9-18-2013

State v. Tena Respondent's Brief Dckt. 40423

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 40423
Plaintiff-Respondent,	)	
	)	Cassia Co. Case No.
vs.	)	CR-2011-3106
	)	
SANTOS TENA,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

HONORABLE MICHAEL R. CRABTREE
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Santos Tena appeals from the judgment and conviction entered upon his conditional guilty plea to felony possession of a controlled substance, claiming the district court erred in denying his motion to suppress.

Statement Of Facts And Course Of Proceedings

Tena's conviction for possession of methamphetamine is based on the following account from the presentence report ("PSI"):

> On April 27, 2011, at approximately 0725 hours, Deputy Bernad was dispatched to 491 E Hwy 81 to serve to [sic] warrants on Santos Tena, one from Cassia County and one from Twin Falls County. Dispatch advised that Veronica Tena reported Santos was staying at that address and that his father thought people were bringing him drugs.
>
> Deputy Bernad and Deputy Garrett arrived and made contact with Revecca Tena, mother of Santos Tena. When asked whether Santos was in the home, she pointed down the stairs and said that he was asleep. She called down to him and he came to the bottom of the stairs arguing with her. Deputies then went to the bottom of the stairs and advised Santos he was under arrest. . . .
>
> Deputy Bernad spoke with Mrs. Tena and she signed a consent to search form for the residence. Upon entering Santos' room, Deputy Bernad noticed a baggie containing a white crystal substance, in plain view. The baggie was on the couch cushion, along with a pocket knife, and the substance inside the baggie later presumptively tested positive for methamphetamine. On the floor in front of the couch, Deputy Bernad observed something wrapped in a blue paper towel. The item was found to be a pipe with a burnt brown residue. Deputy Bernad also located a coin purse containing a glass pipe and five small Ziploc baggies between the cushion and the arm rest of the couch.

(PSI, p.3.)

The state charged Tena with felony possession of a controlled substance (methamphetamine or amphetamine) and possession of drug paraphernalia, and alleged he was a persistent violator. (R., pp.74-76.) Tena filed a motion to suppress.[1] After a hearing and the submission of briefs, the district court denied Tena's motion, ruling that the search of his bedroom was legal because his mother consented to the search and had apparent authority to do so. (Tr., pp.97-118.) Tena entered a conditional guilty plea reserving his right to appeal the denial of his suppression motion. (R., pp.127-141.) The district court imposed a unified seven-year sentence with one year fixed. (R., pp.159-162.) Tena filed a timely notice of appeal. (R., pp.165-167.)

[1] According to the district court, Tena filed his suppression motion on December 6, 2011 (Tr., p.5, Ls.8-10), however, that motion has not been included in the record on appeal.

ISSUE

Tena states the issue on appeal as:

> Did the district court err when it denied Mr. Tena's motion to suppress, because Ms. Tena did not have authority to consent to the search of his bedroom?

(Appellant's Brief, p.6.)

The state rephrases the issue on appeal as:

Has Tena failed to establish the district court erred in denying his motion to suppress?

ARGUMENT

Tena Has Failed To Establish Error In The Denial Of His Suppression Motion

A. Introduction

Tena challenges the denial of his motion to suppress, arguing that his mother did not have apparent or actual authority to consent to the search of his bedroom. (Appellant's Brief, pp.7-20.) Contrary to Tena's argument, the district court correctly concluded that the search was constitutionally valid because Tena's mother had the apparent authority to consent to such a search.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Klingler, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006); State v. Barker, 136 Idaho 278, 280, 40 P.3d 86, 88 (2002); State v. Spencer, 139 Idaho 736, 738, 85 P.3d 1135, 1137 (Ct. App. 2004); State v. Devore, 134 Idaho 344, 346-47, 2 P.3d 153, 155-56 (Ct. App. 2000).

C. The District Court Correctly Applied The Law To The Facts In Denying Tena's Motion To Suppress

The Fourth Amendment prohibits warrantless searches of an individual's home absent certain limited exceptions. Illinois v. Rodriguez, 497 U.S. 177, 181 (1990). One clearly recognized exception to the warrant requirement is consent

from an individual who has actual or apparent authority to submit to the search. State v. Brauch, 133 Idaho 215, 219, 984 P.2d 703, 707 (1999). Where it is later established that a third party who consented to a search lacked actual authority to consent, the search may still be upheld if the law enforcement officers reasonably believed that actual authority existed. Rodriguez, 497 U.S. at 188-89; Brauch, 133 Idaho at 219, 984 P.2d at 707. "The key to the apparent authority exception to the warrant requirement is the concept of reasonableness." Brauch, 133 Idaho at 219, 984 P.2d at 707, citing Rodriguez, 497 U.S. at 183-88. Officers must have an objectively reasonable belief that the person giving consent has the authority to do so. That is, the determination 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?" Rodriguez, 497 U.S. at 188 (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)). Therefore, to assess whether apparent authority exists, "one must look for indicia of actual authority." United States v. Rosario, 962 F.2d 733, 737 (7th Cir. 1992) (quoting United States v. Miller, 800 F.2d 129, 134 (7th Cir. 1986)).

The district court denied Tena's suppression motion, concluding that the deputies reasonably believed Ms. Tena had actual authority to consent to a search of her home and Tena's bedroom, explaining (with bracketed citations to suppression hearing testimony):

> The gravamen of the Defendant's argument is that Ms. Tena lacked the authority to consent to the search of the Defendant's bedroom in her house because he was paying rent. However, regardless of whether Ms. Tena had actual authority to consent to

> the search of the Defendant's bedroom, she had apparent authority to do so.
>
> At the time the officers secured Ms. Tena's consent and searched the Defendant's bedroom they were aware of several relevant circumstances. The residence belonged to Ms. Tena and her husband. [Tr., p.7, L.23 – p.8, L.4.] Ms. Tena told the officers that she had access to the house. [Tr., p.33, Ls.12-13.] There was no evidence that the Defendant had a key to his bedroom door; that he used the old skeleton key lock to prevent access to his bedroom; that the Defendant used a more modern lock on his bedroom door; or that the Defendant had the ability to exclude his parents from his bedroom. [Tr., p.24, L.22 – p.25, L.6.] Ms. Tena's statement that she did the Defendant's laundry and took meals to him in his bedroom gives rise to a reasonable inference that the Defendant did not exclude Ms. Tena in any meaningful way from that area of her residence. [Tr., p.33, Ls.21-25; p.50, Ls.2-5.] Based on these circumstances, the officers reasonably believed that Ms. Tena had ready access and common control over the Defendant's bedroom as part of her residence, and that she could consent to a search.
>
> Although the Defendant asserts that he was a tenant in his parents' residence, Ms. Tena did not mention that the Defendant paid rent or that there was a rental agreement at the time of the search. [Tr., p.34, Ls.2-7; p.50, Ls.8-11; p.59, Ls.6-13.] There was nothing that the officers observed at the time of the search that would give rise to the inference that the Defendant and his parents had a landlord-tenant relationship. Therefore, even if the officers erroneously believed Ms. Tena had authority to consent to a search of the Defendant's bedroom, their belief was reasonable based on the totality of the circumstances. Ms. Tena had apparent authority to consent to the search.

(PSI, pp.5-6.)

As the district court held, regardless of whether Ms. Tena had actual authority to consent to a search of Tena's bedroom, the facts available to the deputies at the moment Ms. Tena consented to their entry into her house and Tena's bedroom gave rise to a reasonable belief she that she did. In sum, the court based its decision on testimony showing (1) the home was owned by Ms.

Tena and her husband, (2) Ms. Tena had access to the home, (3) Tena did not lock his bedroom door, (4) Ms. Tena did Tena's laundry and prepared his meals and took them to Tena's bedroom because he hardly ever left the room, and (5) there was no mention of anything suggesting Tena rented the bedroom. Id.

Additionally, Deputy Garrett testified that when he explained to Ms. Tena what was written on the consent and permission to search form (see State's Exhibit 1), he told her "it was a permission to search her room – or, I mean, the house *and Santos's room*[,]" and she did not seem to have any hesitation in understanding him, and "just said yes and signed the form . . . ." (Tr., p.30, L.8 – p.32, L.11 (emphasis added).) Therefore, after it was made clear to Ms. Tena that the deputies intended to search Tena's bedroom, she still did not object to that request. Deputy Bernad testified that before obtaining Ms. Tena's consent to search her home, she told him she had to go into Tena's bedroom not only to take him meals and do his laundry, but also to "clean." (Tr., p.50, Ls.2-5.)

Tena argues that the deputies "'lacked an objectively reasonable basis to believe [Ms. Tena] had joint access to and mutual use of the [bedroom] without some further inquiry.'"[2] (Appellant's Brief, p.10 (quoting State v. Benson, 133 Idaho 152, 158, 983 P.2d 225, 231 (Ct. App. 1999).) As a central theme of his argument, Tena contends the record shows that when he was being led away

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[2] Tena's argument has consistently been that his mother lacked both actual and apparent authority to consent to the officers' search of his bedroom. Tena did not argue in the district court, nor does he argue on appeal, that as a (supposed) co-tenant, he had a co-equal right to deny officers permission to enter his bedroom, even if his mother granted such permission. See Georgia v. Randolph, 547 U.S. 103 (2006); (see also R., pp.97-100, 115-118; Tr., p.62, Ls.7-23 (setting briefing schedule in lieu of argument).) As a result, a factual record has not been developed relevant to such a claim.

from the house he "yelled to not let the deputies into the house *or his bedroom.*" (Appellant's Brief, p.10 (emphasis added); see id., p.11 ("Tena actively objected to the deputies' entry and search of his bedroom."); p.12 ("Mr. Tena yelled to not let the deputies into the house or his bedroom."); p.13 ("he yelled not to let the deputies into the house or his bedroom," and "the deputies here knew that . . . Mr. Tena had objected to their entry and search of the bedroom").) Contrary to Tena's claim, Deputy Bernad, the only state witness to testify on the subject, explained that after Tena was handcuffed, "he started yelling not to let us in the house as he was taken out to the car" -- without any mention of the bedroom. (Tr., p.55, Ls.17-20.)

In repeatedly stating on appeal that he objected to officers searching his bedroom, Tena appears to rely on the following question his trial attorney posed to Deputy Bernad: "Where was Santos when *you say* he was yelling to not let you in the house *or his room*?" (Tr., p.58, Ls.2-3 (emphasis added); see Appellant's Brief, pp.10-13.) The deputy went ahead and answered the general call of the question of where the yelling incident took place even though the question also improperly assumed testimony that had not been given – i.e., that Tena yelled to not let officers in his bedroom. To the extent Tena's arguments on appeal rely upon the inaccurate contention that he yelled that the officers not be permitted to search his room, they fail.

Contrary to Tena's assertions on appeal, this evidence establishes that Ms. Tena had apparent authority to consent to the search of the bedroom.

The district court correctly concluded that the search of Tena's bedroom was properly conducted pursuant to Ms. Tena's consent and did not violate any of Tena's rights. Tena's claim of error in relation to his suppression motion, therefore, fails.

CONCLUSION

The state respectfully requests that this Court affirm Tena's judgment of conviction.

DATED this 1st day of October, 2013.

JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of October, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BEN PATRICK McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

John C. McKinney
Deputy Attorney General