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Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000056-MR

LISA GAIL TAYLOR — APPELLANT

V.

APPEAL FROM BARREN CIRCUIT COURT
HONORABLE PHILLIP R. PATTON, JUDGE
INDICTMENT NO. 02-CR-00376

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MINTON AND TACKETT, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

MINTON, JUDGE: Law enforcement officers arrived at Lisa Gail Taylor's home and informed her that they were there on a tip that she was making and selling methamphetamine. According to the officers, Taylor then agreed to a search of her residence. Taylor said she only agreed to let them "look around." But the

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

ensuing search of Taylor's home uncovered methamphetamine, evidence of its manufacture, and marijuana. When Taylor's case came to circuit court, the court denied Taylor's motion to suppress the evidence seized in the search, ruling that she consented to it. Taylor then entered a conditional plea of guilty reserving the consent-to-search issue for this appeal. We agree with the circuit court's ruling and affirm.

Approximately four or five weeks before July 27, 2002, Officer Lafferty responded to a report that Taylor was manufacturing methamphetamine. Lafferty approached Taylor at her home; and after informing Taylor why he was there, she gave him permission to "look around" her residence. Lafferty testified that he "looked around" Taylor's kitchen and living room but found no evidence of methamphetamine.

Lafferty returned to Taylor's home on July 27, 2002, in response to another tip that she was manufacturing methamphetamine. Lafferty, Police Chief Minton, and Patrolman McClendon arrived at Taylor's house at approximately 11:00 p.m. Taylor admitted the officers into her home.

Lafferty testified that upon entering Taylor's home, he informed her they had received another complaint that she was "cooking meth." When he asked Taylor if the allegations were true, she responded, "Ron, does it smell like it?" According to Lafferty, he then asked Taylor "if she had any problem" with the

officers “searching the residence.” Lafferty testified that Taylor then gave the officers permission to search her home.

In contrast, Taylor testified that Lafferty only asked if he could “look around,” to which she responded, “Yeah, Ron, go ahead.” Because Lafferty allegedly used the words “look around,” Taylor testified she assumed the search would be cursory and not a “full search” of her residence.

To Taylor’s dismay, the July 27 search was more thorough than Lafferty’s first search. During the search, the officers found evidence that Taylor was manufacturing, trafficking, and in possession of methamphetamine, and that she was trafficking in and in possession of marijuana. The search also uncovered drug paraphernalia. Taylor was arrested and later released on $2,500 bond. Lafferty filed a Uniform Citation and an Individual Incident Report. In both documents, he wrote that Taylor gave “verbal consent” to the officers’ request to search her residence.

After indictment, Taylor filed a motion to suppress the evidence seized from her residence as a result of the July 27, 2002, search. Taylor argued that the officers asked if they could “look around,” not “search,” her residence; therefore, she claimed she was “tricked by the term and this method of police investigation.” She further asserted that she “would never have consented to a search of this nature.”

In response, the Commonwealth argued that Taylor had freely given the officers consent to search her home. Specifically, the Commonwealth stated that there was no evidence the officers had tried to overcome Taylor's free will. Rather, the officers simply asked Taylor once for permission to search and Taylor consented.

The circuit denied Taylor's motion to suppress. The court found that she had given her informed consent for the officers to search her residence, finding that "[t]he officers engaged in no form of coercion; their weapons were not drawn, no threats were made. Nor did the officers fraudulently claim to have a warrant to search the residence." With regard to Taylor's argument that Lafferty used the term "look around" rather than "search," the court concluded that "even if the officers had only asked to 'look around' in the residence, Defendant Taylor's affirmative response would have been a valid consent to search the resident——for what does 'look around' mean except to search?"

Following the court's order, Taylor entered a conditional plea of guilty, reserving the right to appeal the denial of her motion to suppress. She was sentenced in accordance with the plea bargain agreement to five years in prison and a $1,000 fine on charges of trafficking in

methamphetamine, trafficking in marijuana, and possession of drug paraphernalia.[2] This appeal follows.

On appeal, Taylor makes two main arguments: first, the officers conducted an illegal search and seizure, thereby violating her rights under the Fourth Amendment of the United States Constitution and the Tenth Amendment of the Kentucky Constitution; and second, her due process rights were violated when the court imposed a $1,000 fine, despite her indigent status. We will discuss each argument separately.

CONSTITUTIONALITY OF THE SEARCH AND SEIZURE

Taylor argues that her constitutional rights were violated when Lafferty, Police Chief Minton, and Patrolman McClendon searched her home on the night of July 27, 2002. She specifically argues that the officers engaged in "trickery" and "chicanery" by asking if they could "look around," not "search," her residence and that she was never given notice of her right to refuse the search. Taylor also claims the search of her home was unreasonable because it exceeded her expectations. Since Lafferty had only "looked around" the residence during his first visit, Taylor asserts she reasonably believed the second

[2] Upon the posting of a $5,000 surety bond, Taylor was released from jail to attend a 28-day drug treatment program at Park Place, a rehabilitation facility. She was later granted an appeal bond, so long as she abided by the conditions recommended by Park Place, including abstaining from all mind/mood altering substances; attending AA/NA meetings; weekly sessions of aftercare at Park Place; and weekly sessions of aftercare group therapy at LifeSkills.

"search" would similarly be a cursory tour of the house. Finally, Taylor states that the search was unconstitutional because it occurred at night without proof of exigent circumstances. We disagree with Taylor's arguments on all points.

Although it is well settled that a "search conducted without a warrant issued upon probable cause is 'per se unreasonable,'" there are several "'specifically established and well-delineated exceptions.'"[3] Because "[t]he touchstone of the Fourth Amendment is reasonableness," the courts have long recognized the validity of consensual searches.[4] This exception is based on the premise that "it is no doubt reasonable for the police to conduct a search once they have been permitted to do so."[5]

In Schneckloth v. Bustamante, the United States Supreme Court clarified the purpose behind the consent exception to the warrant requirement, stating, "[i]n situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and

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[3] Schneckloth v. Bustamante, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043, 36 L.Ed.2d 854 (1973) (citations omitted).

[4] Florida v. Jimeno, 500 U.S. 248, 250, 111 S.Ct. 1801, 1803, 114 L.Ed.2d 297 (1991).

[5] *Id.* at 250, 251.

reliable evidence."[6] With regard to what constitutes "voluntary" consent, the Court stated:

> [T]he Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed.[7]

The Court further recognized that "knowledge of a right to refuse is not a prerequisite of a voluntary consent"; rather, "it is only by analyzing all the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced."[8]

The United States Supreme Court has held that "[t]he scope of a search is generally defined by its expressed object."[9] In Jimeno v. United States, a police officer pulled over a car for a traffic violation and on suspicions that the car was being used to transport narcotics. The officer informed the driver that he had been stopped for committing a traffic violation and because there was reason to believe he was carrying narcotics. The officer then asked the driver if he could search the

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[6] Schneckloth, *supra* at 227.

[7] *Id.* at 228.

[8] *Id.* at 233; *see also*, Commonwealth v. Neal, 84 S.W.2d 920 (Ky.App. 2002).

[9] Jimeno, *supra* at 251.

vehicle. The driver consented and after opening a paper bag in the back seat of the vehicle, the officer found a kilogram of cocaine. At trial, the driver moved to suppress the cocaine, claiming the officer had exceeded the scope of his authority. The driver argued that because the officer had asked to search the vehicle and not the containers in the vehicle, his search of the bag was unlawful. The Court disagreed, stating:

> We think that it was objectively reasonable for the police to conclude that the general consent to search respondent's car included consent to search containers within that car which might bear drugs. A reasonable person may be expected to know that narcotics are generally carried in some form of a container . . . . The authorization to search in this case, therefore, extended beyond the surfaces of the car's interior to the paper bag lying on the car's floor.

Based on the Court's holdings in Bustamante and Jimeno, Taylor's unreasonableness arguments are without merit. First, Taylor gave her consent to the search. Lafferty told Taylor that he was there on a tip that she was "cooking meth"; he then asked Taylor for her permission to "search" the residence. Although Taylor testified that Lafferty used the term "look around," rather than "search," both Lafferty and Taylor agreed that Taylor gave the officers her permission. There is no evidence that the officers used force, intimidation, or coercion to influence Taylor's consent. In fact, both Lafferty and Taylor testified that the request to search the

residence was only made once and that Taylor willingly told Lafferty to "go ahead." We find no fault with the trial court's determination that this constituted voluntary consent.

Taylor's argument that the July 27 search "exceeded her expectations" because it was more thorough than Lafferty's first search is also without merit. Lafferty informed Taylor why he was at her residence; she was fully aware that the officers were not there for a social visit but, rather, to investigate reports she was manufacturing methamphetamine. Like the defendant in Jimeno, Taylor did not limit the scope of the officers' search. Rather, when asked for permission to search her residence, Taylor told Lafferty to "go ahead." The officers proceeded to search all of Taylor's residence, including the closets, under the beds, and in containers. Much like the search in Jimeno, we hold that it was "objectively reasonable" for the officers in this case to "conclude that the general consent" to search Taylor's residence included the closets and containers therein. Therefore, we find no fault with the trial court's reasoning on this issue.

Third, we note that Taylor vehemently argues that the officers failed to tell her of her right to refuse the search. But as the Court stated in Bustamante, "knowledge of a right to

refuse is not a prerequisite of a voluntary consent."[10] Thus, this argument is unavailing.

Finally, Taylor argues the search was unreasonable because it occurred at night, without exigent circumstances. Taylor points to the case of Commonwealth v. Gross[11] as proof that exigent circumstances must exist for police to search a residence at night.

We must disagree with Taylor's reliance on Gross. In Gross, the Supreme Court of Kentucky held that "when exigent circumstances exist, a search warrant may be executed at any time."[12] We do not interpret this holding to mean that all searches at night must be accompanied by exigent circumstances; this is particularly true when, such as the present case, an individual clearly consents to the search. Regardless, because Taylor gave the officers permission to search her residence, there was no need to prove the existence of exigent circumstances. Therefore, we affirm the trial court's decision to deny Taylor's motion to suppress the evidence seized during the July 27 search.

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[10] *Id.* at 233; *see also*, Commonwealth v. Neal, 84 S.W.2d 920 (Ky.App. 2002).

[11] 758 S.W.2d 436 (Ky. 1988).

[12] *Id.* at 437.

IMPOSITION OF THE $1,000 FINE

Taylor also argues that the court erroneously imposed a $1,000 fine as part of her sentence. Taylor claims that because she is indigent, she should be exempt from payment of the fine under KRS[13] 534.030. We disagree.

KRS 534.030 states:

> (1) Except as otherwise provided for an offense defined outside this code, a person who has been convicted of any felony shall, in addition to any other punishment imposed upon him, be sentenced to pay a fine in an amount not less than one thousand dollars ($1,000) and not greater than ten thousand dollars ($10,000) or double his gain from commission of the offense, whichever is the greater.
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> . . . .
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> (4) Fines required by this section shall not be imposed upon any person determined by the court to be indigent pursuant to KRS Chapter 31.

Taylor claims that because she was "determined to be indigent within the meaning of Chapter 31" and because she was allowed to pursue her appeal *in forma pauperis*, the fine was improperly imposed. However, although there is evidence that the court initially granted Taylor's "Order and Affidavit of Indigency," we cannot find any proof that the court appointed a public defender to represent Taylor. Rather, it appears that

[13] Kentucky Revised Statutes.

Taylor retained two different private attorneys to represent her.

The most compelling argument against Taylor's claim is the fact that the $1,000 fine was imposed as a part of the plea agreement Taylor knowingly, voluntarily, and willfully entered into with the Commonwealth. The plea offer included the Commonwealth's recommendation that a $1,000 fine be imposed; further, both Taylor and her counsel signed the page of the agreement where the recommended sentence appeared. Taylor never made a motion to withdraw this plea, nor is there proof that she objected to the Commonwealth's recommendation of the fine. Therefore, we find no fault with the court's imposition of the $1,000 fine.

CONCLUSION

For these reasons, we affirm the decision of the Barren Circuit Court denying Lisa Gail Taylor's motion to suppress evidence.

ALL CONCUR.

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