

[Cite as *State v. Stuckey*, 2003-Ohio-3177.]

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NO. 13-03-08

v.

JOSEPH S. STUCKY

OPINION

DEFENDANT-APPELLANT

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NO. 13-03-09

v.

JOSEPH S. STUCKY

OPINION

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Municipal Court

JUDGMENT: Judgment Affirmed

DATE OF JUDGMENT ENTRY: June 17, 2003

ATTORNEYS:

**UPENDRA K. PATEL
Attorney at Law
Reg. #0065809
125 South Main Street, Suite 301
Fostoria, Ohio 44830
For Appellant**

RICHARD H. PALAU
Tiffin Municipal Prosecutor's Office
Reg. #0040326
51 East Market Street
Tiffin, Ohio 44883
For Appellee

SHAW, J.,

{1} This is a consolidated appeal from the judgment of the Tiffin Municipal Court which denied Defendant-appellant, Joseph S. Stuckey's ("Stuckey") motion to suppress evidence in two related cases.

{2} On October 5, 2002, Stuckey filed a report with the Tiffin Police Department stating that his home had been burglarized. Subsequently, Sergeant Russell ("Russell"), Officer Bour, and Officer Decker ("Decker") were dispatched to Stuckey's home to process (investigate) the crime scene. When the officers arrived, Stuckey identified a possible point of entry and took the officers through the home, pointing out the items that were disturbed in the living room, kitchen and back bathroom. Stuckey did not limit the officer's investigation to those three rooms; however, the officers investigated only those rooms listed by Stuckey. To aid in the investigation, the officers took photographs and Russell dusted various items for fingerprints including a dresser in the back bathroom. While fingerprinting the dresser, Russell opened the top drawer of the dresser and observed "rolling papers, a pipe, and different item that were recognizable to [him]"

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as drug paraphernalia.” These items were seized by the officers who cited Stuckey for “knowingly obtaining, possessing or using a controlled substance” pursuant to R.C. 2925.11(A). On October 16, 2002, another complaint was filed by the State against Stuckey for “knowingly using or possessing with purpose to use drug paraphernalia” pursuant to R.C. 2925.14(C)(1). Stuckey filed a motion to suppress the evidence confiscated from his home.

{3} On November 21, 2002, a hearing was held wherein Russell and Decker were the only witnesses. Subsequently, Stuckey’s motion to suppress was denied. Thereafter, Stuckey plead no contest to both charges and was sentenced. Stuckey now appeals the denial of his suppression motion asserting the two assignments of error.

First Assignment of Error

The trial court erred in denying Appellant’s motion to suppress the physical evidence seized from the Appellant’s home.

{4} “Upon an appellate court’s review of a trial court’s ruling on a motion to suppress, the appellate court will affirm the trial court’s findings of facts, if supported by competent and credible evidence.” *State v. Mason* (Sept. 29, 1994), Union App. No. 14-94-14. “However, an appellate court will make an independent determination of the law as applied to the facts.” *Id.*

{5} The Fourth Amendment to the United States Constitution protects citizens against unreasonable searches and seizures. *State v. Kinney*, 83 Ohio St.3d

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85, 1998-Ohio-425. Traditionally, warrantless searches and seizures are *per se* unconstitutional unless supported by one of the well-established exceptions to the warrant requirement. *State v. Kessler* (1978), 53 Ohio St.2d 204, 207. Two of these exceptions include obtaining consent signifying waiver of constitutional rights and the plain-view doctrine. *State v. Penn* (1991), 61 Ohio St.3d 720, 723-24.

{6} It is well settled that consent as a waiver of Fourth Amendment protections is only valid if given voluntarily and if the person consenting has some form of authority over the relevant location. See *State v. Sneed* (1992), 63 Ohio St.3d 3, 7, certiorari denied, 507 U.S. 983. To show the voluntariness of consent to search, the state need only show that consent was a product of free choice under a totality of the circumstances test. *Schneckloth v. Bustamonte* (1973), 412 U.S. 218, 248-249. Furthermore, implied consent is sufficient to permit the entry of a police officer into a place without a warrant, and, after such an entry, the plain-view doctrine will apply. *LoomLodge 1473 Celina v. Ohio Liquor Control Comm.* (May 25, 1994), Mercer App. No. 10-94-7, at *2.

{7} First, Stuckey argues that he did not give his consent to allow the officers to enter and search his home. We disagree. While Stuckey denies in his appellate brief that he gave the officers consent, Stuckey did not testify at the suppression hearing and one of the officers testified that Stuckey contacted the

Tiffin Police Department to file the burglary report and stated “yes” when asked if he wanted the officers to come to his house to process the scene. While it does not appear that the officers asked specifically whether they could gather evidence from the inside of the home, voluntary consent was clearly implied under the totality of the circumstances, as Stuckey requested that the Officers come to his home and then accompanied them into his home, directing the officers to the rooms which had been disturbed. Consequently, there was competent credible evidence that Stuckey consented to the officers’ entry and investigation of the crime scene.

{8} Next, Stuckey argues that that even if his consent to the initial entry was given, the officers exceeded the scope of that consent when they opened the top dresser drawer in the bathroom. Again, we disagree. Both officers stated that Stuckey directed them to the back bathroom to investigate a disturbance with some open suitcases. Russell also testified that the intruder probably leaned on the dresser and that he had to open the top drawer of the dresser in order to effectively lift fingerprints from the dresser. Furthermore, there is no evidence that Stuckey withdrew his consent at any time, in fact, after the drug paraphernalia was found, Stuckey allowed the officers to continue investigating. Consequently, there was competent credible evidence that opening the drawer of the dresser in order to lift fingerprints was within the scope of the implied consent given by Stuckey to

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investigate the burglary that occurred at his home. As such, Stuckey's first assignment of error is overruled.

Second Assignment of Error

The trial court erred in denying Appellant's motion to suppress because the physical evidence seized from Appellant's home falls outside of the plain view doctrine.

{9} In *Horton v. California* (1990), 496 U.S. 128, 136-37, the Supreme Court recognized a three-part test for determining whether an officer may seize evidence that lies in plain view. An officer may seize such evidence if (1) the initial intrusion leading to the item's discovery was lawful (2) if it was 'immediately apparent' that the item was incriminating, and (3) if the officer had lawful access to the evidence.

{10} In this case, Stuckey argues that the plain view doctrine was not applicable in this situation because the search of his home was unlawful. However, as we have determined that the officers' investigation of the home was lawful, Stuckey's second assignment of error is also overruled.

{11} Based on the foregoing, the judgment of the trial court is affirmed.

Judgment affirmed.

BRYANT, P.J. and CUPP, J., concur.