

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK KANIA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35875

FILED

NOV 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richard
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a motion to suppress evidence. Appellant, Frederick Kania, pled guilty to one count of possession of a controlled substance pursuant to a guilty plea agreement in which he reserved the right to appeal the district court's order denying his motion to suppress evidence. The district court sentenced Kania to a maximum term of four years in Nevada State Prison with parole eligibility after one year. The district court suspended Kania's sentence and placed him on probation for two years.

"[F]indings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence."¹ Further, a district court's findings of fact are reviewed under a deferential standard of review.²

Kania first contends that the warrantless search of the garage at the residence where he was living was illegal and that the drug evidence seized as a result of the search should have been suppressed by the district court. Specifically, Kania argues that the search of the garage exceeded the scope of the homeowner's consent to search her residence.

"[A] waiver and consent, freely and intelligently given, converts a search and seizure which otherwise would be unlawful into a

¹Peck v. State, 116 Nev. 840, 846, 7 P.3d 470, 474 (2000) (citation omitted).

²Id. (citation omitted).

lawful search and seizure.”³ “A search conducted pursuant to consent must be limited to the terms of the consent,” and “whether the scope of consent has been exceeded is a factual question to be determined by examining the totality of the circumstances.”⁴ Generally, one who challenges the legality of a search must establish that he or she had a reasonable expectation of privacy in the place searched.⁵

The record in this case reveals that Kania, who was in effect either a live-in servant or a renter of a bedroom, did not have a reasonable expectation of privacy in the place searched; namely, the homeowner’s garage, and he therefore did not have standing to challenge the legality of the search. Nonetheless, the record further reveals that the homeowner asked police to search her residence, including her basement and garage, gave her keys to police to facilitate the search, and expected the police to continue their search until Kania was located. Thus, there is substantial evidence to support the district court’s finding that the homeowner consented to a search of her residence and garage, that there were no limits placed on her consent, and that the scope of her consent extended to the search of her garage and the time when the search took place. Accordingly, we conclude that the district court did not err by denying Kania’s motion to suppress evidence.

Kania also contends that the admission of the homeowner’s hearsay statements at his bail hearing violated his Confrontation Clause rights. Although hearsay is generally inadmissible in criminal prosecutions, hearsay testimony is admissible at bail hearings.⁶ Accordingly, we conclude that this contention lacks merit as well. Having reviewed Kania’s contentions and concluded that they lack merit, we therefore


³Id.

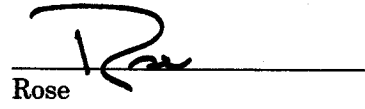
⁴Canada v. State, 104 Nev. 288, 298-91, 756 P.2d 552, 553 (1988) (citations omitted).


⁵Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

⁶See NRS 51.065; NRS 47.020(3)(b).

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Richard Wagner, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk