Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00221-CR

Java Neesha **PEOPLES**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 264th District Court, Bell County, Texas
Trial Court No. 74507
Honorable Martha J. Trudo, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: September 14, 2016

AFFIRMED

Appellant Java Neesha Peoples appeals her conviction for possession of cocaine in an amount of less than one gram. On appeal, Peoples raises two points of error, arguing the trial court erred in admitting the cocaine into evidence because she did not consent to the search of her coin purse, and the search did not constitute a valid search incident to arrest. Because we conclude Peoples voluntarily consented to the search of her coin purse, we affirm the judgment of the trial court.

BACKGROUND

Peoples was shopping at H.E.B. in Temple, Texas when Carly Adair, the store's loss prevention officer, saw Peoples place several items in her purse. Adair contacted the Temple Police Department, and while waiting for authorities to arrive, she watched Peoples go through the checkout line and pay for items in her basket, but not the items in her purse. When Peoples tried to leave the store without paying for the items, Adair stopped her. By that time, three Temple police officers, including Officer Mario Dymtrus, had arrived. The officers escorted Peoples to the store's loss prevention office. Once in the office, Adair removed the stolen merchandise from Peoples's purse, and Officer Dymtrus asked Peoples to see her identification. Peoples stated it was in her purse. Officer Dymtrus asked Peoples if he could "go into her purse" to find the identification, and Peoples stated, "Yes." While searching her purse for the identification, Officer Dymtrus discovered a small coin purse and opened it. In it, he discovered a small bag containing 0.46 grams of cocaine.

The State charged Peoples with possession of cocaine, which was enhanced to a second-degree felony by three prior offenses related to drugs. *See* TEX. HEALTH & SAFETY CODE § 481.115(b) (West 2016); TEX. PENAL CODE § 12.425 (West 2016). Peoples did not file a pretrial motion to suppress; however, at trial, when the State offered the cocaine into evidence, Peoples objected on the basis Officer Dymtrus lacked probable cause to search her coin purse. The court overruled her objection. A jury ultimately found Peoples guilty, and the trial court sentenced her to 15 years' confinement and assessed a $5,000 fine. Peoples then perfected this appeal.

ANALYSIS

In two points of error, Peoples argues the trial court erred in admitting evidence seized as a result of Officer Dymtrus's search of her coin purse. In her first point of error, Peoples contends Officer Dymtrus's search of her coin purse exceeded the scope of her consent to search her purse.

According to Peoples, she consented to a search of her purse, not to a search of any containers discovered therein. In her second point of error, Peoples argues the search of the coin purse did not qualify as a search incident to arrest because Officer Dymtrus was not in danger and there was no reason for Officer Dymtrus to believe additional evidence related to the arrest would be uncovered.

Standard of Review

We review the trial court's ruling on the motion to suppress under a bifurcated standard of review. *See Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010); *see Krause v. State*, 243 S.W.3d 95, 103 (Tex. Crim. App.—Houston [1st Dist.] 2007, pet. ref'd) (holding objection at trial was akin to written pretrial motion to suppress and sufficient to preserve error). Under this standard, we do not engage in our own factual review; rather, the "trial judge is the sole trier of fact and judge of the credibility of the witnesses" and weight to be given to their testimony. *See Valtierra*, 310 S.W.3d at 447. We give the trial court's factual findings "almost total deference," provided its determinations are supported by the record. *See id.*; *State v. Woodard*, 341 S.W.3d 404, 410 (Tex. Crim. App. 2011). When findings of fact are not entered, as is the case here, we "must view the evidence in the light most favorable to the trial court's ruling and assume the trial court made implicit findings of fact that support its ruling as long as those findings are supported by the record." *See Valtierra*, 310 S.W.3d at 447. Although we give almost complete deference to a trial court's factual findings, we review mixed questions of law and fact that do not depend on credibility and demeanor de novo. *See Miller v. State*, 393 S.W.3d 255, 262 (Tex. Crim. App. 2012).

Consent to Search

"Under the Fourth Amendment, a search conducted without a warrant based on probable cause is 'per se unreasonable . . . subject only to a few specifically established and well-delineated

exceptions.'" *Meekins v. State*, 340 S.W.3d 454, 458 (Tex. Crim. App. 2011) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *see* U.S. CONST. amend. IV. A search conducted with a person's voluntary consent is one of those well-established exceptions. *Meekins*, 340 S.W.3d at 458 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973)). Courts have long approved consensual searches because "it is no doubt reasonable" for police to perform a search if a person voluntarily gives police permission. *State v. Weaver*, 349 S.W.3d 521, 526 (Tex. Crim. App. 2011); *see also Harrison v. State*, 205 S.W.3d 549, 552 (Tex. Crim. App. 2006) ("A search made after voluntary consent is not unreasonable."). The validity of a consent to search is a question of fact the court determines by reviewing all of the circumstances. *Meekins*, 340 S.W.3d at 458; *Valtierra*, 310 S.W.3d at 447.

When a person voluntarily consents to a search, an officer's authority to perform that search is not without limit. *See Florida v. Jimeno*, 500 U.S. 248, 251 (1991). "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Jimeno*, 500 U.S. at 251; *Meekins*, 340 S.W.3d at 459.

Here, Peoples argues that although she voluntarily consented to the search of her purse, she did not consent to the search of the coin purse located inside her purse. According to Peoples, Officer Dymtrus exceeded the scope of her consent when he opened the coin purse and searched it. Thus, our inquiry is limited to whether Officer Dymtrus had consent to search Peoples's coin purse located inside her purse.

The record reflects Officer Dymtrus asked Peoples for her identification, and she stated it was in her purse. He then asked Peoples whether he could "go into her purse" to look for the identification, and Peoples stated, "Yes." Inside the purse, Officer Dymtrus found a small coin purse, which he opened because that was "where [Peoples] told him her ID was at." Officer

Dymtrus testified that inside the coin purse there was "just like a bundle of cards" that were "all loose." He testified he flipped through the cards to find her identification, and at the bottom of the coin purse was a small bag containing cocaine. At no time did Peoples object to Officer Dymtrus's action.

Although Peoples argues Officer Dymtrus needed additional consent to search her coin purse, we disagree. It is undisputed Officer Dymtrus received permission to "go into [Peoples's] purse" to look for her identification. Accordingly, contrary to People's assertion, when viewing the record in the light most favorable to the trial court's ruling, we conclude it was objectively reasonable for Officer Dymtrus to believe Peoples consented to the search of her purse, including any closed containers such as her coin purse, that could contain her identification. *See Jimeno*, 500 U.S. at 259 (holding that after receiving consent to search vehicle, it was objectively reasonable for officer to believe he had consent to search closed containers inside vehicle); *United States v. Mendoza*, 318 F.3d 663, 664 (5th Cir. 2003) (holding that "take a look" is same as request for general consent to search). We therefore hold that Peoples's consent to search her purse extended to the coin purse.

Because we conclude Peoples's coin purse was within the scope of her consent to search, we overrule Peoples's first point of error. As a result, we need not address Peoples's remaining argument regarding whether the search constituted a valid search incident to arrest.

CONCLUSION

Based on the foregoing, we affirm the trial court's judgment.

Marialyn Barnard, Justice

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