

IN THE SUPREME COURT OF FLORIDA

FILED

CASE NO. 61,945

JUL 11 1963

ROBERT PATTEN,

Appellant/Cross-Appellee,

SID J. WHITE
CLERK SUPREME COURT
[Signature]
Chief Clerk

vs.

THE STATE OF FLORIDA,

Appellee/Cross-Appellant.

AN APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
CRIMINAL DIVISION

CROSS/REPLY BRIEF OF APPELLEE/CROSS-APPELLANT

JIM SMITH
Attorney General
Tallahassee, Florida

CALIANNE P. LANTZ
Assistant Attorney General
Ruth Bryan Owen Rohde Building
Florida Regional Service Center
401 N.W. 2nd Avenue, Suite 820
Miami, Florida 33128
(305) 377-5441

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INTRODUCTION

Robert Patten, the appellant/cross-appellee was the defendant in the court below. The appellee/cross-appellant was the prosecution. In this brief, the appellant/cross-appellee will be referred to as "Appellant." The State of Florida will be referred to as "Appellee." The symbol "R" will be used to designate the record on appeal. The symbol "T" will be a reference to the transcript of proceedings. The record exhibits will be labeled "R. Exh." All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE

Appellee relies upon the Statement of the Case submitted in its initial brief.

STATEMENT OF THE FACTS

Appellee relies upon the Statement of the Facts submitted in its initial brief and respectfully reserves the right to argue additional facts in the argument portion of this brief.

POINT INVOLVED ON CROSS-APPEAL

Appellee's Point Involved on Cross-Appeal, originally stated in Point III of Appellee's initial brief, is as follows:

WHETHER THE TRIAL COURT ERRED IN FINDING THAT APPELLANT HAD A REASONABLE EXPECTATION OF PRIVACY IN THE SEARCHED PREMISES?

ARGUMENT

THE TRIAL COURT ERRED IN FINDING THAT APPELLANT HAD A REASONABLE EXPECTATION OF PRIVACY IN THE SEARCHED PREMISES.

As Appellee has noted in its initial brief, Appellant did not meet his burden of proving that he had a reasonable expectation of privacy in the area searched. See, Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2856, 65 L.Ed.2d 633 (1980), Rakas v. Illinois, 439 U.S. 128, 130 n.1, 99S.Ct. 421, 424 n.1, 58 L.Ed.2d 387 (1978). The stipulation testimony of Mrs. Maude Biggers, the owner of the residence where the search took place clearly indicates that Appellant did not reside on the premises at the time of the search. (See R. Exh. 46-48; T.441). Moreover, Mrs. Biggers testimony demonstrates that Appellant did not lawfully possess or control the premises.

Contrary to Appellant's assertions, it is not Appellee's position that an individual can only have a reasonable expectation of privacy in the premises in which he resides. Appellee submits that the question of whether or not an individual has a reasonable expectation of privacy in the area of the premises searched hinges upon whether or not the individual possesses or controls the premises. Residence is obviously an important factor in determining an individual's access to and control

over the searched area. In fact, in Barrowclough v. State, 416 So.2d (Fla. 3d DCA 1982), one of the cases relied upon by Appellant, the Court found that the defendant lawfully possessed or controlled the premises where he resided.

Although United States v. Salvucci, 448 U.S. 83, 100 S.Ct. 2547, 65 L.Ed.2d 619 (1980), does theoretically allow one to have a reasonable expectation of privacy in areas of another's residence, the question at issue is whether under the instant facts, Appellant met his burden of proving that he had a reasonable expectation of privacy in the common area of the house from where the gun was seized. In the cause sub judice, the facts do not show that Appellant had either access to or control over the general premises or the specific area searched. Mrs. Maude Biggers, the owner of the dwelling stated that Appellant did not have a key to the general premises at the time of the search and that although he had possessed one in the past, she had regained possession of the key when he moved out and went to live with the Castle family. (R. Exh.48). His only means of authorized admittance was through Mrs. Biggers.

Contrary to Appellant's claims, the fact that Appellant did not have a key or other means of free access to the general premises makes this case factually distinguishable from Jones v. United States, 326 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1960). In Jones, supra, the defendant had

both a key to the apartment that was searched and the permission to use it. Thus, the facts of Jones should not be considered persuasive in considering the facts at issue in the cause sub judice.

Likewise, the instant cause is factually distinguishable from the other cases cited by the Appellant, including United States v. Haydel, 649 F.2d 1152 (5th Cir. 1981), modified on other grounds, 664 F.2d 84 (5th Cir. 1981), cert. denied 455 U.S. 1022 (1982). In Haydel, supra, the Court found that the defendant had a reasonable expectation of privacy in gambling records found under a bed in his parents' home. That defendant had unencumbered access to the premises as well as possession of a key. Haydel conducted a significant portion of his gambling activities from the residence and owned records that were seized.

Furthermore, as noted in Appellee's initial brief, Appellant did not meet his burden of showing that he had a reasonable expectation of privacy in that particular area of the residence where the gun was actually found. See e.g., Walker v. State, So.2d (Fla. 2d DCA 1983) (Case No. 82-2144; Opinion filed June 24, 1983) [8 F.L.W. 1705] (issue of expectation of privacy considered as to occupancy of room within dwelling). Appellee therefore submits that the trial court's finding that Appellant had a reasonable expectation.

of privacy should be reversed, and that the denial of Appellant's
motion to suppress should nonetheless be affirmed.

CONCLUSION

Based upon the foregoing reasons and citations of authority, Appellee/Cross-Appellant submits that the trial court's ruling as to expectation of privacy should be reversed and that the judgment and sentence of the trial court should clearly be affirmed.

Respectfully submitted,

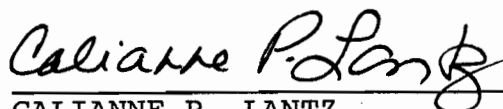
JIM SMITH
Attorney General



CALIANNE P. LANTZ
Assistant Attorney General
Department of Legal Affairs
401 N.W. 2nd Avenue, Suite 820
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing CROSS-REPLY BRIEF OF APPELLEE/CROSS-APPELLANT was furnished by mail to William L. Richey, Esq., VALDES-FAULI, RICHARDSON & COBB, P.A., One S.E. Third Avenue, 1401 AmeriFirst Building, Miami, Florida, 33131 and PETER M. SIEGEL, Esq. and RANDALL C. BERG, JR., Esq., Florida Justice Institute, Inc., One S.E. Third Avenue, 1401 AmeriFirst Building, Miami, Florida, 33131, this 7th day July, 1983.



CALIANNE P. LANTZ
Assistant Attorney General