



IN THE
TENTH COURT OF APPEALS

No. 10-16-00380-CR

LAWRENCE LEWIS LOVE,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 19th District Court
McLennan County, Texas
Trial Court No. 2014-1065-C1

MEMORANDUM OPINION

Lawrence Lewis Love was convicted of possession of marijuana and sentenced to 24 months in a State Jail facility. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.121 (West 2017). The sentence was suspended and Love was placed on community supervision for 5 years. Because the trial court did not err in denying Love's motion to suppress, we affirm the trial court's judgment.

MOTION TO SUPPRESS

In one issue, Love contends the trial court erred in denying his motion to suppress evidence seized at his residence. Specifically, Love asserts that McLennan County Sherriff's deputies coerced Love's wife, Courtnae, to consent to a search of their house, which resulted in the seizure of marijuana.

Consent to Search

The Fourth Amendment of the United States Constitution provides protection from "unreasonable" searches and seizures by government officials. *Hubert v. State*, 312 S.W.3d 554, 560 (Tex. Crim. App. 2010). Even the entry into a residence by police officers is a "search" for purposes of the Fourth Amendment. *Valtierra v. State*, 310 S.W.3d 442, 448 (Tex. Crim. App. 2010). Generally, all searches conducted without a warrant are deemed unreasonable. *Hubert*, 312 S.W.3d at 560. Voluntary consent, however, is a recognized exception to the warrant requirement. *See id.*

A police officer may obtain voluntary consent from either the suspect or a third party who has actual or apparent authority to consent to the search. *See Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S. Ct. 2793, 111 L. Ed. 2d 148 (1990); *State v. Rodriguez*, 521 S.W.3d 1, 19 (Tex. Crim. App. 2017); *In re S.C.*, 523 S.W.3d 279, *11 (Tex. App.—San Antonio 2017, no pet.). A person's consent to search can be communicated to law enforcement in a variety of ways, including by words, action, or circumstantial evidence showing implied consent. *Meekins v. State*, 340 S.W.3d 454, 458 (Tex. Crim. App. 2011).

"But the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force." *Schneckloth v. Bustamonte*, 412 U.S. 218, 228, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973). The State has the burden to prove the voluntariness of a consent to search by clear and convincing evidence. *Meekins*, 340 S.W.3d at 459. But whether a person's consent is voluntary is a question of fact that is determined by analyzing all of the circumstances of a particular situation. *Id.* The trial judge must conduct a careful sifting and balancing of the unique facts and circumstances of each case in deciding whether a particular consent to search was voluntary or coerced. *Id.* Testimony by law enforcement officers that no coercion was involved in obtaining the consent is evidence of the consent's voluntary nature. *Martinez v. State*, 17 S.W.3d 677, 683 (Tex. Crim. App. 2000).

Standard of Review

When reviewing a trial court's ruling on a motion to suppress, we view the evidence in the light most favorable to the trial court's ruling. *State v. Robinson*, 334 S.W.3d 776, 778 (Tex. Crim. App. 2011); *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony. *Wiede v. State*, 214 S.W.3d 17, 24-25 (Tex. Crim. App. 2007). We give almost total deference to a trial court's express or implied determination of historical facts and review de novo the court's application of the law of search and seizure to those facts. *Hereford v. State*, 339 S.W.3d 111, 118 (Tex.

Crim. App. 2011); *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006); *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000). When a trial judge makes express findings of fact, an appellate court must examine the record in the light most favorable to the ruling and uphold those fact findings so long as they are supported by the record. *State v. Rodriguez*, 521 S.W.3d 1, 8 (Tex. Crim. App. 2017).

EVIDENCE

There is no dispute by the parties that Love's wife, Courtnae, had the authority, actual or apparent, to consent to the search of the residence. Love's dispute is two-fold: 1) whether Courtnae voluntarily consented to the deputies' entry into the house, and 2) whether Courtnae voluntarily consented to a search of the house for contraband. The testimony presented at the hearing by Love and the State was so divergent, it was as if neither the deputy nor Courtnae were at the same encounter.

Entry

As to the entry into the house by the deputies, Courtnae disputed that she voluntarily let them in the house. She testified that she only opened the door after 30-40 minutes of continual knocking. She said she was frantic because she had thought something had happened to Love and that when she opened the door, she stepped out onto the porch and shut the door behind her. Courtnae stated that she did not invite them in the house; she only let them in because she was told Love sent the deputies over to enter the house.

Cody Blossman, a McLennan County Sherriff's deputy, had a different version of the entry. Blossman testified that he and another deputy conducted a "knock-and-talk" at the Love residence at 11:30 p.m. and that Courtnae let them in after they explained that her husband was in jail, drugs were found in the vehicle he was driving, it appeared that the drugs were meant for distribution, and that they would like to visit with her inside the house. Blossman testified that they did not demand entry, but rather asked, "We would like to visit with you further regarding this. Can we talk inside?"

Contraband – Voluntary Surrender or Search

Courtnae also disputed that she voluntarily retrieved the contraband for the deputies. She stated that the deputies were standing right next to her, telling her they "just need the stuff." They were shining their flashlights around the house, because only one light was on, and asked her to turn on the lights. She did so, and some of the "stuff" could be seen in a room. She stated that one of the deputies went into the room, saw the "stuff" and started to pull more "stuff" out of the closet. Before this happened, Courtnae explained that, "They told me that I could be taken to jail. They told me that my daughter could be taken to CPS. They told me they were going to call housing and get me kicked off of housing unless I cooperated. If I cooperated with them and went along, just as my husband was, that none of this stuff would happen."

Blossman testified that as they were visiting with Courtnae, the deputies sat on the couch while Courtnae sat on an ottoman. He did not feel like he was threatening her,

and he did not tell her that Love gave them permission to be there at the house or that Love consented to the search of the house. He explained to her that Love was found earlier with marijuana and money which indicated he was dealing drugs. Blossman further explained to Courtnae that they wanted to give her the opportunity that night to cooperate with law enforcement and to show that she's separating herself from any activity that Love may have brought into their home. Blossman told Courtnae that otherwise, they would just take the information that we had and turn it over to our narcotics unit and that if a warrant was issued, CPS could get involved.

Blossman testified that after this discussion, Courtnae cried, got up, and walked into a room behind the living room. She returned to the room with a tray with what appeared to be marijuana, some baggies, and a scale on it. Blossman asked her what else she had. At that point, Courtnae returned to the room, reached into a closet, and pulled out some larger bags of marijuana.

Findings of Fact

The trial court was not required to believe Courtnae's version of the facts. The trial court was called upon to decide which of two very different stories to believe and, based on the trial court's ruling, the trial court expressly determined that Blossman's testimony was credible and reliable. The court then expressly found that after some discussion, the deputies asked to enter the residence to continue the discussion, and Courtnae allowed them to enter. After some options and possible consequences were

discussed regarding what could happen if contraband was found in the house, Courtnae retrieved from another room a tray containing marijuana, baggies, and a scale. The court also found that when Courtnae was asked what else was in the residence, she entered the same room and retrieved larger bags of marijuana from a closet. The record supports the trial court's findings and we defer to those findings.

Conclusions of Law

Based on its fact findings, the trial court then concluded that Courtnae voluntarily allowed the deputies to enter the residence and voluntarily produced the contraband and that consent to search was not necessary because there was no search. When contraband is voluntarily produced, no search is conducted. *Munoz v. State*, 485 S.W.2d 782, 784 (Tex. Crim. App. 1972) ("The officers being where they had a right to be, we certainly cannot say that they should have refused to accept that which was voluntarily handed to them."). We give the same deference to the trial court's findings on the voluntariness of the surrender of the contraband as we would a finding on the voluntariness of consent to search. After our de novo review of the trial court's application of the law of search and seizure to all of the facts, we agree with the trial court's conclusions.

CONCLUSION

Accordingly, because Courtnae voluntarily consented to the deputies' entry into her house, the first part of Love's issue is overruled. Further, because Courtnae voluntarily retrieved the contraband and surrendered it to the deputies, there was no

search, and any issue regarding whether Courtnae voluntarily consented to a physical search for the contraband is obviated. Thus, the second part of Love’s issue is overruled.

Having overruled Love’s issue on appeal, we affirm the trial court’s judgment.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed November 8, 2017

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