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IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHERYL C	COOPER,	)
		)
	Defendant – Below,	)
	Appellant,	)
		)
<b>v.</b>		)
		)
STATE OF	DELAWARE,	)
		)
	Plaintiff – Below,	)
	Appellee.	)

No. 159, 2013

## ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

## STATE'S ANSWERING BRIEF

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DATE: July 1, 2013

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## **NATURE AND STAGE OF THE PROCEEDINGS**

On November 5, 2012, the New Castle County Grand Jury returned a fourcount indictment against Cheryl Cooper alleging Drug Dealing, Maintaining a Drug Property, Possession of Drug Paraphernalia and Possession of Marijuana. A1. Cooper filed a Motion to Suppress which was denied after a hearing on February 15, 2013. A2. The case proceeded to a non-jury trial on March 12, 2013. A2-3. At trial, Cooper was found guilty of Maintaining a Drug Property, Possession of Drug Paraphernalia and Possession of Marijuana. A3. The trial judge acquitted Cooper of Drug Dealing. A3. Cooper was sentenced 3 years and 6 months Level V suspended immediately for probation. A3. Cooper timely docketed a notice of appeal. This is the State's answering brief.

### **SUMMARY OF THE ARGUMENT**

Appellant's argument is denied. Cooper failed to show that she had a legitimate expectation of privacy in the searched areas of 2450 North Market Street. As such, the trial court properly denied Cooper's Motion to Suppress as Cooper did not demonstrate standing to contest the search of 2450 North Market Street.

#### **STATEMENT OF FACTS**

On September 6, 2012, Probation Officer Patrick Cronin received information from a reliable source that an active probationer, Kareem Bradley ("Bradley"), was in possession of firearms located at his father's residence. A5. That information was relayed to Probation Officer Bryan Vettori who learned that Bradley had recently changed his address and was living at 1607 North West Street. A5. Officers first attempted to perform a residence check and execute an administrative search warrant at 1607 North West Street on September 7, 2012. A6. However, officers were unable to verify Bradley's address or execute the administrative search warrant because it appeared that the occupants of the residence were not home. A6. Officers made two additional on September 10, 2012. A6. On both occasions the officers encountered Bradley's father. A6. During the first visit, Bradley's father told officers that Bradley was not home. A6. When officers returned later that evening, Bradley was still not present. A6. Officers asked Bradley's father to show them to Bradley's room and were taken to an empty bedroom. A6. Bradley's father told the officers that his son's belongings were still at Bradley's previous residence located at 2450 North Market Street. A6. Probation officers had previously conducted home visits at 2450 North Market Street when Bradley provided that address as his residence. A8. Based on

those prior visits, officers were aware that Bradley lived at 2450 North Market Street with another unidentified person. A8.

On September 12, 2012, officers from the Wilmington Police Department and the Department of Correction, Probation and Parole executed the administrative search warrant at 2450 North Market Street. A6-7. When the officers entered, they encountered Bradley and an unidentified male in the living room of the residence. A7. Appellant, Cheryl Cooper was also present in the residence and was detained along with Bradley and the unidentified man. A7. Officers patted down Bradley and located marijuana in his pockets. A7. Bradley told officers that there was more marijuana in the residence in a shoe box located on the window sill in his bedroom. A7. Officers located the marijuana in the bedroom window as well as a backpack, which contained more marijuana and \$2300.00. A7-8. A search of the common areas of the residence revealed a marijuana grinder in the living room and a digital scale in a kitchen cabinet. A8. While being detained, Cooper told officers that the marijuana in the residence belonged to Bradley. A8.

#### ARGUMENT

# THE TRIAL COURT PROPERLY DENIED COOPER'S MOTION TO SUPPRESS.

#### **Question Presented**

Whether the trial court abused its discretion when it denied Cooper's Motion to Suppress based upon a finding that Cooper lacked standing to contest the search.

# Standard and Scope of Review

This Court reviews a trial court's denial of a motion to suppress for an abuse of discretion.<sup>1</sup> This Court examines the trial court's legal conclusions *de novo* for errors in formulating or applying legal precepts.<sup>2</sup>

## Merits of the Argument

"The law uses the term 'standing' to define the class of persons entitled to challenge the legality of a search or seizure and to demand the suppression of evidence seized under the exclusionary rule. Standing, therefore, determines access to the exclusionary remedy provided for illegal searches and seizures." <sup>3</sup> The defendant has the burden of demonstrating standing to challenge a search or

<sup>&</sup>lt;sup>1</sup> State v. Holden, 60 A.3d 1110 (Del. 2013); Lopez-Vazquez v. State, 956 A.2d 1280 (Del. 2008).

<sup>&</sup>lt;sup>2</sup> Jackson v. State, 990 A.2d 1281 (Del. 2009); Lopez-Vazquez, 956 A.2d 1280.

<sup>&</sup>lt;sup>3</sup> Hanna v. State, 591 A.2d 158, 163 (Del. 1991).

seizure.<sup>4</sup> Standing depends on whether a defendant can demonstrate a legitimate expectation of privacy in the place searched.<sup>5</sup> An expectation of privacy is legitimate if "it is one that society is prepared to recognize as 'reasonable.'"<sup>6</sup> Cooper failed to carry her burden in this case and is therefore unable to avail herself of the exclusionary remedy.

The evidence adduced at the suppression hearing failed to show that Cooper had either a property or possessory interest in the areas searched at 2450 North Market Street. Property and possessory interests are typically defined as the "present right to control property, including the right to exclude others." <sup>7</sup> The officers present, including Officer Vettori, knew that Bradley maintained his own room.<sup>8</sup> Cooper never objected to the search of Bradley's room nor did she ask the

<sup>&</sup>lt;sup>4</sup> Washington v. State, 1994 WL 716044 (Del. Dec. 20, 1997) (citing Hanna, 591 A.2d at 163); State v. Mobley, 2001 WL 392459 (Del. Super. Apr. 5, 2001) (citing United States v. Salvucci, 448 U.S. 83, 90-91 (1980)).

<sup>&</sup>lt;sup>5</sup> Hanna, 591 A.2d at 163 (citing *Rakas v. Illinois*, 439 U.S. 128, 143 (1978)). See Thomas v. State, 467 A.2d 954, 958 (Del. 1993) (citing *Rakas*, 439 U.S. at 148) ("the proponent of a motion to suppress has standing to contest the legality of a search and seizure only if he can assert either a property or a possessory interest in the areas searched on the property seized and if he can show a legitimate expectation of privacy in the areas searched."); *State v. Ashley*, 1998 WL 110140 at\*2 (Del. Super. Jan. 26, 1998) ("[s]tanding to contest the legality of a search and seizure exists where movant asserts either a property or possessory interest and a legitimate expectation of privacy in the areas searched").

<sup>&</sup>lt;sup>6</sup> Hanna, 591 A.2d at 163 (quoting Rakas, 439 U.S. at 143-44 (other citations omitted)).

<sup>&</sup>lt;sup>7</sup> Black's Law Dictionary 1284 (9th ed. 2009). Black's alternatively defines possessory interest to mean a "present or future right to the exclusive use and possession of property."

officers to leave.<sup>9</sup> Indeed, there are only two references in the record which suggest Cooper's connection to 2450 North Market Street. First, Bradley's father testified that Bradley was living with Cooper.<sup>10</sup> Second, Bradley's mother testified that she observed the officers approach and enter "Cheryl Cooper's house."<sup>11</sup> Cooper argues that those two passing comments were sufficient to carry her burden to show that she possessed standing to challenge the search. The State disagrees.

"[T]he question of 'standing' involves 'the substantive question of whether or not the proponent of the motion to suppress has had [her] own Fourth Amendment rights infringed by the search and seizure which [she] seeks to challenge."<sup>12</sup> "A person must demonstrate his own 'legitimate expectation of privacy in the invaded place' before he may challenge the validity of a search or

<sup>10</sup> A13. Notably, Bradley's father also testified that Bradley was living with him. A13.

<sup>11</sup> A14.

<sup>&</sup>lt;sup>8</sup> A7. Officer Vettori had been to the residence on previous occasions when conducting curfew checks on Bradley, and he was familiar with which rooms were common and which room was designated as Bradley's. A7.

<sup>&</sup>lt;sup>9</sup> A8. Even if this Court were to find that Cooper demonstrated that she possessed standing to object to the search, her failure to do so constituted her implied consent to the search authorized by Bradley. *Cf. Scott v. State*, 672 A.2d 550, 553 (Del. 1996) (holding that a defendant's failure to object or countermand the consent of another party with equal authority constituted an implied consent to search).

<sup>&</sup>lt;sup>12</sup> State v. Santini, 1993 WL 55341(Del. Super. Feb. 1, 1993) (quoting Rakas, 439 U.S. at 133 (other citations omitted)).

seizure.<sup>\*\*13</sup> In this case, the officers were executing an administrative warrant and attempting to verify Bradley's address. When the officers made contact with Bradley inside 2450 North Market Street, he directed them to his bedroom, where he said more drugs would be located. The officers then conducted a search of the room designated by Bradley as his own, as well as those areas designated as common areas. The record fails to demonstrate that Cooper possessed a legitimate expectation of privacy in the contents of Bradley's room or in the common areas of the residence. The record only reflects that Cooper was present in the residence when officers executed the administrative warrant for Bradley. Cooper's mere presence inside 2450 North Market Street does not, in and of itself, create a legitimate expectation of privacy on her part.<sup>14</sup> Cooper has failed to demonstrate that she possessed standing to challenge the search of 2450 North Market Street.

<sup>&</sup>lt;sup>13</sup> *Mills v. State*, 2006 WL 1027202 at \*1 (Del. Apr. 17, 2006) (citing *Wilson v. State*, 812 A.2d 225 (Del. 2002) (other citations omitted)).

<sup>&</sup>lt;sup>14</sup> See Washington v. State, 1994 WL 716044 (defendant had no expectation of privacy in his paramour's residence); *Thomas*, 467 A.2d at 958 (casual visitors do not have a legitimate expectation of privacy in a third party's residence or automobile).

#### **CONCLUSION**

For the foregoing reasons the judgment of the Superior Court should be affirmed.

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