County Criminal Court: CRIMINAL LAW—Search and Seizure—Evidence. The trial court properly denied the motion to suppress, finding the officers' reliance on the consent to a search of the premises was reasonable. Affirmed. *Ronnie Young v. State of Florida,* No. 14-CF-2319-WS (Fla. 6th Cir. App. Ct. April 10, 2015).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

RONNIE YOUNG,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

UCN: 512014CF002319A000WS
Appeal No: CRC1402319CFAWS
L.T. No: 13-2899-MM-WS

On appeal from County Court,

Honorable Anne Wansboro,

Thomas M. McLaughlin, Esq.,
for Appellant,

Andrew McCain, Esq.,
Office of the State Attorney,
for Appellee.

ORDER AND OPINION

We find the trial court properly denied Appellant's motion to suppress evidence obtained as the result of a warrantless search of Appellant's bedroom, consented to by Appellant's mother when Appellant was not present in the home and the contraband was plainly visible in Appellant's bedroom. Affirmed.

STATEMENT OF THE CASE AND FACTS

Officers arrived at Appellant's residence during a probation residence check. Appellant's mother allowed officers inside the home and into Appellant's bedroom while

Appellant was not present. One officer testified she spoke with Appellant on the phone while at the house, that Appellant stated he was in Clearwater and could not get back to the house, but there was no discussion of whether Appellant would consent to a search of his bedroom, because the officers claimed at that time they had no intention of conducting a search. At some point Appellant's mother opened the door to Appellant's room and an officer observed a substance later confirmed to be marijuana in plain view on Appellant's night stand, which the officers seized.

The State charged Appellant with violation of probation. Appellant filed a Motion to Suppress the contraband, alleging the warrantless search conducted by law enforcement was illegal and any evidence obtained as a result of the search must be suppressed. At the hearing, two officers who conducted the search of Appellant's home testified, as well as Appellant. The second officer testified that he did not enter the home until after the other officer stated there may be contraband in the home. The trial court, relying on *Moore v. State*, 830 So. 2d 883 (Fla. 2d DCA 2002), and *U.S. v. Matlock*, 415 U.S. 164 (1974), denied the motion to suppress, finding the officer's testimony demonstrated Appellant's mother reasonably appeared to be the present possessor of the home, and the officers reasonably believed Appellant's mother had authority to consent to a search of the main area of the home. The court further found Appellant's mother initiated entrance into Appellant's bedroom without being asked to do so, which provided objective indicators that she had authority to consent to a search of the room. The officer testified that a search would not have occurred if Appellant's mother had not invited the officers into the home and into Appellant's bedroom. The court found consent was voluntarily given, and the officers' belief that Appellant's mother had authority to consent was reasonable based on the totality of the circumstances. Appellant entered a plea of no contest to the charges, reserving the right to appeal the denial of the motion to suppress.

STANDARD OF REVIEW

"Appellate review of a motion to suppress involves questions of both law and fact." *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). We review the trial court's application of the law to the facts of the case pursuant to a de novo

standard. *Id*; *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Petion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). Findings of fact by the trial court are reviewed for "clear error," and we will give deference to inferences drawn from those facts by the trial court and law enforcement officers. *Ornelas*, 517 U.S. at 699. *See Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002).

LAW AND ANALYSIS

Appellant contends it was error to deny the motion because State failed to prove the officers were reasonable in the belief that Appellant's mother had the authority to consent to a search of Appellant's room. Appellant lives in his mother's home, but Appellant's bedroom is separated from the home by a glass sliding door, and is similar to an enclosed back porch. Appellant maintains the evidence does not support a reasonable belief that Appellant's mother had common authority over and mutual use of the bedroom. *See Kelly v. State*, 77 So. 3d 818 (Fla. 4th DCA 2012). Although Appellant's mother had the authority to consent to a search of the general premises, it does not follow that she had authority to consent to a search of Appellant's bedroom. *See Ward v. State*, 88 So. 3d 419 (Fla. 4th DCA 2012); *Marganet v. State*, 927 So. 2d 52, 58 (Fla. 5th DCA 2006).

Although warrantless searches of a person's home are generally barred by the Fourth Amendment, there is an exception when "voluntary consent has been obtained from the person whose property is searched, or from a third person who possesses common authority over the premises being searched." *Moore*, 830 So. 2d at 885 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Matlock*, 415 U.S. at 171). The search may also be validated when police reasonably rely on consent given by one who appears to possess "common authority over the premises," but in fact does not. *Id.* (citing *Illinois v. Rodriguez*, 497 U.S. 177 (1990)). The question is an objective one which asks whether "the facts available to the officer at the moment" would "warrant a man of reasonable caution in the belief that the consenting party had authority over the premises." *Id*.

When a co-occupant is physically absent from the residence, "the lawful occupant of a house or apartment should have the right to invite the police to enter the dwelling and conduct a search," even if the co-occupant had previously refused consent to a search. *Fernandez v. California*, 571 U.S. --, 134 S. Ct. 1126 (Feb. 25, 2014). Appellant contends that in this case there is no evidence Appellant's mother had mutual or common usage of Appellant's bedroom that would provide actual or apparent authority to consent to a search of that specific room. Therefore any evidence obtained as a result of the search must be suppressed. *See Hollinger v. State*, 620 So. 2d 1242 (Fla. 1993); *State v. Anderson*, 591 So. 2d 611 (Fla. 1991).

State contends the consent to search the premises of the house, including Appellant's bedroom, was voluntary given, and that Appellant's mother had apparent authority, if not actual authority, to consent to the search. The facts apparent to the officers at the time of the search would lead a reasonable person to believe the individual had authority to consent to a search of the area. *See Moore*, 830 So. 2d at 885. We find no error with the trial court's denial of the motion to suppress.

The record supports a reasonable belief Appellant's mother possessed authority to consent to the search. *See Flanagan v. State*, 440 So. 2d 13 (Fla. 1st DCA 1983). One of the officers testified the mother identified the home as belonging to her and invited the officers inside. The testimony was that the mother identified the bedroom as Appellant's and then opened the bedroom door, or that these events occurred simultaneously, and that the door was unlocked and officers made no indication they wished to search the room prior to Appellant's mother voluntarily opening the door, at which point the marijuana could be viewed in plain sight on a table near the door. Although Appellant's mother never expressly stated she had authority to consent to a search of Appellant's room, consent was reasonably inferred from her behavior, and no evidence was presented to rebut this inference. There was no evidence available to the officers at the time to suggest Appellant's mother lacked common control over the area or otherwise lacked authority to consent to a search of the room. *See Preston v. State*, 444 So. 2d 939, 943 (Fla. 1984); *Hernandez v. State*, 80 So. 3d 416, 419-20 (Fla. 4th DCA 2012). The officers in this case were not required to make additional inquiries as to

specific authority to consent to a search of the room, and cases cited by Appellant for this contention are distinguishable.[1] *See Kelly v. State*, 77 So. 3d 818, 824-26 (Fla. 4th DCA 2012) (noting the distinction between authority to consent to a search of the premises and to the search of a container located on the premises).

CONCLUSION

The trial court properly found the officers reasonably relied on the authority to consent to the search of the room. The motion to suppress was properly denied and the trial court is hereby affirmed.

It is ORDERED AND ADJUDGED that the order of the trial court is AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 10th day of April, 2015.

Original order entered on April 10, 2015, by Circuit Judges Daniel D. Diskey, Linda Babb and Shawn Crane.

[1] *See Marganet*, 927 So. 2d at 56, 58 (distinguishing between authority to consent to search of a room and consent to search a suitcase and shaving kit clearly belonging to the defendant, and over which the consenter had no common authority or access; therefore officers were required to "make inquiries sufficient to establish that the person consenting to the search has both common control over the property and mutual use of it").