

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37787

STATE OF IDAHO,)	2011 Unpublished Opinion No. 533
)	
Plaintiff-Respondent,)	Filed: June 23, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
GWEN J. STARK,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsy, District Judge. Hon. John T. Hawley, Jr., Magistrate.

Order of the district court, on appeal from the magistrate division, affirming judgment of conviction for driving under the influence, affirmed.

Coffel & Beaber, P.C., Nampa, for appellant. Alan J. Coffel argued.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent. Rebekah A. Cudé argued.

MELANSON, Judge

Gwen J. Stark appeals from the intermediate order of the district court, affirming Stark’s judgment of conviction for driving under the influence (DUI). For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

In 2008, a citizen observed a Jeep being driven erratically. Concerned about the erratic driving pattern, the citizen called 911. The citizen told the 911 operator that the vehicle was being driven without its headlights even though it was dark, swerving within its lane, crossing the center line and fog line, and speeding noticeably. The citizen also noted that another vehicle was closely following the Jeep and appeared to be travelling with it. The citizen allowed both vehicles to pass, but continued to follow them. As the three cars continued on, the Jeep’s driving pattern continued to be erratic including swerving into the wrong lane. At one point the Jeep

made a left-hand turn and drove down the wrong lane for 100 feet before returning to the correct lane of travel. Eventually, the citizen followed the two vehicles to a house. The Jeep pulled into the garage, and the second vehicle pulled into the driveway. The two drivers entered the house through the garage. The citizen parked across the street and waited for law enforcement to arrive in response to her 911 call. The 911 operator informed officers of the Jeep's driving pattern prior to their arrival.

When two officers arrived at the location, they spoke briefly with the citizen and then approached the house. At the officers' knock, a young woman named Samaya opened the door. The officer asked Samaya whether she had "just gotten home," to which Samaya replied in the affirmative. The officer then asked Samaya if she had been driving the Jeep. Samaya indicated that Stark was the driver of the Jeep. The officer asked to speak to Stark. Samaya went to the back of the house to retrieve Stark, leaving the front door open. The officers remained outside the threshold, but could see into the interior of the house. When Stark appeared from the back of the house, the officers observed her stumble as though falling down, grab a chair, and sit down abruptly. The officers requested that Stark come closer to the door to speak with them, but Stark refused. Samaya then gave the officers permission to enter the residence. Stark made no objection and the officers entered the home. Upon entering the room and approaching Stark, the officers smelled an odor of alcohol coming from Stark. The officers also then noted that Stark's speech pattern and movements were slow and lethargic. After some questioning, Stark admitted that she had just gotten home and that she had been drinking. Stark refused to perform field sobriety tests and requested that the officers leave her house. Eventually the officers arrested Stark for DUI. Subsequent to Stark's arrest, the officers learned that Samaya did not live at the residence.

Stark filed a motion to suppress all evidence obtained after the officers entered her home. In denying Stark's motion to suppress, the magistrate found that Stark's Fourth Amendment right to be free from a warrantless governmental intrusion into her home was not violated because the police properly entered the premises under the exigent circumstances exception to the warrant requirement. The magistrate determined that the officers' warrantless entry was justified by probable cause and the exigent circumstance of imminent destruction of evidence. The magistrate also found that the alternative justification for the search--consent via apparent authority--was without merit. After the denial of her motion to suppress, Stark entered a guilty

plea to DUI. Stark appealed, challenging the denial of her motion to suppress, which the district court affirmed on different grounds. The district court held that Stark's Fourth Amendment right to be free from warrantless governmental intrusion into her home was not violated because the police properly entered pursuant to the consent given by Samaya with apparent authority. The district court held that the alternative justification of exigent circumstances was without merit. Stark again appeals.

II.

STANDARD OF REVIEW

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Id.* If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.*

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

III.

ANALYSIS

The "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."¹ *United States v. United States District Court*, 407 U.S. 297, 313 (1972).

¹ "The right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures, shall not be violated . . ." U.S. CONST. amend. IV.

[The Fourth Amendment] unequivocally establishes the proposition that “[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Silverman v. United States*, 365 U.S. 505, 511, 81 S. Ct. 679, 683, 5 L. Ed. 2d 734 [(1961)]. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

Payton v. New York, 445 U.S. 573, 589-90 (1980). Warrantless searches and seizures inside a home are presumptively unreasonable. *Id.* at 586. There are, however, three common exceptions to the warrant requirement: (1) a search incident to a lawful arrest; (2) a search in response to exigent circumstances; and (3) a search conducted pursuant to properly given consent. *State v. Johnson*, 110 Idaho 516, 522, 716 P.2d 1288, 1294 (1986). Justification for a warrantless entry hinges upon whether the intrusion was objectively reasonable under the circumstances. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). We apply an objective standard to determine whether the action taken was appropriate for a person of reasonable caution given the facts known to the official at the time of entry, along with reasonable inferences drawn therefrom. *State v. Barrett*, 138 Idaho 290, 293, 62 P.3d 214, 217 (Ct. App. 2003).

A. Consent

On appeal, Stark argues that the district court erred in affirming the denial of her motion to suppress. Specifically, Stark argues that Samaya lacked apparent authority to consent to police entry into her home.

The prohibition against warrantless entry does not apply to situations in which voluntary consent has been obtained, either from the individual whose property is searched, or from a third party who possesses common authority over the premises. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *Johnson*, 110 Idaho at 522, 716 P.2d at 1294. Actual authority to consent to a search will be found if the consenting third party “possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected,” as where the defendant and the consenting person are co-habitants. *United States v. Matlock*, 415 U.S. 164, 171 (1974); *see also State v. Reynolds*, 146 Idaho 466, 473, 197 P.3d 327, 334 (Ct. App. 2008); *State v. Buhler*, 137 Idaho 685, 687, 52 P.3d 329, 331 (Ct. App. 2002). Such authority derives from mutual use of the property by persons generally having joint access or control so that it is reasonable to recognize that any of the co-inhabitants have the right to permit the inspection in his or her own

right. *Matlock*, 415 U.S. at 171 n.7; *see also Georgia v. Randolph*, 547 U.S. 103, 110 (2006); *Rodriguez*, 497 U.S. at 181. The parties concede that Samaya did not possess actual authority to consent to the officers' entry into Stark's residence.

The state argues, however, that Samaya possessed apparent authority to consent to the entry. Where it is 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 had an objectively reasonable belief that the person giving consent had the authority to do so. *Rodriguez*, 497 U.S. at 185-86; *State v. Hawkins*, 131 Idaho 396, 400, 958 P.2d 22, 26 (Ct. App. 1998). The proper inquiry is whether the facts available to the officer at the time warranted a person of reasonable caution to believe that the consenting party has authority over the premises. *Buhler*, 137 Idaho at 688, 52 P.3d at 332.

An objective view of the facts known to the officers when they entered the residence indicates that the officers were faced with conflicting and ambiguous evidence as to Samaya's authority to consent. The officers knew that Samaya apparently felt free to open the door and move freely in the residence. Also, at the time Samaya consented to the entry of the officers, Stark was present and did not object.² The officers also knew that Samaya had arrived in a separate vehicle and had parked in the driveway. A number of federal courts have held that an officer has a duty to make further inquiries where he or she is faced with ambiguous or unclear facts related to the third party's authority. *See Rodriguez*, 497 U.S. at 188, *United States v. Purcell*, 526 F.3d 953, 963-65 (6th Cir. 2008); *United States v. Cos*, 498 F.3d 1115, 1128-1131 (10th Cir. 2007); *United States v. Waller*, 426 F.3d 838, 846-48 (6th Cir. 2005); *United States v. Kimoana*, 383 F.3d 1215, 1222 (10th Cir. 2004); *United States v. Reid*, 226 F.3d 1020, 1025-26 (9th Cir. 2000); *United States v. Rosario*, 962 F.2d 733, 738 (7th Cir. 1992); *United States v. Corral*, 339 F. Supp. 2d 781, 794 (W.D. Tex. 2004); *United States v. Whitfield*, 939 F.2d 1071, 1075 (D.C. Cir. 1991). Generally, ambiguity regarding a person's ability to consent triggers an officer's obligation to conduct further factual inquiry before relying on a grant of third party consent. *Kaspar v. City of Hobbs*, 90 F. Supp. 2d 1313, 1319 (D.N.M. 2000).

² Stark's presence is an important factor, but not determinative. On the one hand, her silence when Samaya consented to the entry by the officers could reasonably support an inference that she had no objection. On the other hand, she had just refused to come to the door.

In *Cos*, a woman took three young children to visit Cos's home while he was absent. An officer knocked on the door looking for Cos and the following conversation ensued:

[OFFICER]: Are you guys the only ones at home?

[WOMAN]: Yeah, me and my kids.

[OFFICER]: Is Jose here?

[WOMAN]: Jose, no.

[OFFICER]: Has he ever been here?

[WOMAN]: Like earlier today, yeah, but . . .

[OFFICER]: Can we take a look?

[WOMAN]: Yeah, go for it.

Cos, 498 F.3d at 1118.

Cos moved to suppress evidence obtained after the officer entered the house, arguing that the woman lacked apparent authority. The court held that the young woman did not have apparent authority to consent to the search of the house because the facts surrounding her authority were ambiguous and the officers should have made further inquiries before relying on her consent. *Cos*, 498 F.3d at 1131. The court noted that the officer did not have any information about whether Cos lived alone or with others and did not know who the woman was or her relationship to Cos. *Id.* at 1130. The court stated that the fact she told the officer she and her kids were the only ones "at home" did not resolve the ambiguity and, therefore the officer had a duty to inquire further before relying on her consent. *Id.* at 1130-31.

In this case, when Samaya opened the door to the officers' knock, one officer asked her "Did you just get home?" to which Samaya responded in the affirmative. As noted in *Cos*, simply responding that one is "at home" is not enough to unambiguously indicate the person has apparent authority to consent to the entry. Even if a person was a guest in another's house, they might respond affirmatively to a question regarding whether they just arrived home. In everyday speech home is often used synonymously with "here" or "house." In addition, the officers did not know Samaya's relationship to Stark nor did they have any information about whether Stark lived alone or with others. As noted by the district court, this is a close case, but we believe the officers were under a duty to make an affirmative inquiry into Samaya's authority to consent because the information known to the officer's about Samaya's identity and relationship to Stark were ambiguous. Therefore, we hold that the district court erred in affirming the denial of Stark's motion to suppress on this ground.

B. Exigent Circumstances and Probable Cause for Arrest

Stark next argues that there were no exigent circumstances in this case to justify the officers' warrantless entry. Warrants are generally required to search a person's home unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment. *Brigham City*, 547 U.S. at 403-04. The Fourth Amendment permits a reasonably-tailored warrantless entry into a residence upon coexistence of exigent circumstances and probable cause for a jailable offense. *State v. Robinson*, 144 Idaho 496, 502, 163 P.3d 1208, 1214 (Ct. App. 2007). The traditional exigencies that may justify a warrantless entry by law enforcement officers are pursuit of a fleeing felon, imminent risk of destruction of evidence, preventing of a suspect from escaping, or danger to the police or to other persons inside or outside the dwelling. *State v. Bunting*, 142 Idaho 908, 912, 136 P.3d 379, 383 (Ct. App. 2006). A warrantless search under this exception must be strictly circumscribed by the nature of the exigency that justifies the intrusion. *State v. Buterbaugh*, 138 Idaho 96, 99, 57 P.3d 807, 810 (Ct. App. 2002). The exigent circumstances exception does not apply where there is time to secure a warrant. *See Michigan v. Tyler*, 436 U.S. 499, 509 (1978); *State v. Worthington*, 138 Idaho 470, 472, 65 P.3d 211, 213 (Ct. App. 2002).

Stark argues there were no exigent circumstances in this case which provided a basis for the warrantless entry into her residence. In *Robinson*, a citizen observed Robinson driving erratically. The citizen called 911 to report Robinson's driving pattern and followed Robinson to her home. Shortly after Robinson entered her home, law enforcement arrived. At the officer's knock, Robinson's boyfriend opened the door. Robinson was visible inside the doorway. During a brief conversation with the police, Robinson admitted that she had just arrived from a bar where she had consumed alcohol. The police observed Robinson slurring her speech and noticed a strong odor of alcohol coming from her person. The police asked permission to enter the home, which Robinson refused. Eventually, the police officers arrested her. Robinson appealed from the district court's denial of her motion to suppress. On appeal, this Court held that dissipation of blood alcohol content constituted imminent destruction of evidence which provided a basis for a warrantless entry of the residence to arrest Robinson and thereby secure evidence of her blood alcohol content. *Robinson*, 144 Idaho at 501, 163 P.3d at 1213. In this case, Stark's blood alcohol content was also subject to dissipation. There was not sufficient time to obtain a search warrant because any delay would have provided an opportunity to Stark to

consume more alcohol or otherwise tamper with the validity of the evidence of her blood alcohol content. Therefore, we hold that there were exigent circumstances which provided a basis for the warrantless entry into Stark's residence to arrest her.

Stark also argues that the officers lacked probable cause for the entry into her residence. Probable cause is the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that a person they have placed under arrest is guilty of a crime. *See State v. Julian*, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996). Probable cause is not measured by the same level of proof required for conviction. *Id.* Rather, probable cause deals with the factual and practical considerations on which reasonable and prudent persons act. *Brinegar v. United States*, 338 U.S. 160, 175 (1949); *Julian*, 129 Idaho at 136, 922 P.2d at 1062. When reviewing an officer's actions, the court must judge the facts against an objective standard. *Julian*, 129 Idaho at 136, 922 P.2d at 1062. That is, would the facts available to the officer, at the moment of the seizure or search, warrant a reasonable person in holding the belief that the action taken was appropriate. *Id.* A probable cause analysis must allow room for mistakes on the part of the arresting officer but only the mistakes of a reasonable person acting on facts which sensibly led to his or her conclusions of probability. *State v. Kerley*, 134 Idaho 870, 874, 11 P.3d 489, 493 (Ct. App. 2000).

We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *DeWitt*, 145 Idaho at 711, 184 P.3d at 217. The magistrate found that Stark's speech and movements were slow and lethargic and her speech was slurred. The magistrate based its probable cause finding at least partially on these facts. As noted by the district court, there was not substantial and competent evidence in the record to support this finding. The magistrate's finding that Stark's movements were slow and lethargic was not supported at all by the evidence, and the only evidence concerning Stark's slurred speech referred to the time period after the officer's entry into the home had already occurred. Therefore, we hold there was not substantial and competent evidence in the record to support this finding of fact.

There was, however, sufficient additional evidence in the record to support the magistrate's finding that the officer had probable cause to enter Stark's home. Before the officers arrived at Stark's residence, they had evidence obtained from the citizen's observations

of Stark's driving pattern. They knew that Stark was driving without her headlights on, was swerving, crossed the center and fog lines multiple times, was speeding, and drove for some distance in the wrong lane of traffic. Upon questioning, Samaya confirmed that Stark had been driving the Jeep and that she had just arrived home. In addition, the officers observed Stark stumble, grab the back of a chair for balance, and then sit down abruptly. The totality of the circumstances was sufficient to create a well-founded belief that Stark was guilty of DUI. We hold there was probable cause for the officers' entry into Stark's residence and exigent circumstances existed which justified the entry. Therefore, the magistrate did not err in denying Stark's motion to suppress.

III.

CONCLUSION

We hold that the magistrate did not err in denying Stark's motion to suppress. Accordingly, we affirm the order of the district court, on intermediate appeal, affirming Stark's judgment of conviction for DUI.

Judge LANSING and Judge GUTIERREZ, **CONCUR.**