[Cite as *State v. Crowder*, 2010-Ohio-3766.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 23600
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-60
v.	:	
	:	
ROLANDO L. CROWDER	:	(Criminal Appeal from Fairborn
	:	Municipal Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 13th day of August, 2010.

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FAIN, J.

{¶ 1} The case is before the Court on the direct appeal of defendant-appellant, Rolando Crowder from his conviction and sentence for two counts of Possession of Cocaine and two counts of Having Weapons Under Disability. Crowder argues that the trial court erred in denying his motion to

suppress based on its conclusion that Crowder lacked standing to challenge the search. We conclude that because Crowder had no reasonable expectation of privacy in the basement of his host's apartment building, he lacked standing to challenge the officers' warrantless entry into that basement. The judgment of the trial court will be Affirmed.

I

{¶ 2} Very early one morning in early January, 2009, Dayton Police used a key given to them by the landlord of an apartment building in order to enter the building and carry out a knock-and-advise at the unit rented by Mr. Bobo. The building contains four units, two each on the first and second floors, and a basement. The building has common front and back doors, which are kept locked. Each unit has front and back doors that open into common hallways. The units do not have direct access to the common basement, which houses the utilities for the building. But residents can enter the basement, which is not kept locked, through the back hallway. The tenants do not use the basement for storage.

{¶ 3} When the officers knocked on Bobo's front door, they heard the back door of his unit open and close. The officers went to the back hallway and entered the basement. They found drugs in plain view at the bottom of the basement stairs. They also found drugs and a gun under a floor joist at the top of a concrete wall. Crowder and his co-defendant, whose conviction is not within the scope of this appeal, were found hiding in the basement. Crowder was Bobo's overnight guest.

{¶ 4} Crowder was indicted on two counts each of Possession of Cocaine

and Having Weapons Under a Disability. He filed a motion to suppress. The trial court overruled this motion, concluding that Crowder had no standing to contest the officer's entry into the basement, because he had no reasonable expectation of privacy in the common basement of the apartment building in which he was an overnight guest.

{¶ 5} Crowder pled no contest to the charges and was sentenced to an aggregate term of three years in prison. From his conviction and sentence, Crowder appeals.

II

{¶ 6} Crowder's First Assignment of Error is as follows:

{¶ 7} "THE TRIAL COURT ERRED IN HOLDING THAT MR. CROWDER DID NOT HAVE STANDING TO CONTEST THE POLICE ENTRANCE INTO THE BASEMENT OF THE APARTMENT, IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS."

{¶ 8} Crowder's Second Assignment of Error is as follows:

{¶ 9} "THE TRIAL COURT ERRED IN OVERRULING MR. CROWDER'S MOTION TO SUPPRESS."

{¶ 10} Crowder maintains that because he was an overnight guest in Bobo's apartment, he had standing to challenge the officers' warrantless entry into the basement of the building, and the trial court should have granted his motion to suppress. When assessing a motion to suppress, the trial court, as the finder of

fact, evaluates the credibility of witnesses and the weight of evidence. *State v. Jackson,* Butler App. No. CA2002-01-013, 2002-Ohio-5238, citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 20. An appellate court must rely on those findings and determine whether the court has applied the appropriate legal standard. Id., citing *State v. Anderson* (1995), 100 Ohio App.3d 688, 691. Therefore, when the trial court's ruling on a motion to suppress is supported by competent, credible evidence, an appellate court may not disturb that ruling. Id., citing *State v. Retherford* (1994), 93 Ohio App.3d 586.

{¶ 11} Central to any suppression hearing is the issue of whether the defendant has demonstrated that he has a legitimate expectation of privacy in the place searched. *Rakas v. Illinois* (1978), 439 U.S. 128, 143, 99 S.Ct. 421, 58 L.Ed.2d 387, citing *Katz v. United States* (1967), 389 U.S. 347, 358, 88 S.Ct. 507, 19 L.Ed.2d 576; additional citations omitted. "A subjective expectation of privacy is legitimate if it is 'one that society is prepared to recognize as reasonable.'" *Minnesota v. Olson* (1990), 495 U.S. 91, 95-96, 110 S.Ct. 1684, 109 L.Ed.2d 85, quoting *Rakas,* supra, at 143, n. 12. An overnight guest may have a reasonable expectation of privacy in his host's home. Id. at 96-97. But it does not necessarily follow that the scope of the guest's reasonable expectation of privacy is co-extensive with his host's reasonable expectation of privacy.

{¶ 12} In other words, even if *Bobo* could establish that he had a reasonable expectation of privacy in the basement of his building, it does not necessarily follow that his overnight guest would reasonably understand his privileges as a guest to extend beyond his host's apartment to the common areas of the multi-unit building.

We do not conclude that society is prepared to recognize as reasonable an overnight guest's claim that his legitimate expectation of privacy extends to the common basement of a multi-unit apartment building in which he is an overnight guest, without some indication from his host that his guest privileges extend into the common basement.

{¶ 13} In support of his assignments of error, Crowder relies on several cases from federal district courts of appeals. Those cases are factually distinguishable from the facts of the case before us. Moreover, two of the cases have been effectively overruled by a more recent decision from the same court.

{¶ 14} First, Crowder directs our attention to *Fixel v. Wainwright* (C.A.5, 1974), 492 F.2d 480. In *Fixel*, the court held that the defendant had a reasonable expectation of privacy in his own back yard, which was a fenced area adjacent to his unit in a multi-unit apartment building. Id. Unlike in the case before us, there was no issue of a third party's privacy interest in the defendant's back yard. Furthermore, a back yard specifically fenced off for the use of a single tenant is not comparable to a common basement open to all tenants.

{¶ 15} Crowder also relies on *United States v. King* (C.A.6, 2000), 227 F.3d 732. In that case, the court began by acknowledging a split in opinion among federal courts whether the basement of a multi-unit dwelling is entitled to Fourth Amendment protection. Id. at 744-48, citations omitted. Relying on the fact that a two-family dwelling is different in character from a multi-family dwelling, particularly where a defendant was sharing the building with other members of his own family, the court concluded that the defendant did have a reasonable expectation of privacy

in the basement of his duplex. Id. Once again, there was no issue of a third party's privacy interest in the defendant's basement. Furthermore, Bobo's residence is neither a two-family dwelling, nor is it shared only by members of Bobo's family.

{¶ 16} Additionally, Crowder points to *United States v. Case* (C.A.6, 1970), 435 F.2d 766, in which officers used a key provided by the landlord to enter a hallway that connected several businesses. The court held that because it was not a public hallway, the officers were not legally in a position to overhear the incriminating statements that led to the defendant's arrest. Id. Although the facts in *Case* are somewhat analogous to those in the case before us, we note that *Case* has effectively been overruled by a more recent case from the same court. For the same reason, Crowder's reliance upon *United States v. Carriger* (C.A.6, 1976), 541 F.2d 545, is also misplaced.

{¶ 17} Subsequent to both *Case* and *Carriger,* the Sixth Circuit held that a tenant has no reasonable expectation of privacy in the common areas of his apartment building, such as the vestibule. *United States v. Concepcion* (C.A.6, 1991), 942 F.2d 1170. In fact, because of the common nature of the vestibule, the court noted "it is odd to think of an expectation of 'privacy' in the entrances to a building." Id. at 1172. Moreover, the court specifically stated that "[t]o the extent * * * *Case* * * * impl[ies] otherwise, [it has] not survived changes in the Supreme Court's definition of protected privacy interests." Id.

{¶ 18} Similarly, several other federal districts courts of appeals have agreed that tenants do not have a reasonable expectation of privacy in common areas of their buildings, even when the building itself is locked. See, e.g., *United States v.*

Eisler (C.A.8, 1977), 567 F.2d 814, 816; *United States v. Thornley* (C.A.1, 1983), 707 F.2d 622; *United States v. Barrios-Moriera* (C.A.2, 1989), 872 F.2d 12, 14-15, overruled on other grounds by *Horton v. California* (1990), 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112*; United States v. Nohara* (C.A.9, 1993), 3 F.3d 1239, 1242. If tenants do not have a reasonable expectation of privacy in the common areas of their buildings, it follows that a tenant's overnight guest would not have a reasonable expectation of privacy in those areas, either.

{¶ 19} Although Crowder may have had a reasonable expectation of privacy in his host's apartment, that reasonable expectation of privacy did not extend to the common basement of the building. We conclude that an overnight guest's expectation of privacy in the common basement of his host's apartment building is not one that society is prepared to recognize as reasonable. Accordingly, Crowder lacked standing to challenge the officers' entry into the building. Because Crowder lacked standing, we need not address the issue of the scope of the landlord's consent for the officers to enter the building.

{¶ 20} Both of Crowder's assignments of error are overruled.

III

{¶ 21} Both of Crowder's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and VUKOVICH, J., concur.

(Hon. Joseph J. Vukovich, Seventh District Court of Appeals, sitting by assignment of

the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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