STATE OF NEW JERSEY,
Appellant,

v.

DAN QUAIL,
Defendant-Respondent.

A-99-4321-T4

Superior Court, Appellate Division

Submitted April 5, 1999 -- Decided May 4, 1999

Before Judges GRIM, REAPER and MERCY.

ALPHONSE GORED, Essex County Prosecutor, attorney for the appellant (*W. Milton Bradley*, Assistant Prosecutor, of counsel and on the brief).

GEORGE W. ARBOR, attorney for the defendant-respondent (*Mr. Arbor*, of counsel; *E. Chiquita Dole*, on the brief).

REAPER, J.A.D., joined by GRIM, J.A.D.

This case arises from the January 4, 1999 order of the Superior Court, Law Division (Hatrick Buchanan, J.), granting defendant's motion to suppress evidence obtained in a warrantless search of defendant's residence. The trial court determined that two East Orange police officers violated N.J.S. 40A:14-152 when they obtained entry to defendant's home in Newark and conducted a warrantless search for evidence that defendant had received property stolen in East Orange. Alternatively, the trial court found that the officers failed to obtain valid consent to their entry onto defendant's premises. On either ground, the trial court held that all evidence obtained in the search of defendant's home must be excluded from use at his trial for receiving stolen property.

We disagree.

We hold, first, that N.J.S. 40A:14-152 is not violated when police officers take investigative actions outside their own jurisdictions that the law permits any private citizen to take. Moreover, exclusion of evidence is not required as a remedy for what is, at worst, a technical, procedural statutory violation.

We hold, second, that the officers in this case obtained valid consent to enter defendant's residence and that their plain view observations justified their seizure of the evidence in question. Therefore, exclusion of the evidence is not required as a constitutional imperative.

Accordingly, we reverse.

The Facts

The facts as established in an evidentiary hearing before Law Division Judge Buchanan are as follows:

Sister Jessie Ventura, a Trinitarian nun, and Sister Pillaried Clinton of the Little Sisters of the Poor joined in an effort to help the homeless in the urban Essex County communities and established a storefront office at 453 Springfield Avenue in East Orange. They provided counseling and outreach services to walk-in clients and would visit the homeless shelters. On November 3, 1998, the nuns arrived at their storefront office to find that it had been burglarized some time during the night. No one saw the robbery. Stolen were a room heater, a small refrigerator, a typewriter, a computer hard drive and monitor and several boxes of canned goods.

The police investigation implicated an East Orange resident, Kristen "Odd" Whitman, who was arrested late on the afternoon of Friday, November 6th. Whitman confessed to having burglarized the office and told police she had sold the room heater to defendant Dan Quail at his house at 185 Washington Street in Newark.

The East Orange officers assigned to the case, Sgt. Julie Rudiani and Ptl. Al Tamatto, were concerned about getting the investigation completed in a timely fashion and went without delay to the Quail residence at 185 Washington Street and knocked on the door. When the door was answered by Mrs. Birdie Quail, the officers identified themselves as police officers and told Mrs. Quail they wanted to speak with Dan Quail about some items which may have been stolen. She confirmed that Dan Quail was her son but said she was certain he had not stolen anything. Sgt. Rudiani said the police were not saying he had stolen anything, but merely wanted to ask him about some things that might have been stolen. Mrs. Quail said her son was not at home then, but should be arriving soon. She said the officers could wait for him.

Mrs. Quail brought the officers into the living room, where they could see in plain view a room heater that matched the description of the one taken from the burglarized office. They could also see stairs leading to a second floor. After several minutes of conversation, the telephone rang and Mrs. Quail went into the kitchen to answer it. Ptl. Tamatto followed her to the kitchen door to ask if he could use a bathroom. From that position, he was able to look up the stairs to the second floor and could see a computer monitor in an upstairs bedroom. The image displayed on the monitor was the logo of the storefront office that had been burglarized. Sgt. Rudiani meanwhile matched the heater's serial number with the serial number of the stolen unit and determined that it was the

stolen heater.

The officers told Mrs. Quail the heater was certainly one that had been stolen and that they were going to have to take it as evidence. They also told her they needed to look at the computer upstairs. Mrs. Quail then said the officers should "do what needs to be done." The officers gathered up the heater and the entire computer system from the second floor and gave her a receipt for the items taken. They then left the residence.

Some time later, defendant returned home. His mother told him the police had been there and had taken the heater and the computer. She was unable to find the receipt she had been given. Defendant went to the Newark Central precinct, but the officer on duty there said he knew nothing about any police investigation of those items. The desk officer said defendant should come back the next day when he might have paperwork on the matter.

The next day, November 7, 1998, the East Orange officers obtained a warrant for defendant's arrest on charges of receiving stolen property. They returned to defendant's residence later that day and executed the arrest warrant.

On November 20, 1998, defendant was indicted on one count of receiving stolen property, in violation of N.J.S. 2C:20-7. At arraignment on November 24, 1998, defendant through counsel notified Judge Buchanan of his intent to move to suppress all physical evidence taken from his home. An evidentiary hearing followed on December 14-16, 1998, and the trial court handed down its ruling suppressing the evidence on January 4, 1999.

The State sought leave to appeal on January 13, 1999, and leave was granted on January 26, 1999.

Discussion

Defendant asserts, first, that N.J.S.A. 40A:14-152 prohibits the search the officers made of his premises, and therefore no evidence obtained through that search may be used against him, citing *Wong Sun v. United States*, 371 U.S. 471 (1963).

We reject defendant's argument. Our reading of the relevant statutes satisfies us that the police were within their powers when they went to the defendant's home to investigate a transfer of stolen property. We believe that the Legislature intended to permit such actions by the police, as part of their official duties. See N.J.S.A. 40A:14-152.1 and 40A:14-152.2. Whether or not a crime was committed in the presence of the officers, they still had the right and the duty to investigate allegations of criminal activity.

Such was the conclusion of the Pennsylvania Supreme Court in a case very closely paralleling the facts before us here. In *Commonwealth v. O'Shea*, 523 Pa. 384, cert. denied, 498 U.S. 881 (1990), police officers from another municipality went to defendant's

residence, obtained the consent of the home's owners to enter and look around, and then seized evidence found in plain view. Like the Court in O'Shea, we conclude that "In the absence of explicit legislative directives to the contrary, we will not prohibit police officers from doing that which a private citizen could do."

While *State v. Cohen*, 73 N.J. 331 (1977), makes it clear that police officers are not authorized generally to exercise their police powers outside of the municipality that employs them, it also suggests that not all conduct by a police officer rises to the level of an exercise of police powers. Any private detective could do lawfully what the East Orange police officers here did: go to defendant's home, seek consent to enter, and look around while there for evidence of crime. We will not suppress this evidence because it was found by two uniformed officers rather than by two private detectives.

Moreover, even if the officers did violate the statutory restrictions by conducting an investigation outside of their jurisdiction, we agree with our colleagues from other jurisdictions that a technical procedural violation of a statute does not require the drastic remedy of exclusion of evidence so obtained. *See e.g. City of Kettering v. Hollen*, 64 Ohio St.2d 232 (1980) (exclusionary rule need not be applied where evidence obtained in violation of state law but not of constitutional rights).

Defendant alternatively asserts, that his constitutional rights were violated when his private premises were searched and evidence seized without a warrant. Again, he argues that all of the evidence so obtained is the fruit of the poisonous tree and inadmissible under *Wong Sun v. United States*, 371 U.S. 471 (1963).

The facts here establish that Mrs. Quail invited the officers into the home she shared with defendant. There is nothing in the evidence to suggest that the consent given by Mrs. Quail was anything other than entirely voluntary. She was of full age, of sound mind and not in custody. Such indicia support a finding of voluntariness. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). Mrs. Quail owned the home, and certainly had sufficient "common authority over or sufficient relationship to the premises" to authorize the entry by the police officers. *United States v. Matlock*, 415 U.S. 164, 171 (1974).

It is true that the officers never identified themselves as East Orange police. We find that failure immaterial. So long as defendant's mother consented to their entry, it is irrelevant whether they identified themselves as police officers at all. *See e.g. State v. Anglada*, 144 N.J. Super. 358 (App. Div. 1976) (no violation where police claim to be realtors rather than identifying themselves as police).

Once inside, the officers observed evidence from a vantage point they legally occupied and nothing more is required for the doctrine of plain view to apply. "[W]hat a person knowingly exposes to the public, even in his own home... is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 351 (1967).

REVERSED.

MERCY, J.A.D., dissenting

I respectfully disagree with my colleagues and would affirm the decision of the court below to suppress all of the evidence seized from the defendant's home in Newark on November 6, 1998.

First and foremost, it is clear to me that the laws of this State do not permit municipal law enforcement officers from one jurisdiction to cross into the territory of another jurisdiction except in specified and limited circumstances -- none of which was present here. N.J.S. 40A:14-152 was, in my view, intended by the Legislature to limit the activities of local police officers to "the territorial limits of the municipality." There are express statutory exceptions for crimes committed in the presence of the officer anywhere within the State, N.J.S. 40A:14-152.1; for cases where an officer is asked by competent authority from another jurisdiction to assist in an emergency in that other jurisdiction, N.J.S. 40A:14-156-1; and for certain motor vehicle violations committed in the officer's presence, N.J.S. 39:5-25. Obviously, none of these exceptions applies, and I agree with the Massachusetts Supreme Judicial Court that "the Legislature knows how to expand the extraterritorial authority of the police when it thinks it fit to do so." *See Commonwealth v. LeBlanc*, 407 Mass. 70 (1990). The Legislature has not granted the police extraterritorial authority to conduct investigations and I will not read the statute to permit such.

Unlike the officers in *State v. Cohen*, 73 N.J. 331 (1977), the officers here are municipal police and their jurisdiction cannot be interpreted to extend beyond the territorial limits of East Orange. And unlike the officer in *State v. Montalvo*, 280 N.J. Super. 377 (App. Div. 1995), the officers here were not only not acting at the request of the competent authorities in the jurisdiction they invaded, they were actually acting in express disregard of the instructions of those authorities. The evidence before Judge Buchanan, and ignored by the majority here, established that the East Orange officers telephoned the appropriate police officials in Newark on the afternoon of Friday, November 6, 1998, to ask that Newark officers accompany them to defendant's home. The evidence shows that they were told that there were no officers available on that Friday night, that none would be available until Monday at the earliest and, significantly, that they were not to proceed on their own but were to wait for assistance from Newark officers.

Secondly, even if the statute could be read not to bar the conduct of the East Orange police officers here, I cannot agree that they appropriately secured consent to enter the defendant's home. The police conduct here is far closer to that of the police in *Bumper v. North Carolina*, 391 U.S. 543 (1968) (false claim that a warrant existed when it did not) than it is to the police conduct in *State v. Anglada*, 144 N.J. Super. 358 (App. Div. 1976) (officers did not identify themselves as police but were permitted entry on a pretext). Here, the police cajoled and enticed an elderly, infirm and possibly incompetent woman into giving consent to entry. Such efforts cannot be the basis for a voluntary consent.

According to evidence adduced at the suppression hearing, Mrs. Quail did not immediately admit the officers when they knocked at her door. To the contrary, Mrs. Quail -- who is nearing 80 and uses a walker -- never suggested the officers should wait inside

but rather outside. It was Sgt. Rudiani who asked if they could come inside and wait. Mrs. Quail replied that her son had told her she should never let anyone in the house. The sergeant answered that they were "not just anyone, we're police officers. There's no reason why your son wouldn't want you to let police officers in, is there?"

When Mrs. Quail again said her son had told her never to let anyone in the house, Ptl. Tamatto said it was very cold outside and added he was sure neither Mrs. Quail nor her son would want police officers to have to wait out in the cold "just to ask a few easy questions." Mrs. Quail asked the officers to "please wait 'til Danny comes home." At that point, Sgt. Rudiani said the officers would wait until defendant got home, but added: "We are the police, ma'am, and we really can't do our jobs unless you let us wait inside."

This cajolery and enticement eventually led Mrs. Quail to allow the officers inside, but even then she led them into the living room and asked them to sit down there and wait. In a conversation that ensued, Mrs. Quail told them that Dan Quail was the sole occupant of the upstairs floor, that he paid rent for the second floor, that she was unable to climb the stairs and that the only areas the two shared were the downstairs areas. (Thus, even if Mrs. Quail could consent to an initial entry to the home, nothing she said thereafter could act as consent to an entry to the second floor, from which the computer monitor was seized. *See e.g. State v. Scrotsky*, 39 N.J. 410 (1963), holding that a landlord may not consent to the search of a tenant's property.)

The officers could not have determined that the heater was stolen without checking its serial number, and the serial number was in the back against the wall. It was only when Mrs. Quail momentarily left the room that one officer got up from the chair and peered around to the back of the heater. Similarly, the officers could not see up the stairs from the chairs where Mrs. Quail had asked them to wait; it was only when one officer followed her to the kitchen door that he was able to see the computer monitor upstairs.

Mrs. Quail never volunteered that the officers could look around upstairs, but rather asked if they could wait until defendant came home. When they said they could not, she told them she was confused and upset and did not know what to do. Finally, she used words to the effect: "I guess you have to do what needs to be done."

There is not one shred of evidence as developed in this case that would permit us to conclude that the defendant's mother understood for one moment that she had the right to refuse to permit the officers to enter the home she shared with defendant, or the right to refuse to allow them to go upstairs. Without that understanding, our Constitution precludes a finding that the consent was effective, the federal Constitution notwithstanding.

Since I would find that the entry itself was not consensual, I cannot agree with my colleagues that the officers were where they had a right to be and therefore cannot agree that any of the seized evidence can appropriately be held to have been in plain view. *Cf. Coolidge v. New Hampshir*e, 403 U.S. 443 (1971).

For the foregoing reasons, I would affirm the trial court's order granting the defendant's motion to suppress evidence seized by East Orange police from defendant's Newark home.

IN THE SUPREME COURT
OF THE STATE OF NEW JERSEY

A-99-522

STATE OF NEW JERSEY,	:	
Respondent,	:	
v.	:	**ORDER**
DAN QUAIL,	:	
Defendant-Appellant.	:	

The appeal of this matter by the plaintiff-appellant is, on this 26th day of May, 1999, hereby docketed as to all appropriate issues. Simultaneous briefing is directed and both parties are to file briefs with this Court on or before July 12, 1999.

STEPHEN W. TOWNSEND, Clerk
For the Court