DISTRICT OF COLUMBIA COURT OF APPEALS

No. 95-C0-998

CLEVELAND WRIGHT, APPELLANT,

v.

UNITED STATES, APPELLEE.

Appeal from the Superior Court of the
District of Columbia
Criminal Division

(Hon. Patricia A. Wynn, Trial Judge)

(Argued February 17, 1998 Decided August 6, 1998)

John A. Shorter, Jr. for appellant.

Ronald Machen, Assistant United States Attorney, with whom *Mary Lou Leary*, United States Attorney at the time the brief was filed, and *John R. Fisher, Mary-Patrice Brown* and *Barry Wiegand*, Assistant United States Attorneys, were on the brief, for appellee.

Before SCHWELB, REID and GREENE,* *Associate Judges.*

REID, *Associate Judge*: This case, concerning an allegation of ineffective assistance of counsel, due to the failure of defense counsel to file a motion to suppress evidence, presents the issue of whether, under the doctrine of apparent authority, a 1978 search involving a father's consent to the search of his son's bedroom by police officers was valid. The search of a bureau in the bedroom, located on the top floor of Wright's parents' home, turned up items

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* Sitting by designation pursuant to D.C. Code § 11-707 (a) (1995).

introduced against Wright at trial, including a photograph of him holding a handgun. We conclude, as did the trial court, that the police reasonably relied

on the apparent authority of Wright's father to consent to the 1978 search of appellant's bedroom and bureau. Moreover, we hold that the failure of Wright's trial counsel to file a motion to suppress the evidence seized did not prejudice Wright under *Strickland v. Washington*, 466 U.S. 668 (1984), because the motion would not have been successful in 1979.

FACTUAL SUMMARY

In 1981, in an unpublished memorandum opinion and judgment, we affirmed Wright's convictions of first degree felony murder while armed, first degree premeditated murder while armed, and armed robbery. *Wright v. United States*, No. 80-97 (D.C. May 18, 1981). After Wright subsequently challenged his convictions on the ground of ineffective assistance of counsel, we remanded his case to the trial court for a hearing on his claim. *Wright v. United States*, 608 A.2d 763, 768 (1992).

On remand, an evidentiary hearing focused on: (1) whether Wright's trial counsel had been deficient in failing to file a motion to suppress evidence taken from one of the rooms he allegedly rented in his parents' home,[1] and (2) whether he was prejudiced by the use of the evidence at his trial. The trial court found that Wright's father voluntarily consented to the search of his son's rooms, but

[1] The record reveals that the two rooms were located on the top floor of Wright's parents' home. One room was larger than the other. Wright slept in the smaller room where a bureau was located. Wright's mother testified that he paid her $25.00 a week for his accommodations, beginning at age seventeen. Wright's father acknowledged that his son did not have a regular job in July and August of 1978, but said that he performed tasks around the house for his parents, and did odd jobs for neighbors.

had no actual authority to consent to the search of the bureau located in the room where his son slept. However, the court also "conclude[d] that the [police] officers had a reasonable belief that [Wright's] father had the authority to consent to the search of both the room and the bureau." Finally, the court determined that trial counsel's performance in failing to file a suppression motion was deficient under *Strickland, supra*, but that Wright "failed to demonstrate that he would have prevailed on his suppression motion and, thus . . . failed to show that but for counsel's error there was a 'reasonable probability' that he would have been found not guilty."

ANALYSIS

On appeal, Wright argues that the trial court properly concluded that his parents lacked actual authority to consent to the search of his bedroom and bureau; that the court erred in determining that the police officers reasonably believed that his parents had the authority to consent to the search of his bedroom and his bureau; and that the court erred in declaring that his trial counsel's failure to file a suppression motion did not constitute ineffective assistance of counsel under the prejudice prong of *Strickland.* The government contends Wright was not prejudiced under *Strickland* because his father had actual authority to consent to the search; the police officers reasonably relied on the apparent authority of Wright's father to consent to the search; and in any event, Wright would have been convicted even if the evidence taken from his bureau had been suppressed.

"To prevail on his ineffective assistance of counsel argument, [Wright] 'must show (1) deficient performance by his trial counsel, and (2) prejudice traceable to his counsel's deficiencies.'" *Courtney v. United States*, 708 A.2d 1008, 1010 (D.C. 1998) (quoting *Zanders v. United States*, 678 A.2d 556, 569 (D.C. 1996) (citing *Strickland*, *supra*, 466 U.S. at 689)). "The burden is a heavy one because 'a court must indulge a strong presumption that counsel's conduct falls within the range of reasonable professional assistance.'" *Id.* (quoting *Strickland, supra,* 466 U.S. at 689). "'To prove prejudice [Wright] must [show] that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* at 1011 (quoting *Zanders, supra*, 678 A.2d at 569) (other citation omitted)).

To determine the validity of the 1978 search at issue in this case, we must examine whether Wright's father's consent to the search was voluntary, *see Bumper v. North Carolina*, 391 U.S. 543, 548 (1968); *Oliver v. United States*, 618 A.2d 705, 709 (D.C. 1993); and either whether the father had the actual authority to consent to the search of his son's bedroom and bureau, or whether the 1978 search of Wright's bureau was valid because the police officers who conducted the search reasonably believed that Wright's father had the authority to consent to the search. *See Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990).[2]

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[2] In 1990, the Supreme Court adopted the apparent authority doctrine in deciding *Illinois v. Rodriguez, supra*, saying that:

> The Constitution is no more violated when officers enter without a warrant because they reasonably (though erroneously) believe that the person who has consented to their entry is a resident of the premises, than it is violated when they enter without a warrant because they

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Because nothing in the record before us indicates that the father's consent was the product of duress or coercion, we agree with the trial judge's conclusion that the father's consent was "freely and voluntarily given." *Bumper, supra,* 391 U.S. at 548.[3] As the trial court stated in this case:

> [T]he Court finds, based on [Wright's father's] maturity and status as the head of the household, as well as the circumstances leading up to and surrounding the search, that [the father] agreed to the search because he felt that no harm would come of it. This finding is supported not only by the father's willingness to let the police enter his home, but also by his statement to the officers that he had "nothing to hide." . . . The Court finds . . . that Mr. Wright was not subjected to coercion or intimidation by the officers.

Since Wright's father willingly permitted the police officers to enter the family home, accompanied them while they searched his son's bedroom and bureau, did not

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[2](...continued)

> reasonably (though erroneously) believe they are in pursuit of a violent felon who is about to escape.

497 U.S. at 186 (citation omitted). The court also stated:

> determination of consent to enter must "be judged against an objective standard: would 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?

Id. at 188 (quoting *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)). Since *Illinois v. Rodriguez* had not been decided in 1978 or in 1979 when Wright's trial took place, we must determine whether there was another basis for applying the apparent authority doctrine to the search of Wright's bureau.

[3] There was no requirement in 1978 that police officers ask additional questions concerning common authority and mutual use before proceeding to search under the doctrine of apparent authority.

raise any objections, and was not subjected to coercion or intimidation, his consent to search the premises was "freely and voluntarily given." *Id.*

We do not consider whether the trial court erred in determining that Wright's father did not have actual authority to consent to the search of his son's room and bureau. Rather, we conclude that, under the doctrine of apparent authority, the 1978 search of Wright's bedroom and bureau was valid.

In *Jackson v. United States*, 404 A.2d 911 (D.C. 1979), we applied the doctrine of apparent authority to validate the search of the trunk of an automobile and the seizure of a blanket used as evidence in a murder trial. There, a husband who had purchased a car for his wife and registered it in her name, permitted the police to search the car. We relied in part on *United States v. Matlock*, 415 U.S. 164, 171 (1974), in holding that "(1) [the husband] had a 'sufficient relationship' to the car to authorize the search and (2) there was a substantial basis for the detective's reasonable and prudent belief that his search of the trunk and seizure of the blanket occurred with the consent of one who had 'sufficient relationship' to the car."[4] *Id.* at 921. Admittedly, residential premises stand on a different footing than automobiles for Fourth Amendment purposes. *See Chambers v. Maroney*, 399 U.S. 42, 52 (1970). However, the decision in *Jackson* shows that this court applied the apparent authority doctrine to an automobile search occurring around the time that the police officers searched Wright's bedroom and bureau and seized items introduced against him at his November 1979 trial.

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[4] *Matlock* did not determine whether the search involved in that case could have been justified on the ground of apparent authority.

The doctrine of apparent authority was recognized as early as 1955 in a California case involving the search of a law student's room in a private home, *People v. Gorg*, 291 P.2d 469 (Cal. 1955).[5] The owner of the home gave the police permission to enter, and asked them to search his entire house. *Id.* at 471. The officers found and seized marijuana plants, marijuana seeds, and fertilizer in bureau drawers. In response to appellant's contention that he did not consent to the search of his room, the court concluded that the owner of the home "believed that he had at least joint control over [the law student's] quarters and the right to enter them,

. . . and authorize a search thereof." *Id.* at 473. Therefore, "[u]nder these circumstances the officers were justified in concluding that [the owner] had the authority over his home that he purported to have, and there was nothing unreasonable in their acting accordingly." *Id.* Furthermore, "when . . . the officers have acted in good faith with the consent and at the request of a home owner in conducting a search, evidence so obtained cannot be excluded merely because the officers may have made a reasonable mistake as to the extent of the owner's authority." *Id.* (citation omitted).[6]

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[5] The student was arrested for shoplifting. When the police learned that he had two prior drug arrests, they returned to the private home. The owner showed the officers a bucket containing plants which he had removed from the law student's bathroom while preparing the room for the student's visiting father.

[6] In a footnote in *United States v. Hughes*, 441 F.2d 12 (5th Cir.), *cert. denied*, 404 U.S. 849 (1971), the court indicated that officers reasonably relied on the consent of a person who in fact owned the home, but who had moved out of her home after a beating by the appellant. The court said: "Because [the homeowner] had apparent authority to consent, an officer relying on her consent to conduct a search would not be acting unreasonably." *Id.* at 15 n.3. In *United States v. DiPrima*, 472 F.2d 550 (1st Cir. 1973), a case involving the consent of a mother to the search of her son's room to which she had "free access" even though her son paid her a weekly sum of money for the room, *Id.* at

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When *Matlock, supra,* was decided in 1974, it left open the question as to whether the doctrine of apparent authority, or a police officer's reasonable belief that the person consenting to the search had the authority to do so, could validate a search. After *Matlock* was handed down, at least one scholar, a Harvard Law School professor, expressed the view that "'Apparent authority' to consent is not by itself a basis for sustaining a search, although a good faith effort to obtain consent may help to sustain a claim that there was a sufficient emergency to overcome the requirement of a warrant." Weinreb, "Generalities of the Fourth Amendment," 42 U. OF CHI. L. REV. 47, 64 (1974). However, in 1975, the Fourth Circuit decided *United States v. Peterson*, 524 F.2d 167 (4th Cir. 1975), *cert. denied*, 423 U.S. 1088 (1976), a case involving a mother's consent to the search of her son's room. The court concluded that "the searching officers acted in perfect good faith in relying on the authority exercised by the mother . . . to consent to the search.[7] *At the very least,* [the mother] possessed 'the

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[6](...continued)
551, the court commented:

> A hotel clerk may have a key to a room, and so may the cleaning staff, but the clerk will not have apparent authority to consent to a search. . . . On the other hand, even if a minor child, living in the bosom of a family, may think of a room as "his," the overall dominance will be in his parents. We cannot pronounce a rule that will answer all cases, except to say that to some extent the police must be allowed to rely upon the word of the householder and general appearances. In the case at bar they had both.

Id. at 551-52.

[7] Earlier, in *Reeves v. Warden*, 346 F.2d 915 (4th Cir. 1965), a case involving a mother's consent to the search of her son's room located in a home owned by the mother's sister, the court found the mother's consent constitutionally inadequate to authorize the search of a bureau in the son's room. However, the court did not consider whether the search was valid under the
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necessary appearance of authority demanded by *Matlock'* to validate a search based on her consent." *Id.* (quoting *United States v. Sells*, 496 F.2d 912, 914 (7th Cir. 1974)).

Approximately three years after *Peterson*, the Fourth Circuit decided *United States v. Block*, 590 F.2d 535 (4th Cir. 1978). The court concluded in *Block* that although a mother had the authority to consent to a search of her son's room, "her authority did not extend to the interior of the footlocker within [his] room." *Id.* at 541. The mother did not have a key to the footlocker, and it was forced open by police officers. The apparent authority doctrine was not applied because "the police . . . specifically confronted a secured container that required force to open and a custodian-owner of the general premises who both asserted the absent person's claim of privacy over it and disclaimed for herself any shared right of access to it." *Id.*

The record before us reveals that Wright's father had the apparent authority to consent to the search of his son's bedroom and bureau. In *Matlock*, the Supreme Court stated:

> The authority which justifies the third-party consent . . . 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.

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[7](...continued)
doctrine of apparent authority.

415 U.S. at 171 n.7. The record shows that Wright's parents appeared to have "common authority over or other sufficient relationship to the premises or effects sought to be inspected." *Id.* at 171. Wright's father's relatives stayed in the top floor rooms on occasion, without permission from Wright. On those occasions, Wright slept in the basement of the family home. Moreover, Wright's father testified that when the police officers asked where his son resided in the family home, he "took them up and showed [them] what part of the house he lived in," and that he, the father, watched while the search was being conducted, including the search of the bureau drawers. Wright's father said nothing to the officers suggesting he had no authority to consent to the search of his son's bedroom.

Therefore, we see no reason to disturb the trial court's conclusions that:

> the officers searching the Wright[s'] home acted reasonably in relying on the consent of [Wright's] father to the search [of his son's] room and dresser. In the instant case, the officers spoke to [Wright's father and mother] for a few minutes and obtained consent to search [their son's] bedroom. . . . Like the mother in the *Peterson* case, it is apparent that Mr. Wright was the owner of the house and the head of the household. Given the nature of the family dwelling and the willingness of the father to let the officers search the premises, the officers could reasonably rely on his consent to the search. There is no evidence of any facts which would cause a reasonable person to doubt the father's authority or to make more detailed inquiries into that authority. The father exhibited no reservations about his authority to consent. There was no reason for the officers to assume that someone other than [Wright's father] had the authority to consent to the search. According to Officer Muse, who was present during the search, it was his impression that [Wright's father and mother] "controlled the whole house."

With respect to apparent authority to search the bureau or dresser, we agree with the trial court's determination that Wright's case is different from *Block, supra,* because "unlike the circumstances surrounding the search in *Block*, there were no conditions, such as a padlock or locked drawer, which would undermine the appearance of authority [to search the bureau]."[8] Moreover, as the trial court found, "there is no evidence that either parent in any way objected to the search of [Wright's] dresser, or took any other action which would lead the officers to question the father's asserted authority to consent to the search of [the dresser's] contents." Consequently, we conclude that the 1978 search of Wright's bedroom and dresser was valid under the doctrine of apparent authority as articulated in *Gorg* and *Peterson*.

The trial court concluded that "trial counsel's failure to file a suppression motion was a deviation from the norm." Even assuming deficient performance, Wright was not prejudiced under *Strickland, supra*. Existing case law in 1978 when the search was conducted, and in 1979 when the trial took place, revealed that, under the apparent authority doctrine as it then existed, a motion to suppress would not have been successful. *See, e.g., Jackson, supra; Peterson, supra; Gorg, supra.* Thus, under *Strickland*, there was no reasonable probability of a different outcome had the motion been filed.

Accordingly, for the foregoing reasons, we affirm the judgment of the trial court denying Wright's § 23-110 motion to vacate conviction and sentences.

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[8] The court in *Block* stated that objects like "suitcases, footlockers, [and] strong boxes . . . are frequently the objects of [a person's] highest privacy expectations. . . ." 590 F.2d at 541.

Affirmed.