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IN THE
COURT OF APPEALS OF INDIANA

KERA BORGSCHULTE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A05-0705-CR-289
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Wayne A. Sturtevant, Judge
Cause No. 29D05-0601-CM-201

November 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kera Borgschulte appeals her conviction for Possession of Marijuana,[1] a class A misdemeanor, claiming that marijuana seized by the police officers was improperly admitted into evidence at trial. More specifically, Borgschulte maintains that the police officers' entry into an apartment where Borgschulte was visiting and the subsequent seizure of marijuana from her purse violated her rights under the Fourth Amendment to the United States Constitution. Concluding that the marijuana was properly admitted into evidence, we affirm the judgment of the trial court.

FACTS

On November 24, 2005, Fishers Police Officers Robert Thompson and Wayne Druelinger were dispatched to an apartment in Hamilton County after receiving a call regarding a possible domestic disturbance. When the officers arrived, they knocked on the door. Although there was no immediate response, the officers observed individuals inside the apartment. Approximately ten minutes later, Borgschulte—a visitor at the residence—opened the door. She appeared as if something was "wrong with her" like "she had been in an argument or had been sleeping." Tr. p. 45. After Borgschulte denied that there had been any domestic dispute, the officers asked if they could enter and make sure that "everyone was okay." Id. Borgschulte responded, "yes, come on in." Id. When they entered, the officers noticed a "bong"—a device normally associated with smoking marijuana—sitting on a living room table. Id. at 34, 45. Officer Thompson also noticed a woman's purse on the floor and

[1] Ind. Code § 35-48-4-11.

asked Borgschulte if it belonged to her. Borgschulte replied that the purse was hers and she told Officer Thompson that it was "fine" if he searched it because he wanted to verify her identity. Id. at 35. After discovering suspected marijuana in the purse, Borgschulte admitted to the officers that the drugs were hers. Subsequent laboratory testing revealed that the substance was, in fact, marijuana.

As a result of the incident, Borgschulte was arrested and charged with possession of marijuana. Thereafter, Borgschulte filed a motion to suppress, claiming that the seizure of the marijuana was improper under the Fourth Amendment to the United States Constitution because the officers "did not obtain proper consent from a person of authority to conduct the search of the property." Appellant's App. p. 8.

The trial court denied Borgschulte's motion to suppress, and a bench trial commenced on March 23, 2007. At trial, Borgschulte testified that she and her friend, Michael Crabtree, went to the residence to visit their friend, Jessica,[2] who lived in the apartment. When Borgschulte and Crabtree arrived, Jessica let them in and explained that she was getting ready to leave. Jessica asked Borgschulte to stay at the apartment "and wait for [Jessica's] boyfriend to call." Tr. p. 65. Borgschulte maintained that they had been at the residence for approximately thirty minutes before the police officers arrived.

Following the presentation of evidence, Borgschulte was found guilty as charged and was sentenced to 365 days in jail, all suspended to probation. Borgschulte was also given

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[2] Jessica's last name is not apparent from the record.

credit for four days that she served in jail. She now appeals.

DISCUSSION AND DECISION

In addressing Borgschulte's contention that the trial court erred in admitting the marijuana into evidence, we initially observe that to preserve a claim of error regarding the admission or exclusion of evidence, the defendant must state an objection together with the specific ground or grounds therefore at the time the evidence is first offered at trial. Mullins v. State, 646 N.E.2d 40, 44 (Ind. 1995). A defendant's failure to do so results in waiver of the issue on appeal. Id. Moreover, our Supreme Court has determined that when the trial court denies a motion to suppress evidence, the moving party must renew the objection to the admission of the evidence at trial. Wright v. State, 593 N.E.2d 1192, 1194 (Ind. 1992). If the moving party fails to object, the error is waived. Id.

At trial, Borgschulte did not challenge the constitutionality of the officers' entry into the apartment, the search of her purse, or the admission of the marijuana into evidence. Borgschulte's only objection at trial regarding the marijuana was that the "the chain of custody [had not] been met." Tr. p. 61. Hence, Borgschulte has failed to preserve the alleged error and it is waived. Mullins, 646 N.E.2d at 44.

Waiver notwithstanding, we note that the Fourth Amendment to the United States Constitution generally prohibits warrantless searches. Edwards v. State, 762 N.E.2d 128, 132 (Ind. Ct. App. 2002). The purpose of the Fourth Amendment is to protect the privacy and possessory interests of individuals by prohibiting unreasonable searches and seizures. Barfield v. State, 776 N.E.2d 404, 406 (Ind. Ct. App. 2002). If a warrantless search is

conducted, the burden is on the State to prove that, at the time of the search, an exception to the warrant requirement existed. Id. Searches conducted without a warrant are per se unreasonable, subject to a few well-delineated exceptions. Johnson v. State, 766 N.E.2d 426, 432 (Ind. Ct. App. 2002).

One exception to the warrant requirement occurs when consent is given to the search. Sellmer v. State, 842 N.E.2d 358, 362 (Ind. 2006). A valid consent to search may be given by the person whose property is to be searched or by a third party who has common authority or an adequate relationship to the premises to be searched. Norris v. State, 732 N.E.2d 186, 188 (Ind. Ct. App. 2000). A third party may consent to the search of the premises or property of another if actual authority exists. United States v. Matlock, 415 U.S. 164, 171 (1974).

We note that establishing actual authority requires a showing that there is a sufficient relationship to or mutual use of the property by persons generally having joint access or control for most purposes. However, if actual authority cannot be shown, then facts demonstrating that the consenting party had apparent authority to consent could prove a lawful search. Krise v. State, 746 N.E.2d 957, 967 (Ind. 2001). Under the apparent authority doctrine, a search is lawful if the facts available to the officer at the time would warrant a man of reasonable caution to believe that the consenting party had authority over the property. Id.

Here, Borgschulte maintains that the officers' initial entry into the apartment was invalid because she was only a "social guest" at the residence. Appellant's Br. p. 8. Thus, Borgschulte claims that she lacked the authority to allow the officers inside the apartment.

However, as noted above, the undisputed evidence established that Jessica invited Borgschulte and Crabtree into her apartment. Tr. p. 64. After explaining to them that she had to leave, Jessica specifically asked them to stay at the apartment and "wait for her boyfriend to call." Id. at 65. Hence, although Jessica left the premises, it is apparent that Bogschulte shared some authority over the apartment when the officers arrived because Jessica had asked her to stay there. Moreover, the record is devoid of any evidence suggesting that Borgschulte limited the officers' access to particular areas of the residence or that Jessica had forbidden them from allowing others to enter. Thus, Borgschulte's claim that the marijuana should have been excluded because she lacked the authority to allow the police officers to enter the apartment fails.

Notwithstanding this conclusion, Borgschulte also maintains that the marijuana should have been excluded because there was "a greater intrusion into her privacy than she had authorized" when the police officers searched her purse. Appellant's Br. p. 12. However, the evidence showed that Borgschulte admitted to the officers that the purse belonged to her. Tr. p. 35-36, 60. As noted above, Borgschulte indicated that it was "fine" for the officers to search the purse. Id. at 35. There is not a shred of evidence suggesting that Borgschulte acted under duress or was coerced into consenting to the search. Thus, we conclude that the officers' entry into the apartment and the subsequent search of Borgschulte's purse was proper. As a result, the trial court did not err in admitting the marijuana into evidence.

The judgment of the trial court is affirmed.

MAY, J., and CRONE, J., concur.