[Cite as *State v. Hilton*, 2009-Ohio-5744.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 08-CA-18
Plaintiff-Appellee	:	
	:	Trial Court Case No. 07-CR-312
v.	:	
	:	(Criminal Appeal from
JANINE HILTON	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 30th day of October, 2009.

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FAIN, J.

{¶ 1} Defendant-appellant Janine Hilton appeals from her conviction and sentence, following a no-contest plea, to charges of Possession of Cocaine, Permitting Drug Abuse, and Endangering Children. Hilton contends that the trial court erred by denying her motion to suppress evidence obtained as the result of an

alleged unlawful search and seizure of her residence. We conclude that the evidence in the record supports the trial court's conclusion that Hilton voluntarily consented to a search of her residence. Accordingly, the trial court did not err in overruling Hilton's motion to suppress, and the judgment of the trial court is Affirmed.

II

{¶ 2} In early December 2007, a dispatcher for the Urbana Police Department received an anonymous tip reporting suspected drug activity at 921 Terry Lane. Officers Kizer, Evans, and Roberts were dispatched to the address at around 2:00 a.m. The officers parked their cruisers down the street and walked to the address, which was a two-story apartment. As the officers came up to the apartment, they could see that no lights were on. A television was on, however, and they could see lights flashing through the blinds. Kizer and Roberts went to the front door, and Evans went to the back door.

{¶ 3} The blinds were down, but Evans was able to see through a small opening at the bottom of the back door blind. Evans had a clear shot of the living room, and saw three females. One was sitting in front of a recliner, and the other two were off to the side, on the couch or the floor. The woman in front of the recliner (later identified as Hilton), put a drug instrument into her mouth and lit it with a lighter. Evans notified the officers at the front door of this activity, and then returned to the back door, where he noticed that Hilton was no longer in the room. The other two females were still there.

{¶ 4} The officers began knocking and ringing the doorbells at the front and

back doors. They persisted in this activity continuously for five to ten minutes, but no one came to the door. At some point, Evans observed women putting items under the couch and the chair. Finally, a woman (later identified as Karen Wheeland) answered the front door. The officers obtained identification from Wheeland, and then from Hilton, who had come to the door. After checking police records, the officers discovered that Shelby County had issued a warrant for Wheeland's arrest, for failure to pay fines and costs.

{¶ 5} Upon confirming that Shelby County wanted Wheeland arrested, Officers Kizer and Roberts went inside the house to arrest Wheeland. At the time they entered, the front door was partially open, and the officers could see Wheeland in plain sight, within five to ten feet of the front door.

{¶ 6} Sergeant Purinton of the Urbana Police Department arrived shortly before Wheeland was arrested. Purinton began talking with Hilton, to explain why the officers were there. Purinton asked Officer Evans to come around to the front porch and tell Hilton what he had observed regarding the alleged drug activity. Purinton then asked for permission to search the premises. Purinton told Hilton that she had to consent voluntarily and could stop the police at any time. Hilton then consented to the search.

{¶ 7} Purinton did not obtain written consent, and none of the other officers heard Hilton give consent. Purinton believed that Officer Evans heard Hilton give consent, because Evans was standing in close proximity to Purinton and Hilton. However, Evans did not actually hear Hilton give consent. After securing permission, Purinton told the officers that they could search the premises.

{¶ 8} Purinton asked Hilton if she could show Officer Roberts where the items were located. After hesitating briefly, Hilton took Roberts upstairs to the master bedroom, where Roberts found some drugs and drug paraphernalia on the bed, under the mattress, and in the closet. The officers photographed and collected the items. The officers did not search a second bedroom where Hilton's five-year old son was sleeping, because Hilton asked them not to disturb her son. In the meantime, Officer Evans searched under the couches and chairs in the living room, and located several items, including drugs and what appeared to be crack pipes.

{¶ 9} Hilton testified at the suppression hearing and told a somewhat different story. Hilton heard loud knocks, but did not answer the door, because she had looked out the window and did not see any cars. She was separated from her husband at the time, and thought he might be at the door. Hilton also denied giving permission to search. She stated that she knew drugs were on the premises, and knew that a drug conviction would affect her license as a registered nurse.

{¶ 10} Hilton testified that all the officers were inside the house to arrest Wheeland before Purinton arrived. While the officers were arresting Wheeland, Officer Evans tipped the recliner over with his knee and found a crack pipe. Hilton stated that she did not know what her rights were at that point. Hilton then spoke to Purinton outside the house and refused permission to search. After Purinton arrived, the police began searching the apartment. Hilton stated that she was asked to take Officer Roberts upstairs, and that she never told Purinton or any of the other officers that they could search the premises. Hilton did indicate that she never asked the officers to leave.

{¶ 11} The Urbana Police Department has a manual governing searches, which states that:

{¶ 12} "Consent must always be obtained from a person who has the proper control of the area to be searched and who can lawfully authorize the search. Consent must be voluntary. The person giving consent must be present during the consensual search.

{¶ 13} "The scope of the consent search must be limited to a specific time(s), location(s), and item(s).

{¶ 14} "Consent in writing is preferred, not required (when applicable, use the Division's 'Consent to Search' form). The Officer obtaining a verbal consent should have another Officer or person witness the consent." Defendant's Exhibit A.

{¶ 15} Hilton was not arrested the night of the search, but she was subsequently indicted on five charges, including one count of Possession of Cocaine, two counts of Possession of Criminal Tools, one count of Permitting Drug Abuse, and one count of Endangering Children.

{¶ 16} After hearing the evidence, the trial court concluded that the officers were more credible than Hilton. The court found that Hilton had voluntarily consented to the search, and denied the motion to suppress. Hilton then pled no contest to Possession of Cocaine, Permitting Drug Abuse, and Endangering Children. Hilton now appeals from her conviction and sentence.

II

{¶ 17} Hilton's sole assignment of error is as follows:

{¶ 18} "THE TRIAL COURT INCORRECTLY DETERMINED THAT MRS. HILTON HAD VOLUNTARILY CONSENTED TO THE OFFICERS' SEARCH OF HER APARTMENT."

{¶ 19} Under this assignment of error, Hilton acknowledges that her account differs from that of the police, but argues that the ultimate issue is whether her eventual cooperation was coerced by the officers' overbearing behavior. According to Hilton, even if the officers' testimony is believed, she refused repeatedly to interact with them or to allow them into the apartment, and only relented after the officers clearly indicated that they would not leave until they were allowed to conduct a search.

{¶ 20} The standards for reviewing decisions on motions to suppress are well established. In ruling on a motion to suppress, the trial court "assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses." *State v. Retherford* (1994), 93 Ohio App.3d 586, 592 (citation omitted). Accordingly, when we review suppression decisions, "we are bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard." Id.

{¶ 21} The legal standard for warrantless searches is described in *City of Xenia v. Wallace* (1988), 37 Ohio St.3d 216, as follows:

{¶ 22} "The burden of initially establishing whether a search or seizure was authorized by a warrant is on the party challenging the legality of the search or

seizure. * * * Once a warrantless search is established, the burden of persuasion is on the state to show the validity of the search. * * * This flows from the presumption that searches conducted outside the judicial process, without prior approval by judge or magistrate, are 'per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions.' " Id. at 218.

{¶ 23} "It is * * * well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." *Schneckloth v. Bustamonte* (1973), 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (citations omitted). "To rely on the consent exception of the warrant requirement, the state must show by 'clear and positive' evidence that the consent was 'freely and voluntarily' given." *State v. Posey* (1988), 40 Ohio St.3d 420, 427 (citations omitted). "A 'clear and positive' standard is not significantly different from the 'clear and convincing' standard of evidence, which is the amount of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations to be proved. It is an intermediate standard of proof, being more than a preponderance of the evidence and less than evidence beyond a reasonable doubt." *State v. Ingram* (1992), 82 Ohio App.3d 341, 346 (citations omitted). Furthermore, "the question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Schneckloth*, 412 U.S. at 227, 93 S.Ct. at 2048.

{¶ 24} At the suppression hearing, Hilton did not testify that her consent to the search was involuntary or coerced. She testified, instead, that the officers

conducted a non-consensual, limited search before Sergeant Purinton arrived, and a full-scale non-consensual search after Purinton arrived. In fact, Hilton specifically testified that she did not consent at any time to a search. The issue before the trial court, therefore, was not whether Hilton's consent was "involuntary." The trial court was presented with a credibility issue – whether to believe Sergeant Purinton's testimony that Hilton consented to the search, or whether to believe Hilton's testimony that both searches were conducted without her permission.

{¶ 25} The trial court chose to believe Purinton, and we are bound to accept that finding, if it is supported by competent, credible evidence. "The 'rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *In re J.Y.*, Miami App. No. 07-CA-35, 2008-Ohio-3485, at ¶33, quoting from *Seasons Coal Co., Inc. v. City of Cleveland* (1984), 10 Ohio St.3d 77, 80. The trial court in the case before us was presented with two different accounts, and chose to believe the police officers.

{¶ 26} Hilton argues that coercion is shown by the officers' repeated knocking on the door and ringing of the doorbells, as well as other evidence indicating that the officers did not intend to leave until they had searched the premises. However, Hilton failed to testify to these matters at the suppression hearing. Hilton indicated that she was not aware the police were responsible for the loud knocking at the door, but thought it might be her estranged husband. Hilton also testified as follows about her interaction with Sergeant Purinton and the other officers:

{¶ 27} "Q. Then when did Mr. Purinton talk to you? Before or after that?

{¶ 28} "A. After that [Wheeland's arrest].

{¶ 29} "Q. And where was he speaking with you?

{¶ 30} "A. Outside my door.

{¶ 31} "Q. All right. And what did he say to you?

{¶ 32} "A. He asked me if he could come into my house and search. And I told him no.

{¶ 33} "Q. Did he make any threats to you?

{¶ 34} "A. He told me I could possibly go to jail. I actually informed him that my son was in the house and that was not an option.

{¶ 35} " * * *

{¶ 36} "Q. Did you ever tell Mr. Purinton that he had consent to search your premises?

{¶ 37} "A. No, I did not.

{¶ 38} "Q. Did you ever tell any other officers that they had consent to search the premises?

{¶ 39} "A. No, I did not." Suppression Hearing Transcript, pp. 84 and 87 (bracketed material added).

{¶ 40} In view of Hilton's testimony at the suppression hearing, the dispute was whether Hilton had, in fact, consented to the search, not whether her consent was coerced. If Hilton's account were believed, the only conclusion that could have been reached is that Hilton never consented to the searches. The trial court chose to believe the police account, and the court's conclusion is supported by competent,

credible evidence. The account of events set forth in the testimony of the police officers does not, in our view, establish any degree of coercion that would rise to the level of causing Hilton's consent to the search to have been involuntary. This is especially true in light of Purinton's testimony that he told Hilton that she was not obliged to give her consent, and that she could withdraw her consent at any time.

{¶ 41} The trial court did state in its decision that written consent would have simplified procedures in this case. We agree with the trial court. Written consent would have eliminated the factual dispute concerning whether Hilton gave consent. However, it would not necessarily have avoided a factual dispute concerning whether Hilton's consent was voluntarily given.

{¶ 42} Hilton's sole assignment of error is overruled.

III

{¶ 43} Hilton's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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FROELICH and WOLFF, JJ., concur.

(Hon. William H. Wolff, Jr., retired judge from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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