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

STATE OF FLORIDA,
Appellant,

v.

RICKY WINFRED REDDEN,
Appellee.
_____/

UCN: 512020AP000003APAXWS
Appeal No.: 20-AP-3
L.T. Case No.: 19-MM-4881

On appeal from Pasco County Court,
Honorable Debra Roberts

Jennifer Counts,
Assistant State Attorney
for Appellant,

Kari Jorma Myllynen, Esq.,
for Appellee.

ORDER AND OPINION

Because the trial court erred by granting Appellee's hearsay objection and the error was not harmless, the trial court's order granting Appellee's motion to suppress must be reversed and the case remanded for a new suppression hearing.

STATEMENT OF THE CASE AND FACTS

In case number 19-MM-4817,[1] one of the conditions of Appellee's pretrial release was compliance with a no contact order issued by the trial court. The no contact order stated that Appellee could not go within 500 feet of the victim or her residence regardless of whether Appellee shared the residence with the victim prior to the order's issuance. However, the no contact order did not specify the victim's residential address.

Appellee was arrested at an apartment that he allegedly shared with the victim and was charged by Information with Violation of Pretrial Release. Appellee moved to

[1] Appellee is appealing his conviction for domestic battery in 19-MM-4817. See appeal number 20-AP-4.

suppress law enforcement's identification of him as well as statements he made to law enforcement after his arrest. Appellant's motion asserted that when law enforcement was investigating the offense, Appellee was inside the apartment in question. A deputy threatened to kick in the front door unless Appellee opened it and cooperated. Appellee opened the door and was arrested inside the apartment.

The motion argued that law enforcement's actions violated the Fourth Amendment because "a suspect does not consent to being arrested[2] within his residence when his consent to entry into his residence is prompted by a show of official authority." *United States v. Edmondson*, 791 F. 2d 1512, 1515 (11th Cir. 1986). The motion further argued that "[c]ases in which police have used their position to demand entry have held that consent was not voluntary and thus have required suppression of evidence discovered pursuant to entry." *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968).

During the motion hearing, Appellant attempted to admit evidence that Appellee was in the apartment illegally by calling Pasco Sheriff Deputy Matthew Griffin to testify that the apartment was the victim's. Deputy Griffin further testified that he knew this because of information from the related domestic battery case. Appellee objected on the ground that because the deputy's testimony was based on what he read in the domestic battery case, the testimony was hearsay. The trial court sustained the objection which resulted in no evidence being admitted that the apartment was the victim's residence. Deputy Griffin then testified that Appellee refused the deputy's request that Appellee come out of the apartment. He testified on cross-examination that he told Appellee "you need to come outside or we're going to kick the door open, come get you." Only after that, did Appellee let the deputies into the apartment.

During the defense presentation of evidence, Appellee testified that the apartment was his residence. He further testified that he consented to law enforcement's entry into the apartment because one of the deputies said that the door was going to get kicked in and Appellee would be getting another charge if he did not cooperate. The trial court granted Appellee's motion to suppress. Appellant timely-appeals.

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[2] Appellant's motion mischaracterized *Edmondson*. The question was whether the defendant in *Edmondson* consented to law enforcement's entry into the apartment, not whether he consented to his arrest. *See Edmondson*, 791 F. 2d at 1515 ("The government alternatively contends that the warrantless arrest was valid because Edmondson consented to the officers' entry into the apartment").

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). An appellate court reviews 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). A trial court's ruling on a motion to suppress comes to the appellate court "clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling." *See Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002). The reviewing court is bound by the trial court's factual findings if they are supported by competent, substantial evidence. *Id*.

The standard of review for a trial court's ruling on the admissibility of evidence is abuse of discretion. *Jackson v. State*, 107 So. 3d 328, 339 (Fla. 2012). However, that discretion is limited by the rules of evidence. *Id*. If the reviewing court finds that the trial court abused its discretion, the error is subject to harmless error analysis. *Id*. at 342-43.

LAW AND ANALYSIS

Appellant argues that the trial court erred by sustaining Appellee's objection. Appellee argues that the trial court's order should be affirmed because even if the trial court erred, Appellant did not make a legal argument as required by the contemporaneous objection rule and therefore Appellant failed to preserve the issue for appellate review.

Hearsay testimony is admissible in motion to suppress hearings. *Harris v. State*, 826 So. 2d 340, 341 (Fla. 2d DCA 2002). Preservation for appellate review of an error regarding the admission of evidence differs depending on whether the appellant was the party that objected or should have objected, or was the party that sought to admit evidence over an objection.

The contemporaneous objection rule only applies to a party seeking to prevent the admission of testimony as that is the party that has to make the objection. *See Braddy v. State*, 111 So. 3d 810, 855 (Fla. 2012). Where, as here, the appellant was the party that sought to admit testimony over an opposing party's objection, the appellant need only have proffered the witness's expected testimony for the record to preserve the issue for appellate review. *Frances v. State*, 970 So. 2d 806, 814 (Fla. 2007). Without that proffer,

"an appellate court will not otherwise speculate about the admissibility of such evidence." *Id*. (*quoting Jacobs v. Wainwright*, 450 So. 2d 200, 201 (Fla. 1984). *See also Whitley v. State*, 349 So. 2d 840, 841 (Fla. 2d DCA 1977) ("Nevertheless, the state failed to make a proffer of what he would have said. . .").

Just prior to Appellee's objection, Deputy Griffin testified on the record that he knew the apartment was the victim's residence due to the domestic battery case. Therefore, the issue was preserved for appellate review. *See Francis*, 970 So. 2d at 814. Assuming *arguendo* that information from the domestic battery case was hearsay, the deputy's testimony was admissible because this was a motion to suppress hearing. *See Harris*, 826 So. 2d at 341. Therefore, the trial court erred by sustaining Appellee's objection.

The Court further holds that this error was not harmless. Without Deputy Griffin's testimony, there was no evidence adduced during the motion hearing establishing that the apartment was the victim's residence. Without such evidence, Appellant was unable to establish that Appellee was in the apartment in violation of the no contact order.

Appellant also argues for the first time on appeal that Appellee did not have standing under the Fourth Amendment.[3] Because a new suppression hearing is required, the Court declines to address this argument.

CONCLUSION

Because hearsay evidence is admissible in a motion to suppress hearing, the trial court erred by sustaining Appellee's objection to Deputy Griffin's testimony that the apartment at which Appellee was arrested was the victim's residence. Because this was the only evidence supporting Appellant's argument that Appellee was in the apartment in violation of the no contact order, the error was not harmless. Accordingly, the trial court's order granting Appellee's motion to suppress must be reversed and the case remanded for a new suppression hearing.

[3] Lack of standing to file a motion to suppress can be raised for the first time on appeal. *State v. Pettis*, 266 So. 3d 238, 239 (Fla. 2d DCA 2019).

It is therefore ORDERED and ADJUDGED that the trial court's order granting Appellee's motions to suppress is hereby REVERSED and the case REMANDED for proceedings consistent with this Opinion.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this ___ day of _____, 2020.

Original Order entered on December 29, 2020, by Circuit Judges Daniel D. Diskey, Kimberly Campbell, and Lauralee Westine.

Copies to:
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