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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re J.M., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

F064449

(Super. Ct. Nos. JW118055-00,
JW118055-01, JW18055-02)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Juvenile Court Referee.

Kendall Dawson Wasley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and Peter H. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Levy, Acting P.J., Cornell, J. and Franson, J.

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J.M. appeals from a dispositional order of probation upon his admission of one count of second degree burglary (Pen. Code, § 460, subd. (b)). He contends the juvenile court erred in denying his motion to suppress evidence because an adult counselor at the group home where he lived did not have actual or apparent authority to consent to a search of his bedroom and shoes. He also contends his subsequent confession should have been suppressed as “fruit of the poisonous tree.” We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The evidence at the suppression hearing showed the following: On November 16, 2011, at 3:08 a.m., Kern County Deputy Sheriff Robert Contreras was dispatched to investigate a report of vehicle vandalism at the Famoso Nut Company on Famoso Road in McFarland. Two employees reported to Deputy Contreras that their vehicles had been broken into.

After examining the damaged vehicles, Deputy Contreras found shoeprints in the dirt near where the vehicles were parked. The deputy took photographs of the shoeprints on a digital camera and then drove to Casa de Niños, a nearby group home for boys. Deputy Contreras explained that he went to the group home because he knew several boys living there were habitual runaways, who previously had committed crimes in the immediate vicinity of the home.

When Deputy Contreras knocked on the front door of the group home, it was answered by group counselor Jesse Celedon. Deputy Contreras knew Celedon from having taken numerous reports from him in the past concerning boys leaving the home without permission. Deputy Contreras told Celedon he was investigating a burglary which occurred down the street and asked if any of the boys had gone out that night. Celedon reported that J.M. and another boy left the group home around 12:30 a.m. and did not return until after 3:00 a.m.

Deputy Contreras asked Celedon if he could check the two boys' shoes to see if they matched the shoe tracks left at the scene. Celedon said he could and walked the deputy to J.M.'s bedroom first. Deputy Contreras recalled that the bedroom door was open. J.M., who was lying on top of the covers in his street clothes, appeared to be pretending to sleep. There were three pairs of shoes on the floor next to J.M.'s bed. Deputy Contreras turned the shoes over and checked the soles. The deputy did not speak to J.M. at this time. He estimated he was in J.M.'s bedroom for about five minutes before he went to the other boy's room to check his shoes.

Based on his observations of the shoes next to the boys' beds, Deputy Contreras thought each boy had a pair of shoes similar to the shoe tracks he had observed in the dirt by the Famoso Nut Company. He told Celedon he was going to return to the business and look at the shoe tracks again and would return if they matched the boys' shoes.

After looking at the shoe tracks again and determining they matched the boys' shoes, Deputy Contreras returned to the group home for the purpose of interviewing the boys to see if they would confess to the crime. He knocked on the door and Celedon again answered. After explaining to Celedon why he had returned, Deputy Contreras went to J.M.'s room. J.M. was still lying on his bed in his street clothes and did not appear to be sleeping. Deputy Contreras had J.M. walk to the dining room table. After the deputy read J.M. his *Miranda*¹ rights, J.M. agreed to speak with the deputy and made a confession.

The parties stipulated that, if J.M. was called as a witness, he would testify that he shut his bedroom door before he went to bed.

In denying J.M.'s motion to suppress the shoe evidence and his confession, the juvenile court stated:

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

“Well, I have to say that if I saw Deputy Contreras in my bedroom in the middle of the night, I would certainly be shocked by his appearance. The question, of course, here is the fact this young man is residing in a group home and not his own home. He is residing in a facility where he shares a bedroom apparently with someone else. He has access to his room. The other individual has access to his room and the staff has access to his room. His reasonable expectation of privacy, therefore, is much more limited than that of someone in their private home and in their own bedroom. At least according to the testimony of the officer, the room was opened, the door was open at the time he went to the room. The shoes were in plain sight within the room. They were not in a closet. They were not in a set of drawers; they were not in a locked toolbox or closed toolbox or any other type of closed container. Under the circumstances, it appears that entry was consensual, consent given by the group home staff; intrusion at that point by, at that point by the deputy, was a[s] minimal as possible in the situation. [¶] Based on my understanding of the facts and making these distinctions, the Court denies [defense counsel’s] request to suppress the evidence. [¶] As far as the observations of the officer and again, the Court also denies that request in regard to the statements given after the *Miranda* warnings issued.”

DISCUSSION

“In reviewing the trial court’s denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court’s ruling, deferring to those express or implied findings of fact supported by substantial evidence. [Citations.] We independently review the trial court’s application of the law to the facts. [Citation.]” (*People v. Jenkins* (2000) 22 Cal.4th 900, 969 (*Jenkins*).)

As our Supreme Court explained in *Jenkins*, “The Fourth Amendment protects an individual’s reasonable expectation of privacy against unreasonable intrusion on the part of the government. A warrant is required unless certain exceptions apply, including the exception that permits consensual searches. [Citations.] [¶] ... A warrantless search may be reasonable not only if the defendant consents to the search, but also if a person other than the defendant with authority over the premises voluntarily consents to the search. [Citations.]” (*Jenkins, supra*, 22 Cal.4th at pp. 971-972.) “[T]he consent of a third party may be valid if that party ‘possessed common authority over or other

sufficient relationship to the premises or effects sought to be inspected.’ [Citations.]” (*Id.* at p. 977.) “[Common] authority ... rests ... on mutual use of the property by persons generally having joint access or control for most purposes” (*United States v. Matlock* (1974) 415 U.S. 164, 171, fn. 7.)

Since reasonableness is the touchstone of the Fourth Amendment, it is not necessary for the state to prove the person consenting to the search had actual authority to do so. (*Jenkins, supra*, 22 Cal.4th at p. 972.) The state may carry its burden of demonstrating the reasonableness of a warrantless search by showing “it was objectively reasonable for the searching officer to believe that the person giving consent had authority to do so, and to believe that the scope of the consent given encompassed the item searched. [Citations.]” (*Id.* at p. 974.) In other words, actual or apparent authority will suffice: “The Fourth Amendment recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, authority over the area in common with a co-occupant who later objects to the use of evidence so obtained. [Citations.]” (*Georgia v. Randolph* (2006) 547 U.S. 103, 106.)

We conclude that it was objectively reasonable for Deputy Contreras to believe Celedon had authority to consent to a search of J.M.’s bedroom and shoes. We therefore uphold the juvenile court’s ruling on the consent issue. Celedon, an adult counselor, answered the door of the group home for boys in the middle of the night. He had knowledge that J.M. and another boy absconded from the home that night and he had access to the boys’ bedrooms. Even though Deputy Contreras did not question Celedon about his specific duties at the group home and whether he had actual authority to consent to the search of J.M.’s bedroom and his shoes, the facts available to Deputy Contreras clearly indicated that Celedon occupied a position of responsibility towards J.M. and were sufficient to establish the counselor had apparent authority to consent to the search at issue. Because we conclude the search in this case was lawful, we reject

J.M.'s argument that his confession should have been suppressed because it was a tainted product of an unlawful search.

In so concluding, we reject J.M.'s assertion that even if Celedon had apparent authority to consent to the search of his bedroom, that authority did not extend to the shoes lying next to his bed. “[T]he scope of consent usually is defined by the expressed object of the search. [Citation.]” (*Jenkins, supra*, 22 Cal.4th at p. 974.) And when the consenting party gives general consent to search an area, the police may usually look in any location within that area where the object of the search may be located.” (*Id.* at pp. 974-975.) None of these principles were violated here. The record shows that when Deputy Contreras asked Celedon if he could check J.M.'s shoes, the counselor agreed and took the deputy into J.M.'s bedroom and pointed out his bed. The shoes—the object of the search—were lying right next to the bed. Celedon's apparent authority to consent to the search of the bedroom clearly encompassed the expressed object of the search and we reject J.M.'s assertions to the contrary.

In challenging the juvenile court's ruling, J.M. also emphasizes the lack of evidence supporting the court's statement that J.M. apparently shared his room with someone else. Although Deputy Contreras could not recall whether there was another person besides J.M. occupying the room at the time of the search, he did confirm that, in his report, he wrote “Celedon escorted me to [J.M.]'s bedroom first and pointed out to me *which bed* he was in.” (Italics added.) This sentence in the deputy's report indicates there was more than one bed in the room, and supports a reasonable inference the room was not set up for a single occupant. Thus, the court's statement about J.M. “apparently” sharing the room with someone else was not completely lacking in evidentiary support like appellant suggests on appeal. In any event, whether or not this particular statement by the court was accurate, the other evidence discussed above showed Celedon had apparent authority to consent to the search and thus the record supports the court's finding that the search was consensual.

DISPOSITION

The judgment (order of probation) is affirmed.