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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A134990

v.

**(Napa County
Super. Ct. No. CR159820)**

JACQUELINE GELOW,

Defendant and Appellant.

_____ /

The trial court denied appellant Jacqueline Gelow’s motion to suppress and she pleaded guilty to possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a).) Appellant contends the court erred by denying her motion to suppress because her mother did not have authority to consent to a search of the bedroom she occupied in her mother’s house.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2011, appellant lived in a bedroom in her mother Lori Gelow’s (Gelow) house. Appellant did not pay rent. Gelow had full access to appellant’s bedroom and had searched it on at least one occasion. On December 6, 2011, Gelow suspected appellant was using drugs, because appellant spent long periods of time in the bathroom and had an “altered” emotional state. Gelow went into appellant’s bedroom

and looked in appellant's purse to "see if [she] could find" drugs. Gelow found a makeup bag inside the purse and unzipped it. Inside the makeup bag, Gelow found 19 "needles and some drug paraphernalia, and drugs." She took the syringes out of the bag to look at them. Not wanting to find her daughter "in the bathroom dead" and not knowing what else to do, Gelow called the police.

Napa County Sheriff's Deputy Russell Fitzpatrick went to Gelow's house on December 6, 2011. When he arrived, appellant was sleeping on the living room couch in the front of the house. Gelow told Deputy Fitzgerald she found drugs in appellant's room and took him there. When he entered the bedroom, Deputy Fitzgerald saw a "small purse at the foot of the bed. The purse was open and there were some syringes . . . next to the purse."¹ Fitzgerald testified syringes are typically used to inject drugs intravenously. Gelow told Deputy Fitzpatrick the purse belonged to her daughter; he asked Gelow whether she had "permission to look through her daughter's personal items" and she said "she did." Deputy Fitzpatrick looked inside the open purse and saw "a cellophane wrapper that contained a hard object" he determined was heroin. Deputy Fitzgerald also found a cord used as a tourniquet.

Appellant moved to suppress. Following a hearing, the court denied the motion, concluding the search was lawful because Gelow "had authority to allow the officer into the bedroom. . . . And then once . . . the officer was in there[,] there [were] needles in plain view[.]" Seeing the needles "allowed the officer to seize [them]" and to search the purse.

Appellant pleaded guilty to possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and the court placed her on drug diversion (Pen. Code, § 1000).

DISCUSSION

"In reviewing a ruling on a motion to suppress, we defer to the trial court's factual findings when supported by substantial evidence, but we exercise our independent judgment in determining whether, on the facts so found, the search was lawful.

¹ Deputy Fitzgerald initially testified the syringes were next to the purse. He also testified that before he touched the purse, he could also see a silver spoon.

[Citation.] A warrantless search is presumed to be unreasonable, and the prosecution bears the burden of demonstrating a legal justification for the search. [Citation.]” (*In re D.C.* (2010) 188 Cal.App.4th 978, 982 (*D.C.*).

Gelow Had the Authority to Consent to a Search of Appellant’s Bedroom

Appellant contends the court erred by concluding Deputy Fitzpatrick “had authority to empty and inspect the contents of the purse.” She concedes her mother “was authorized to invite the police into her home” but claims Gelow’s “right of consent did not extend to permitting them entrance into [her] designated bedroom or allowing them to rummage through [her] personal belongings.” Appellant is wrong.

“Consent has long been recognized as excusing the requirement of a search warrant. ‘The Fourth Amendment generally prohibits the warrantless entry of a person’s home, whether to make an arrest or to search for specific objects. [Citations.] The prohibition does not apply, however, to situations in which voluntary consent has been obtained, either from the individual whose property is searched, [citation], or from a third party who possesses common authority over the premises’ [Citations.] . . . [C]onsent to a search given by a single resident of a residence occupied by several persons ‘is valid as against [an] absent, nonconsenting person’ so long as the consenting resident ‘possesses common authority over [the] premises’ with the absent resident. [Citation.] ‘Common authority’ [rests] . . . on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.’” (*D.C., supra*, 188 Cal.App.4th at p. 983, quoting *United States v. Matlock* (1974) 415 U.S. 164, 171, fn. 7.) “In addition, officers may rely on the consent of a person who they ‘reasonably and in good faith believe[] . . . ha[s] the authority to consent’ to a particular search.” (*D.C., supra*, 188 Cal.App.4th at p. 983, quoting *People v. Ledesma* (2006) 39 Cal.4th 641, 703.) Such apparent authority to consent exists if “the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the

premises.” (*D.C., supra*, 188 Cal.App.4th at p. 983, quoting *Illinois v. Rodriguez* (1990) 497 U.S. 177, 188.)

“[O]utside the parent-child context . . . adults sharing a residence but maintaining separate bedrooms do not have the apparent authority to consent to the search of one another’s bedrooms, at least when officers have no other information about their living arrangements.” (*D.C., supra*, 188 Cal.App.4th at p. 983.) “California courts, however, have come to a different conclusion when an adult child maintains a bedroom in the home of his or her parents.” (*Id.* at p. 984.) As a general rule, a search of an adult child’s bedroom in a parent’s home with the parent’s consent is reasonable “absent circumstances establishing [the adult child] has been given exclusive control over the bedroom.” (*People v. Daniels* (1971) 16 Cal.App.3d 36, 43; see also *People v. Oldham* (2000) 81 Cal.App.4th 1, 10 [father’s consent to search son’s room valid because “there was nothing to show [the son] had exclusive control over the bedroom he used or its contents;” father had “superior control” over his son in relation to the residence because he could exclude son from the apartment].)

Here, Gelow had the authority to consent to a search of appellant’s bedroom. Appellant lived in Gelow’s residence without paying rent. As she testified at the hearing on the motion to suppress, Gelow had full access to her daughter’s room and had searched it on at least one prior occasion. There is no evidence demonstrating appellant had exclusive control over the bedroom she used. That appellant was “permitted to use a particular bedroom . . . does not confer upon [her] exclusive control” of that bedroom. Appellant’s “occupancy [was] subservient to the control of [her] parents. [Citations.] [She] may be excluded from the premises by them at any time. [Citation.] They may enter and search the room at will, or may authorize others to make such a search. [Citations.]” (*Daniels, supra*, 16 Cal.App.3d at p. 44.) We conclude Gelow had the authority to permit Deputy Fitzgerald to enter appellant’s bedroom.² We also conclude

² Appellant claims “*Daniels* is a bizarre case and should not be followed” and refers to it as “dated and poorly supported.” We are not persuaded. *Daniels* has been cited with approval in numerous cases, most recently in *D.C., supra*, 188 Cal.App.4th at p. 984, a

Fitzgerald properly relied on Gelow, whom he reasonably in good faith believed had the authority to consent to the search of the bedroom. (*D.C.*, *supra*, 188 Cal.App.4th at p. 983.) Fitzgerald asked Gelow whether she “[had] permission to look through her daughter’s personal items” and she said “she did.”

The Contraband Was in Plain View

Once legally inside appellant’s bedroom, Deputy Fitzgerald observed the contraband in plain view. “It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.” (*Harris v. United States* (1968) 390 U.S. 234, 236.) Appellant does not demonstrate otherwise.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.

2010 case.) The cases upon which appellant relies are unavailing. This is not a situation where appellant “personally objected to the search under circumstances which would have supported a conclusion [she] was in exclusive possession” of the bedroom.” (*Daniels, supra*, 16 Cal.App.3d at p. 44.)