

As law enforcement reasonably believed they had consent to search Defendant’s apartment and seize suspected evidence,

IT IS ORDERED that Defendant’s Amended Motion to Suppress is **DENIED**.

IT IS SO ORDERED, this 24 day of March, 2023.



H. PATRICK HAGGARD
JUDGE, WESTERN JUDICIAL CIRCUIT
SUPERIOR COURT OF ATHENS-CLARKE COUNTY

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