[Cite as *State v. Young*, 2015-Ohio-2575.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
		CASE NO. CA2014-12-243
Plaintiff-Appellee,	:	
		O P I N I O N
	:	6/29/2015
- vs -		
	:	
JEREMY CHAD YOUNG,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2014-05-0854

Michael T. Gmoser, Butler County Prosecuting Attorney, Kimberly L. Kasten, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Neal D. Schuett, 121 West High Street, Oxford, Ohio 45056, for defendant-appellant

S. POWELL, J.

{¶ 1} Defendant-appellant, Jeremy Young, appeals the decision of the Butler County Court of Common Pleas denying his motion to suppress. For the reasons discussed below, we affirm the decision of the trial court.

{¶ 2} Appellant resides with his fiancée, Sara Miller, in a house located in Hamilton, Ohio. On May 14, 2014, Miller went to the Hamilton Police Department and spoke with officers regarding her concerns with appellant's substance abuse. After advising the police

that appellant had drugs in the home, Miller signed a consent form to search the residence. Miller then accompanied police to her residence where she allowed the police to enter and led them to the bedroom, which she shared with appellant. Upon entering the bedroom, police observed appellant asleep on the bed with drugs and drug paraphernalia strewn throughout the room. Appellant was then awakened by police, arrested, and advised that Miller had consented to a search of the home. A search of the room yielded further evidence of drug abuse, including pills and methamphetamine.

{¶ 3} Appellant was indicted on one count of aggravated possession of drugs in violation of R.C. 2925.11, a fifth-degree felony, and one count of possession of drugs in violation of R.C. 2925.11, a first-degree misdemeanor. Subsequently, appellant moved to suppress evidence obtained from the search of the residence. Following a hearing, the trial court denied appellant's motion. Thereafter, appellant entered a plea of no contest. Appellant now appeals the decision of the trial court denying his motion to suppress, raising one assignment of error for review.

{¶ 4} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT OVERRULED HIS MOTION TO SUPPRESS EVIDENCE COLLECTED DURING A WARRANTLESS AND NONCONSENSUAL SEARCH OF HIS HOME.

{¶ 5} In his sole assignment of error, appellant argues the trial court erred by denying his motion to suppress. We disagree.

{¶ 6} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Brannon*, 12th Dist. Clinton No. CA2014-09-012, 2015-Ohio-1488, ¶ 24. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility. *State v. Cruz*, 12th Dist. Preble No. CA2013-10-008, 2014-Ohio-4280, ¶ 12. In

turn, the appellate court must accept the trial court's findings of fact so long as they are supported by competent, credible evidence. *Id.* at ¶ 13. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *State v. Swift*, 12th Dist. Butler No. CA2013-08-161, 2014-Ohio-2004, ¶ 9.

{¶ 7} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution protect individuals against unreasonable governmental searches and seizures. *Brannon* at ¶ 26. Warrantless searches are per se unreasonable unless one of the well-delineated exceptions applies. *State v. Boland*, 12th Dist. Clermont Nos. CA2007-01-016 and CA2007-01-017, 2008-Ohio-353, ¶ 11. An entry or search conducted with the consent of one who has common authority over the premises is a well-established exception to the requirements of both a warrant and probable cause. *State v. Henderson*, 12th Dist. Warren Nos. CA2002-08-075 and CA2002-08-076, 2003-Ohio-1617, ¶ 20.

{¶ 8} "When the state seeks to establish consent for a warrantless search, it is not limited to proving that the defendant himself consented, but it may also show that the consent was obtained from a third party who possessed common authority or other sufficient relationship over the premises to be inspected." *Boland* at ¶ 12. Common authority is not to be implied from a mere property interest, but from mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched. *State v. Norman*, 12th Dist. Warren No. CA2014-02-033, 2014-Ohio-5084, ¶ 35. The burden of establishing that a third party possesses common authority to

consent to a search rests with the state. *Id.*

{¶ 9} In *Georgia v. Randolph*, 547 U.S. 103, 126 S.Ct. 1515 (2006), the United States Supreme Court created a narrow exception to this rule and held that "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." *Id.* at 122-123; *State v. Boysel*, 4th Dist. Hocking No. 08CA5, 2008-Ohio-4037, ¶ 16; *Fernandez v. California*, __ U.S. __, 134 S.Ct. 1126 (2014) ("In *Georgia v. Randolph* * * *, we recognized a narrow exception to this rule, holding that the consent of one occupant is insufficient when another occupant is present and objects to the search").

{¶ 10} On appeal, appellant does not refute the fact that Miller had the authority to consent to a search of their shared residence. However, consistent with the decision in *Georgia v. Randolph*, appellant argues that he expressly refused consent to the police when they entered the bedroom and woke him up. Therefore, appellant argues the trial court should have suppressed all evidence related to the search of his residence.

{¶ 11} At the suppression hearing, the trial court heard testimony from Officer Casey Johnson and Officer Eric Taylor, both with the Hamilton Police Department. Officer Johnson testified that Miller gave permission to enter the residence, that he followed Miller to her bedroom where he observed several marijuana pipes, methamphetamine, seeds, a bottle of pills, and various other items of drug paraphernalia. Officer Johnson testified that, after entering the room, he woke up appellant and placed him under arrest. According to Officer Johnson, appellant did not refuse consent or otherwise revoke the consent granted by Miller. This testimony was corroborated by Officer Taylor who stated that appellant did not give any indication that he refused consent. Miller, however, testified that when appellant woke up, he told officers "you don't have my consent."

{¶ 12} In overruling appellant's motion to suppress, the trial court noted the conflicting

evidence in the record, but found the officers' testimony to be more credible. Specifically, the trial court stated "the court believes that the testimony of the police officers is highly credible and believes that the testimony of the [appellant] and his fiancée are not as credible. And therefore the Court believes that there was nothing there that a police officer could constitute as a revocation of the right to search."

{¶ 13} Based on our review of the evidence, we find the trial court did not err in denying appellant's motion to suppress. As noted by the trial court, this matter came down to the credibility of the witnesses. The state presented the testimony of the two investigating officers who clearly testified that appellant did not refuse to consent to the search. Although appellant introduced the testimony of Miller, his fiancée, who offered competing testimony, the trial court, as trier of fact was in the best position to weigh the credibility of the witnesses. Therefore, because we find the trial court's decision was supported by competent, credible evidence, appellant's sole assignment of error is overruled.

{¶ 14} Judgment affirmed.

M. POWELL, P.J., and RINGLAND, J., concur.