



NUMBER 13-16-00159-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

VERNON CORDOVA,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 319th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Hinojosa
Memorandum Opinion by Justice Rodriguez**

Appellant Vernon Cordova pleaded guilty to two counts of possession of a controlled substance. By his sole issue on appeal, Cordova contends that the trial court erred when it denied his motion to suppress evidence. We affirm.

I. BACKGROUND

At the suppression hearing, multiple officers from the Corpus Christi Police Department recounted their experiences on June 4, 2015, when they responded to a report of gunfire at Cordova's family home. Officer Dwayne Kelly testified that he was the first to arrive on the scene, at 11:07 a.m., shortly after which he saw Cordova's brother Vincent emerge from the backyard. Officer Kelly placed Vincent in his patrol car to secure the scene. Around this time, two other patrol cars arrived.

Officer Kelly testified that from the front of the house, he could hear Cordova "yelling and screaming and hollering" from inside, and Officer Kelly could tell that there were others present in the house. According to both Officer Kelly and Officer Ricardo Soliz, the officers remained outside and talked to Cordova through the screen door, asking him to come outside. After a "few minutes," Cordova complied and emerged from the house. A dashcam video captured Cordova being escorted, in handcuffs, into a patrol unit at 11:19 a.m.

Officer Soliz testified that officers then entered the house, and soon thereafter, three or four women¹ emerged from different parts of the house one by one, and they sat around the kitchen table; their identities were not immediately clear, though officers later gathered that two younger women were in relationships with Cordova and Vincent, and an elderly woman was related to the brothers. Officer Soliz kept watch in the kitchen while other officers performed a "protective sweep" of the house. Officer Kelly testified that one of the officers found a bullet casing in the hallway and a bullet hole in the door

¹ The exact number of women present was unclear.

of a room. The door was locked. Meanwhile, Officers Soliz and Kelly received “several” varying and “evasive” reports of what had happened from those present in the first few “chaotic” minutes after Cordova surrendered.

At 11:23 a.m., four minutes after Cordova was taken into custody, Officer Kelly was heard on the dashcam video asking Cordova where the key to the locked door was kept. Officer Kelly described Cordova’s response: “I asked him where the keys were, and he said, you can hear, he’ll show me anything, he’ll give me the keys, he’ll take me in there if you need to [sic].” The dashcam video confirmed Officer Kelly’s testimony, and it also captured him explaining, “We need to make sure that nobody’s hurt in that room.” Officer Kelly testified that Cordova told him to ask his wife for the key to the room.

The locked room was later confirmed to be Cordova’s bedroom. Officer Kelly testified that he obtained the key and made entry, along with Lieutenant Carlos Rios. Kelly saw no one in the main area of the room, then went around a dresser near the entry way and checked under the bed and in the closet. Finding no one, Officer Kelly asked “Officer Saul” to take photographs of the area.

Several officers testified that at some point in the following minutes, an officer noticed a plastic bag containing a green, leafy substance on Cordova’s dresser.² Officers believed the substance to be marijuana, which field testing confirmed.

² At the suppression hearing, there was a great deal of uncertainty as to which officer had initially discovered the bag of marijuana. The State stipulated that six of the officers who were first on the scene—Officers Rodriguez, Soliz, Kelly, Saul, Rios, and Rivera—had no recollection of who discovered the marijuana, and other officers who arrived later testified that they did not discover the marijuana. However, one officer testified that he recalled the sequence of events with certainty: Officer Swain, who drew up the warrant application and the affidavit, testified that Officer Soliz had described finding the marijuana. Cordova does not challenge this discrepancy on appeal.

Shortly later on the same day, an application for a search warrant was drawn up by Officer Joshua Swain, who also submitted a supporting affidavit. In the affidavit, Officer Swain summarized the information he had gathered thus far: officers responded to reports of multiple gunshots at a residence; there, officers encountered Vincent Cordova, who explained that after he punched his brother (Cordova) during an argument, Cordova pulled out a hand gun and “fired several shots”—some within the home, and others aimed at Vincent as he moved across the backyard; after police took Cordova into custody, Officer Rios, Officer Soliz, and another officer named Roberto Rodriguez performed a protective sweep of the residence and located a handgun lying on the living room couch, a bullet casing in a hallway, and a bullet hole in Cordova’s bedroom door; on top of a dresser in Cordova’s bedroom, officers discovered a small, clear, plastic baggy containing a substance that was confirmed to be marijuana; and a criminal history check revealed that Cordova had been convicted of burglary of a habitation and was on parole. The application sought a warrant to search the house for more marijuana and evidence of narcotics trafficking.

The trial court issued a warrant at approximately 3:00 p.m. that day. The search revealed more marijuana, as well as methamphetamine, heroin, and other firearms. The State indicted Cordova for two counts of possession of a controlled substance in an amount less than one gram, both state jail felonies. See TEX. HEALTH & SAFETY CODE ANN. §§ 481.032, 481.115(a)–(b) (West, Westlaw through 2015 R.S.). Also in the indictment were allegations that Cordova had two prior convictions for state jail felonies,

thus enhancing each count to a felony of the third degree. See TEX. PENAL CODE ANN. § 12.425(a) (West, Westlaw through 2015 R.S.).

Cordova moved to suppress the contraband and other evidence. The trial court denied the motion to suppress, and Cordova then waived any right to the entry of findings of fact and conclusions of law. Pursuant to a plea agreement, Cordova received a sentence of three years' confinement on each count in exchange for his plea of guilty, subject to his right to file this appeal, which we now consider.

II. APPLICABLE LAW

A. Standard of Review

In reviewing a trial court's ruling on a motion to suppress, we afford almost total deference to a trial judge's determination of historical facts. *Weems v. State*, 493 S.W.3d 574, 577 (Tex. Crim. App. 2016). When findings of fact are not entered, we 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 the ruling as long as the record supports those findings. *Id.* We review questions of law de novo. See *id.* We will sustain the ruling if the record reasonably supports that ruling and is correct on any theory of law applicable to the case. *Id.*

B. Justification for Warrantless Search

"If the police have probable cause coupled with an exigent circumstance, or they have obtained voluntary consent, or they conduct a search incident to a lawful arrest, the Fourth Amendment will tolerate a warrantless search." *Gutierrez v. State*, 221 S.W.3d 680, 685 (Tex. Crim. App. 2007). The court of criminal appeals has identified three

categories of exigent circumstances that justify a warrantless intrusion by police officers: (1) providing aid or assistance to persons whom law enforcement reasonably believes are in need of assistance; (2) protecting police officers from persons whom they reasonably believe to be present, armed, and dangerous; and (3) preventing the destruction of evidence or contraband. *Id.*

As an incident to a lawful arrest, officers may, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched—known as a protective sweep. *Maryland v. Buie*, 494 U.S. 325, 334 (1990). Beyond that, however, there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. *Id.*

C. Appellate Briefing Rules

An appellant's brief must concisely state the facts pertinent to the issues or points presented, and it must support the facts stated with references to the record. TEX. R. APP. P. 38.1(g). It is incumbent upon appellant to cite specific legal authority and to provide legal arguments based upon that authority. *Bell v. State*, 90 S.W.3d 301, 305 (Tex. Crim. App. 2002) (en banc); see TEX. R. APP. P. 38.1(i). This Court has no obligation to construct and compose a party's issues, facts, and arguments with appropriate citations to authorities and to the record. *Lucio v. State*, 351 S.W.3d 878,

896 (Tex. Crim. App. 2011) (quoting *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008)).

III. DISCUSSION

By his sole issue, Cordova contends that the trial court erred when it denied his motion to suppress because there was sufficient time to petition a magistrate for a search warrant before entering Cordova's locked room: "the house and its occupants were secured and there were no exigent circumstances" in that there was no risk that any "gunshot evidence that may have been found in his room" would degrade or disappear. As support for this argument, Cordova offers only general allusions to the United States Constitution, a citation to a single protective-sweep case (*Maryland v. Buie*), little explanation of that case or its applicability here, and only broad references to large swaths of the record. See TEX. R. APP. P. 38.1.

Nevertheless, as we understand the limited argument presented in Cordova's brief, he focuses his attention on whether there was justification for the protective sweep. However, the State presented specific, articulable facts that would justify the officers' " cursory inspection of those spaces where a person may be found." See *Buie*, 494 U.S. at 335. The State adduced testimony that officers responded to reports of multiple gunshots at the residence; that after his arrival, Officer Kelly found a bullet casing near the street; that officers spent the first minutes of the encounter trying to coax Cordova to stop screaming and come out of the house peaceably; that, even after Cordova was detained, the three officers who first entered the house were outnumbered by those who had made their presence known—people whose identities were unknown to the officers—

and that officers did not know how many other people were in the house; that those present provided “evasive,” “back and forth” accounts in the initial, “chaotic” moments after Cordova’s detention; and that firearms were found on a couch in the middle of the room. Taken together, these facts certainly justified the protective sweep of the home, including, at a minimum, the hallway where the bullet casing and bullet hole were found. See *Buie*, 494 U.S. at 335.

Beyond his limited treatment of the protective sweep, Cordova “presents nothing for review.” See *Lucio*, 351 S.W.3d at 896. At the suppression hearing, the State developed other potential justifications for the officers’ actions entry into Cordova’s room, and none of these supportive grounds are addressed by Cordova. See TEX. R. APP. P. 47.1 (providing only for the dispatch of “every issue raised”); see also *United States v. Buchanan*, 70 F.3d 818, 826 (5th Cir. 1995), as amended (Feb. 22, 1996) (taking as given “the validity of the arrest warrant, the officers’ entry into her home, [and] the protective sweep of her house” where appellant did not challenge those aspects of the case); *Marsh v. State*, 343 S.W.3d 475, 479 (Tex. App.—Texarkana 2011, pet. ref’d). Cordova does not address the State’s case on probable cause, he cites no authority relating to exigent circumstances, and he neglects to mention another potential source of exigent circumstances outlined in *Gutierrez* and developed before the trial court: the need to help “persons whom law enforcement reasonably believes are in need of assistance.” See 221 S.W.3d at 685; see also *United States v. Yarbrough*, No. 2:12-CR-551, 2013 WL 104812, at *5 (S.D. Tex. Jan. 8, 2013) (order) (upholding a search based on an unchallenged theory of exigent circumstances), *aff’d*, 558 Fed. Appx. 416 (5th Cir. 2014).

Perhaps most importantly, Cordova does not dispute the State’s evidence and argument at the suppression hearing that he voluntarily consented to the search of his bedroom, thereby justifying police presence in the room. See *Dickey v. State*, 96 S.W.3d 610, 613 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (upholding denial of suppression where the trial court did not make findings of fact and defendant did not challenge the State’s evidence and argument that the defendant gave voluntary consent to a search); *Thornton v. State*, 925 S.W.2d 7, 12 (Tex. App.—Tyler 1994, pet. ref’d) (same); see also *Williams v. State*, 621 S.W.2d 609, 613 (Tex. Crim. App. [Panel Op.] 1981).

In sum, the State developed many potential “theor[ies] of law applicable to the case” which could support the officers’ actions. See *Weems*, 493 S.W.3d at 577. On appeal, Cordova only briefly addressed one of these theories, see TEX. R. APP. P. 47.1, and we have found this argument to be without merit. See *Buie*, 494 U.S. at 335.

We overrule Cordova’s sole issue.

IV. CONCLUSION

We affirm the judgment of the trial court.

NELDA V. RODRIGUEZ
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
6th day of April, 2017.