In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-15-00257-CR
NO. 09-15-00258-CR
NO. 09-15-00259-CR

RICARDO GONZALEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 356th District Court
Hardin County, Texas
Trial Cause Nos. 19582, 19584, 23078

MEMORANDUM OPINION

Ricardo Gonzalez[1] appeals the trial court's ruling denying his motion to suppress. The motion addressed evidence that police seized in a warrantless search of Gonzalez's home. In 2014 when the search occurred, Gonzalez was on deferred

[1] The record reflects that the defendant is also known as Ricardo Gonzalez Jr., Ricardo V. Gonzalez, Ricardo Valazquez Gonzalez, and Ricardo Valazquez Gonzalez Jr.

adjudication for two previous crimes in cause number 19582, based on an indictment for possessing cocaine, and in cause number 19584, based on an indictment for aggravated assault with a deadly weapon. Following the 2014 search, the State charged Gonzalez with possessing cocaine in cause number 23078. After the trial court overruled the motion to suppress Gonzalez filed in cause number 23078, Gonzalez pled guilty in cause number 23078 to possessing cocaine with the intent to deliver, and he pled true in cause numbers 19582 and 19584 to the allegations that are in the State's motions to revoke alleging that Gonzalez violated the terms of the trial court's deferred adjudication orders. At the conclusion of the punishment hearings conducted in the three cases, the trial court found that Gonzalez should serve an eight-year sentence in cause number 19582, a sixteen-year sentence in cause number 19584, and an eighteen-year sentence in cause number 23078. *See* Tex. Health & Safety Code Ann. §§ 481.112, 481.115 (West 2010); Tex. Penal Code Ann. § 22.02 (West 2011).

In two issues, arguing that he did not voluntarily consent to the search and that his decision to agree to the search was tainted by police activity that he argues was improper, Gonzalez challenges the trial court's ruling denying his motion to suppress. We hold the trial court did not abuse its discretion by denying Gonzalez's motion to suppress, and we affirm the judgments in causes 19582, 19584, and 23078.

Standard of Review

We review a trial court's ruling on a motion to suppress under a bifurcated standard. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). Under that standard, the reviewing court gives the trial court's findings of historical fact almost total deference when its findings are supported by the record. The review of a trial court's ruling on a mixed question of law and fact is also given almost total deference in cases where the resolution of the mixed question of law and fact turns on the evaluation that the trial court made of the credibility and demeanor of the witnesses who testified during the suppression hearing. *Id.* However, "'mixed questions of law and fact' that do not depend upon credibility and demeanor[]" are reviewed using a de novo standard. *Id*. (quoting *Montanez v. State*, 195 S.W.3d 101, 107 (Tex. Crim. App. 2006)); *Guzman*, 955 S.W.2d at 89.

When, as is the case here, no findings of fact were requested or filed, we "impl[y] the necessary fact findings that would support the trial court's ruling if the evidence (viewed in the light most favorable to the trial court's ruling) supports these implied fact findings." *State v. Kelly*, 204 S.W.3d 808, 818-19 (Tex. Crim. App. 2006); *accord State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). In an appeal from a ruling on a motion to suppress, our responsibility is to determine

"whether, after affording almost total deference to the trial court's determination of historical facts that are supported by the record, the trial court abused its discretion by finding that the State proved by clear and convincing evidence that [the appellant] voluntarily consented to the [challenged] search[.]" *See Montanez*, 195 S.W.3d at 108; *see also Guzman*, 955 S.W.2d at 89.

Because it overruled Gonzalez's motion, we presume the trial court found that Gonzalez voluntarily consented to the search of his home and that the knock-and-talk procedure the police employed in approaching Gonzalez's home was conducted in a manner that did not result in a violation of the general constitutional requirement that searches conducted by the police must be authorized by a valid search warrant. At the conclusion of the hearing the trial court conducted on the motion to suppress the trial court made only one finding, which was oral, indicating that the trial court thought the video and audio recordings of the search supported the testimony of the police officers who testified that Gonzalez consented to the search.

In this case, it is undisputed that the police did not obtain a search warrant to authorize the search that occurred of Gonzalez's home. However, if an individual voluntarily consents to a police officer's request to conduct a search of the individual's property, the police can lawfully search the individual's property without obtaining a warrant. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973);

Meekins v. State, 340 S.W.3d 454, 458 (Tex. Crim. App. 2011). Under Texas law, the question of whether a person voluntarily consented to a request by police to conduct a search is viewed as a question of fact, and the State, at the hearing on the motion to suppress, bears the burden to prove by clear and convincing evidence that the defendant's consent was voluntary. *Gutierrez v. State*, 221 S.W.3d 680, 686 (Tex. Crim. App. 2007); *Carmouche v. State*, 10 S.W.3d 323, 331 (Tex. Crim. App. 2000) (instructing that "'[v]oluntariness is a question of fact to be determined from all the circumstances'") (quoting *Ohio v. Robinette*, 519 U.S. 33, 40 (1996)). Additionally, a claim that a police officer engaged in activities that violated someone's rights under the Fourth Amendment often requires that trial courts evaluate and resolve disputes between the officers who testify and others who were present during the search. *See Amador*, 221 S.W.3d at 673; *Montanez*, 195 S.W.3d at 108-09; *Johnson v. State*, 68 S.W.3d 644, 652-53 (Tex. Crim. App. 2002). On appeal, the trial court's resolution of such disputes is considered a mixed question of law and fact. *Id.* Therefore, with respect to the issues that Gonzalez has raised in his appeal, and given that the trial court resolved a factual dispute that concerned whether Gonzalez consented to the search, the trial court's ruling is reviewed under a standard that requires the appellate court to give the trial court's ruling almost total deference. *See Amador*, 221 S.W.3d at 673.

Knock-and-Talk

In issue two, Gonzalez argues that police resorted to a knock-and-talk procedure to gain access to him while he was home because they knew they did not possess sufficient information that would have allowed them to obtain a warrant authorizing a search of his home. According to Gonzalez, the police engaged in misconduct by approaching his house just before midnight, by detaining him without justification after he answered the door, and by failing to warn him regarding his rights. *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966). According to Gonzalez, the procedure that police used to gain his agreement to allow the search was improper, which he argues tainted the consent that he ultimately gave to allow the search in a way that that trial court should have found that his consent was not voluntary.

Under both federal and state law, police officers are allowed to approach citizens in public places, to knock on doors to ask questions, and to ask whether an individual will allow the police to search the individual's property or to search property that is under the individual's control. *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *State v. Perez*, 85 S.W.3d 817, 819 (Tex. Crim. App. 2002); *Hunter v. State*, 955 S.W.2d 102, 104 (Tex. Crim. App. 1997). Courts have referred to the procedure of the officer's approaching an individual's residence and knocking on the door with

the goal of speaking to an individual who is believed to be in the home as a knock-and-talk. *See Ewolski v. City of Brunswick*, 287 F.3d 492, 504-05 (6th Cir. 2002); *see also United States v. Chambers*, 395 F.3d 563, 567 n.2 (6th Cir. 2005). Courts generally view knock-and-talks as encounters between citizens and the police that are noncustodial and consensual, even though the police ultimately in some cases ask the person they encounter for permission to conduct a search. *Id*.

If the officer conducting the knock-and-talk does not indicate that the individual must comply with the officer's requests, an officer need not have reasonable suspicion or a basis for suspecting a particular person before the officer is permitted to approach a person's home, knock on the person's door, ask questions of the individuals subsequently encountered, or to request that these individuals consent to a search. *See Bostick*, 501 U.S. at 434-35; *see also Perez*, 85 S.W.3d at 819; *Hunter*, 955 S.W.2d at 104. Generally, police are permitted to employ a knock-and-talk strategy because it is a reasonable investigative tool when the circumstances show that the police never indicated to the person who they encountered during a knock-and-talk that the person was required to speak to police or to cooperate with their requests. *See United States v. Lewis*, 476 F.3d 369, 381 (5th Cir. 2007). In most cases, the decision that a person makes to come to the door and to talk with police is viewed as a consensual encounter, as the individual under these circumstances can

generally terminate the interaction at any time. *See Hunter*, 955 S.W.2d at 104. Unless the circumstances show that encounter at issue was not consensual, these types of encounters are not ones that courts generally consider to be seizures that are subject to the Fourth Amendment. *Bostick*, 501 U.S. at 434; *see Hunter*, 955 S.W.2d at 104. On the other hand, if the evidence demonstrates that an officer restrained an individual by means of physical force or a show of authority, a trial court may conclude that a seizure occurred. *See Bostick*, 501 U.S. at 434. Additionally, the facts regarding such encounters are examined from the standpoint of whether a reasonable person would have felt he was free to terminate the encounter. *See Hunter*, 955 S.W.2d at 104. A trial court is to determine whether a knock-and-talk was a consensual encounter based on the totality of the circumstances. *See id.*

Three witnesses, the two police officers who were the primary officers involved in searching Gonzalez's home and Gonzalez, testified during the hearing the trial court conducted on Gonzalez's motion to suppress. The evidence from the hearing established that the officer in charge of the search was a sergeant who worked in the narcotics division of the Hardin County Sheriff's Office. The narcotics officer indicated that before he searched Gonzalez's home, he obtained information from another individual who identified Gonzalez as the person responsible for selling him the marijuana that the narcotics officer had found in his possession. The

individual who identified Gonzalez as the person who sold him contraband then showed the narcotics officer where Gonzalez lived.

Within hours after learning where Gonzalez lived, the narcotics officer and a sergeant with the City of Silsbee Police Department went to Gonzalez's house. According to the narcotics officer, he and the sergeant approached Gonzalez's house around midnight after he noticed there were some lights on inside Gonzalez's house to see if Gonzalez was there. The narcotics officer acknowledged that he did not have a search warrant authorizing a search, but his testimony also indicates he did not attempt to obtain one. The narcotics officer indicated during the hearing that on the night he went to Gonzalez's home, he was wearing a shirt marked "Sheriff." The sergeant who accompanied him that night was wearing a standard patrol uniform. Both of the officers had their guns, but the narcotics officer testified that at no time did he or the other officer draw their weapons, threaten to arrest Gonzalez, or promise Gonzalez anything in return for cooperating with the police.

The narcotics officer explained that when Gonzalez answered the door, he asked Gonzalez whether he had been burning rubber in or around his property. The narcotics officer agreed that his suggestion about the burning of tires was posed merely to get Gonzalez to come outside. According to the narcotics officer, he wanted Gonzalez to come outside because he had information that Gonzalez had a

gun. When Gonzalez answered the door, he told the police that he was not burning anything. After that, the narcotics officer asked Gonzalez to point out to him who owned an adjoining property, which the officer explained was simply another request designed to distance Gonzalez from his home and reduce the chance that Gonzalez might attempt to retrieve a gun. When Gonzalez was about six feet from the house, the narcotics officer told Gonzalez that the police had information that Gonzalez had marijuana inside the home. According to the narcotics officer, Gonzalez admitted that he had marijuana, cocaine, and firearms in the home. The narcotics officer explained that during the encounter, Gonzalez spoke to him in "[v]ery plain English." After Gonzalez told the officer that he had drugs and firearms in the house, the narcotics officer asked Gonzalez if he would allow the police to search the home. According to the narcotics officer, Gonzalez agreed to the request, stating: "'Yes, not a problem. You can search. Not only can you search, I will tell you it's in a safe. The safe is locked, and I can provide you with the codes to open it.'"

According to the narcotics officer, Gonzalez was very calm and relaxed throughout the encounter. While the officer was aware based on what Gonzalez told him that Gonzalez's girlfriend was inside the home, the narcotics officer testified that he never threatened to arrest Gonzalez or his girlfriend if they refused to

cooperate with his requests. After Gonzalez agreed to allow the police to search his home, he showed the officers where the safes in the home with the drugs and guns were located and then opened them.

The sergeant who assisted the narcotics officer with the investigation that resulted in Gonzalez's arrest also testified during the hearing. The sergeant testified that as they were going to Gonzalez's house, the narcotics officer told him that they were going to conduct a knock-and-talk "and see if he couldn't get consent to search[.]" The sergeant explained that after Gonzalez answered the door and came outside, he heard Gonzalez and the narcotics officer conduct their entire discussion in English. In his testimony, the sergeant offered his opinion that Gonzalez was fluent in the English language. The sergeant also explained that after Gonzalez told the narcotics officer that he had drugs in one of the bedrooms of the home, he heard the narcotics officer ask Gonzalez if he would "mind if we come in and look?" According to the sergeant, Gonzalez responded by saying "[s]ure." The sergeant indicated that Gonzalez consented to the narcotics officer's request to search the home before either of the officers entered Gonzalez's home.

Gonzalez was the last witness who testified during the hearing. He testified at the hearing with the assistance of an interpreter. In his testimony, Gonzalez indicated that he understood some English, but he stated that Spanish is his primary language.

Gonzalez testified that he never agreed to the request the narcotics officer made asking him for his permission to search his home.

In addition to the fact that Gonzalez denied that he consented to the search, there are also other differences with the account that Gonzalez provided about the encounter that evening when it is compared to the accounts that were provided by the officers. According to Gonzalez, after answering the door, the officer standing at the door told him that there was a fire in the woods and asked that he come outside. Gonzalez indicated that when he opened the door, he saw the officer at the door had a gun. However, Gonzalez never testified that either officer ever removed the guns from their holsters. Gonzalez also disputed the testimony of the officers that he volunteered that he had drugs and guns in the house. When the narcotics officer suggested that he had information indicating that Gonzalez had drugs in his house, Gonzalez stated that he "stared" at the officer, who he then saw signal the other officer, and that officer then went into his home. According to Gonzalez, he asked the narcotics officer whether the police had anything that would allow the officers to enter his home. According to Gonzalez, the officer responded he "didn't need it." Gonzalez testified that after the officer entered his home, the other officer placed him in handcuffs, and he followed the officer who was with him inside because the other officer had already gone into the home. Gonzalez explained that after the

officers were in his home, and because the officers told him they were going to search the home anyway, he agreed to open the safes in his home.

While Gonzalez argues in his brief that the circumstances show that English is his second language, he does not argue that his proficiency is such that he did not understand what the officers said. While the evidence from the hearing shows that English is Gonzalez's second language, it also shows that he can communicate in English. For instance, on cross-examination, Gonzalez admitted that while he was in jail, he had, on occasion, acted as an interpreter for Spanish speaking inmates. The recorded interview that Gonzalez gave to the narcotics officer after being taken into custody also shows that Gonzalez can communicate using English.

The evidence admitted in the hearing includes three short DVD recordings, which came from recording devices that were controlled by the police on the night of the search. While the devices recorded the search, they did not capture the narcotics officer's initial conversation with Gonzalez during which, according to the officers, Gonzalez consented to the request to allow the officers to search his home. As a result, the trial court was required to resolve whether Gonzalez consented to the narcotics officer's initial request for permission to search Gonzalez's home based on the testimony that was admitted during the hearing. Although the narcotics officer's initial conversation with Gonzalez was not recorded, the recordings

captured the subsequent conversations between Gonzalez and the police. The recordings show that Gonzalez assisted the police in the search, and they demonstrate that Gonzalez never claimed that the police were conducting the search without his permission. The recordings also do not show that police threatened or promised Gonzalez anything to gain his cooperation.

Having reviewed the testimony and the recordings that were admitted into evidence during the hearing on the motion to suppress, and having considered the totality of the circumstances, we conclude the trial court acted within its discretion by finding that the knock-and-talk procedure employed by police was a consensual encounter that did not result in a seizure. *See Hunter*, 955 S.W.2d at 104; *see also State v. Garcia-Cantu*, 253 S.W.3d 236, 243 (Tex. Crim. App. 2008) (holding that officers are free to approach and knock on citizens' doors and ask to talk with them, and that such conduct does not constitute a seizure until officers engage in threatening or coercive conduct).

Consent

A search conducted without a warrant is "per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions[.]"*Schneckloth*, 412 U.S at 219 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One of the recognized exceptions to the general requirement that police obtain a search warrant

occurs when the individual whose property is searched is shown to have voluntarily consented to the search. *Id.* The question of whether a person voluntarily consented to a search generally requires that trial court's resolve the dispute as a question of fact. *Meekins*, 340 S.W.3d at 459. Consequently, issues of consent are of necessity "fact intensive," and "a trial court's finding of voluntariness must be accepted on appeal unless it is clearly erroneous." *Id.* at 460.

Since the trial court overruled Gonzalez's motion, we imply that it found that Gonzalez voluntarily consented to the search. *See Kelly*, 204 S.W.3d at 818-19. On appeal, the prevailing party in the trial court "'is afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence.'" *Id.* (quoting *Garcia-Cantu*, 253 S.W.3d at 241). Nonetheless, the Fourth and Fourteenth Amendments require that an individual's consent to a request to conduct a search not be coerced by either explicit or implicit means, or by implied threat or covert force. *Schneckloth*, 412 U.S. at 228.

Interpreting the Supreme Court's standard for evaluating the voluntariness of an individual's consent, the Court of Criminal Appeals has directed appellate courts to "review the totality of the circumstances of a particular police-citizen interaction from the point of view of the objectively reasonable person, without regard for the subjective thoughts or intents of either the officer or the citizen." *Meekins*, 340

S.W.3d at 459. Ultimately, the question is "whether the person's 'will ha[s] been overborne and his capacity for self-determination critically impaired,' such that his consent to search must have been involuntary." *Id.* (quoting *United States v. Watson*, 423 U.S. 411, 424 (1976) (quoting *Schneckloth*, 412 U.S. at 225)). Trial courts consider a variety of factors in balancing the unique facts and circumstances of each case to determine whether the State proved by clear and convincing evidence that a person's consent to a search was voluntary. *Id.* at 459-60. Factors that are relevant to the voluntariness of an individuals' consent include "physical mistreatment, use of violence, threats, threats of violence, promises or inducements, deception or trickery, and the physical and mental condition and capacity of the defendant[.]" *Id.*, 340 S.W.3d at n.26 (quoting *United States v. Pena*, 143 F.3d 1363, 1367 (10th Cir. 1998)). Other factors include the defendant's age, his education, intelligence, the length of any detention that occurred before the police obtained consent, any advice the police gave the defendant about his constitutional rights, how many times the police requested consent to search before obtaining it, and whether the police used physical threats during the encounter. *See Reasor v. State*, 12 S.W.3d 813, 818 (Tex. Crim. App. 2000).

In this case, Gonzalez argues that his consent was not voluntary because the officers came to his home in the middle of the night, accused him of drug crimes and

possessing firearms, failed to determine the extent to which he could communicate in English, failed to explain his rights, and failed to advise him that he could refuse to allow the search. The trial court resolved these same arguments against Gonzalez when it overruled his motion and by implication found that he voluntarily consented to the search. The trial court did not abuse its discretion in finding that Gonzalez voluntarily consented to the search. While a warning that an individual has the right to refuse a requested search is a relevant factor in a court's determination regarding whether a defendant's consent was voluntary, the State is not required to prove that it warned the defendant that he could refuse a requested search before a trial court may find that the defendant's consent was voluntary. *See Meeks v. State*, 692 S.W.2d 504, 510 (Tex. Crim. App. 1985); *see also Graham v. State*, 201 S.W.3d 323, 330 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd). Additionally, neither *Miranda* warnings nor the defendant's awareness that he can refuse a request by police to conduct a search are conditions that must be proven by the State before a trial court may find that a defendant's consent was voluntary. *See Rayford v. State*, 125 S.W.3d 521, 528 (Tex. Crim. App. 2003).

In this case, it appears the trial court considered all of the relevant circumstances regarding Gonzalez's consent in evaluating whether his consent was voluntary. *See Meekins*, 340 S.W.3d at 459. Based on the testimony admitted in the

hearing, the trial court was faced with conflicting testimony about whether Gonzalez consented to the search, and whether the police obtained his consent before they entered his home. Nonetheless, the trial court was free to believe the officers' accounts that Gonzalez consented to the request the narcotics officer made to search the home, and to believe the officers' accounts that Gonzalez gave his consent before any of the officers went inside the home. *See Ross*, 32 S.W.3d at 855; *McFadden v. State*, 283 S.W.3d 14, 17 (Tex. App.—San Antonio 2009, no pet.). From the evidence, the trial court also acted within its discretion by concluding Gonzalez voluntarily consented to the search even though he did not know that he could refuse the narcotics officer's request. As the factfinder in the suppression hearing, the trial court was free to give great weight to the evidence showing that only a short period of time elapsed between the time the police knocked on Gonzalez's door and the time the narcotics officer's asked Gonzalez to allow the police to search his home, to the evidence showing that Gonzalez understood English, to the evidence that Gonzalez was very cooperative throughout the entire encounter, to the evidence showing that the police did not threaten Gonzalez or his girlfriend, and to the testimony that Gonzalez agreed to the request the narcotics officer made asking Gonzalez for permission to search the home. As the factfinder in the hearing, the

trial court also had the discretion to give little or no weight to Gonzalez's testimony regarding the encounter leading to the search. *Id*.

In light of the discretion the trial court possessed to resolve the disputed testimony regarding the encounter between Gonzalez and the police, we hold the trial court did not abuse its discretion by deciding to deny Gonzalez's motion to suppress. We overrule Gonzalez's issues and affirm the trial court's judgments in cause numbers 19582, 19584, and 23078.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on April 13, 2016
Opinion Delivered February 15, 2017
Do Not Publish

Before Kreger, Horton, and Johnson, JJ.