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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000463-MR

MONICA LEE CHENAULT — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 03-CR-01414

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: Monica Lee Chenault appeals from an order of the Fayette Circuit Court reflecting her conditional plea of guilty to one count each of first-degree possession of a controlled substance, third-degree possession of a controlled substance, and possession of drug paraphernalia, second or subsequent offense. Prior to pleading guilty, Chenault unsuccessfully moved to suppress the introduction of evidence discovered during a police search of her residence. She now appeals the order denying the motion to suppress. For the

reasons stated below, we affirm both the order denying the motion to suppress and the judgment reflecting the guilty plea.

On October 7, 2003, the Lexington Police Department received an anonymous tip that individuals located at an apartment on Campbell Street in Lexington, Kentucky, were involved in illegal drug activity. According to the record, it also was determined that an individual residing at the apartment had outstanding arrest warrants.

Officers were dispatched to the location and knocked on the apartment door. An individual named Julia Baltimore opened the door. Baltimore was not the apartment's renter. The officers told Baltimore why they were there, and Baltimore consented to allowing the officers to enter the apartment. Two other persons were present in the apartment. The first, Chris Lewis, provided identification. The second, Chenault, gave the officers a false name, social security number and birth date. Chenault's true identity subsequently was determined by reference to the identification contained in her wallet. She was placed under arrest for giving a false name to the police and for outstanding arrest warrants.

The police conducted a search incident to arrest and discovered one gram of crack cocaine, ten hydrocodone pills, two crack pipes and approximately $425 in cash and money orders.

The matter went before the Fayette County grand jury, which indicted Chenault on one count each of first and second-degree trafficking in a controlled substance, possession of drug paraphernalia, and giving a false name or address to a police officer.

On January 5, 2004, Chenault, through counsel, moved to suppress the evidence obtained during the search of her residence. As a basis for the motion, she argued that the search and seizure were unlawful because she never gave consent for the police to enter the apartment. She further maintained that the "knock and talk" procedure employed by the police constituted a violation of her constitutional right against unreasonable searches and seizures. After considering the parties' arguments, the Fayette Circuit Court rendered an order denying the motion to suppress. Chenault later plead conditionally guilty to one count each of first degree possession of a controlled substance, third degree possession of a controlled substance, and possession of drug paraphernalia, second or subsequent offense. This appeal followed.

Chenault now argues that the trial court erred in overruling her motion to suppress the evidence obtained during the search of her residence. She maintains that the search of the apartment violated the protection against unreasonable searches and seizures granted by the Fourth Amendment of the

United States Constitution and Section 10 of the Kentucky Constitution. Specifically, she argues that warrantless searches are per se unconstitutional and illegal unless one of the limited exceptions is found to exist, and that the Commonwealth failed to prove that Baltimore's consent to enter the apartment constituted such an exception. Chenault argues that Baltimore was not a resident of Chenault's apartment and did not have the authority to allow the police officers into the apartment. As such, she contends that since the police had no authority to be in the apartment, any evidence obtained as a result of their unlawful presence should have been excluded by order of the trial court. She seeks an order reversing the judgment.

We have closely examined Chenault's argument and find no error in the trial court's denial of her motion to suppress. As the parties are well aware, the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.[1] A warrantless search and seizure may pass constitutional muster, however, if it falls within one of the limited exceptions to the general rule against unreasonable

[1] See generally, Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 111L.Ed.2d 148 (1990).

searches and seizures.[2] Valid consent constitutes such an exception.[3]

Chenault contends that Baltimore did not possess the authority to authorize a search of Chenault's premises. We believe this argument is misplaced and not applicable to the facts at bar. The record indicates that the police did not come to Chenault's apartment for the purpose of conducting a search. Rather, they came to investigate an anonymous complaint by conducting a "knock and talk" procedure. As its name states, the procedure merely entails making contact with the person or persons in the dwelling and talking with them for investigative purposes.

In the matter at bar, when officers knocked on Chenault's door, Baltimore allowed them to enter. Once inside, they asked the three individuals who were present for identification and Chenault provided false information. No search was conducted until Chenault was under arrest.

We agree with Judge Overstreet's conclusion that the search of the premises was properly conducted as a search incident to Chenault's arrest. Chenault's argument on the issue of consent to search is misplaced because no search was undertaken at this time. Rather, only consent to enter the

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[2] Gallman v. Commonwealth, 578 S.W.2d 47 (Ky. 1979).
[3] Rodriguez, supra.

apartment was required, and this consent was given by Baltimore. We are aware of no legal authority supportive of the proposition that Baltimore's consent to enter (as opposed to consent to search) was somehow invalid or can form a basis for arguing that the Fourth Amendment was abrogated.

Arguendo, even if the police had sought Baltimore's consent to conduct a search, the law is well-established that a third-party's consent is valid if the police reasonably believe that the person has actual authority to authorize the search.[4] The police might reasonably believe that Baltimore had actual authority to consent to a search since she was the individual who opened the door when the police knocked, and because Chenault apparently remained mute as the officers entered. This approach to the issue is unnecessary, however, since the police never requested Baltimore's consent to search the premises. Again, we emphasize no search was conducted until after Chenault was arrested. No consent is required for a search incident to arrest.

Chenault also briefly argues that the "knock and talk" procedure violated her constitutional safeguards against unreasonable searches and seizures. She maintains that the procedure is merely a mechanism used to sidestep the Fourth Amendment's prohibition against unreasonable searches and

[4] Rodriguez, supra.

seizures, as it gives the police an opportunity to turn a mere investigation into a search without the benefit of a warrant. She argues that it is a further narrowing of her constitutional safeguards and forms a basis for finding that the circuit court erred in overruling her motion to suppress.

We are not persuaded by this argument. The sole, extra-jurisdictional case cited by Chenault found the procedure to be constitutional.[5] Similarly, the 7th Circuit Court of Appeals has held that as a general rule, the police do not need to suspect wrongdoing before they may initiate a consensual encounter with an individual by knocking on the door of a hotel room.[6]

Even absent these cases, we find nothing on the face of the "knock and talk" procedure leading us to believe that it is anything but a proper investigative tool. The police must be availed of the ability to employ reasonable investigative techniques with which to interact with both the general public and those under suspicion. We would be hard pressed to invent a more reasonable means of investigating alleged wrongdoing than determining if those under suspicion are willing to speak voluntarily with the police. Since the police in this matter

[5] People v. Frohriep, 637 N.W.2d 562 (Mich.App., 2001).

[6] United States v. Adeyeye, 359 F.3d 457 (7th Cir.2004).

were responding to a claim that illegal drug activity was occurring in Chenault's apartment, their use of the "knock and talk" procedure was completely proper. The circuit court correctly so ruled, and we find no error on this issue.

For the foregoing reasons, we affirm the order of the Fayette Circuit Court denying Chenault's motion to suppress. Since this ruling was the sole basis for attacking the criminal judgment, we affirm the judgment reflecting Chenault's conditional plea of guilty.

ALL CONCUR.

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