Affirmed and Opinion filed May 3, 2001.

In The

Fourteenth Court of Appeals

———————————

NO. 14-99-01237-CR

———————————

AMUD VELASQUEZ WILVER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 798,880

O P I N I O N

Appellant was charged by indictment with possession with intent to deliver more than 400 grams of cocaine. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112 (Vernon Supp. 2000). Jurors found appellant guilty as charged in the indictment and assessed punishment at fifty years in prison and imposed a $250,000 fine. We affirm.

I. Background

The wife of appellant, Maria Johnson, testified that she met and befriended a woman she knew as "Samantha," who, unbeknownst to Johnson, was a confidential informant for Houston

police. Johnson testified that after some conversations she told Samantha her husband was a Colombian. According to Johnson, Samantha then informed Johnson that she sold drugs and was seeking to purchase a kilogram of cocaine. Samantha asked Johnson if appellant could supply the cocaine. Johnson relayed Samantha's message to appellant, but appellant, who did not know Samantha, was unwilling to deal with her. Subsequently, however, Samantha arranged to purchase a half-ounce of cocaine from appellant for $300. Samantha gave the money to Johnson, who delivered the money to her husband. On October 10, 1998, Johnson delivered the cocaine to Samantha at a supermarket.

Appellant ultimately agreed to deliver a kilo of cocaine to Samantha, and on November 24, 1998, appellant instructed her to meet him at another Houston supermarket. Samantha and a female undercover Houston police officer, K.Y. King, who was wearing a concealed radio transmitter, met appellant at the supermarket. After they all got into Samantha's vehicle, King showed appellant some $16,000 in cash she carried in her purse. Appellant told the two women to accompany him to his apartment complex to complete the transaction. At the complex, King waited outside the security gate while Samantha went to appellant's apartment. After Samantha reported she had seen the cocaine, King approached the apartment complex security gate and waited to be admitted by appellant. At that point, the police arrest team attempted to enter the complex but were unable to get through the security gate. A police officer testified that appellant identified the team members as police officers and walked away from his apartment. The team members eventually were able to enter the complex and arrested appellant in the mail room.

Two Spanish-speaking officers presented Spanish-language consent-to-search forms to appellant and sought permission to search his apartment. A police officer testified that appellant indicated he wanted to enter the apartment with the police to avoid public embarrassment. Police officers Dimas and Almanza both testified that appellant signed the Spanish-language consent forms, granting permission to search appellant's apartment and vehicle. The forms, admitted into evidence as State's Exhibits 1 and 2, included appellant's

acknowledgment that he had the right to refuse permission for a search without a warrant. Officer Almanza agreed with the prosecutor that when appellant signed the consent forms appellant was not "threatened, or coerced," that appellant had not been promised anything, and that appellant signed the forms freely and voluntarily. Almanza testified, "[Appellant] was very cordial. He was very cooperative. He was not combative. He was agreeable. He was – like I said, very cooperative."

During the search of the apartment, investigators found a kilo of cocaine, wrapped in black tape, concealed in a pile of firewood on the apartment patio. Investigators also found other amounts of cocaine in other locations within the apartment. The police seized approximately 1.6 kilos of cocaine from the apartment.

When appellant testified, through a translator, he said he agreed to meet with Samantha only because she had told him that appellant's wife was having an affair with Samantha's husband. He testified that he was forced at gunpoint to sign English-language consent forms and that the signatures on the Spanish-language forms were not his.

The State introduced other documents also purporting to bear appellant's signature. The State argues that these other signatures resemble the signatures on the Spanish-language consent forms.

After appellant moved to suppress the cocaine on grounds that the search was unlawful and that his purported consent was not valid, the trial court denied his motion.

II. Discussion

In a single point of error, appellant complains the trial court erred by denying his motion to suppress.

Under the Fourth and Fourteenth Amendments, a warrantless search is *per se* unreasonable, subject only to a few specifically established and well-delineated exceptions. *Reasor v. State*, 12 S.W.3d 813, 817 (Tex. Crim. App. 2000). One such exception is a search

conducted with the consent of the suspect. *Id*. For consent to be a valid exception, however, that consent must be voluntary. *Id*. Under article I, section 9, of the Texas Constitution, people are protected against all unreasonable searches and seizures. *Id*. at 818. A search made after voluntary consent is not unreasonable. *Id*. The State must prove by clear and convincing evidence that a suspect's consent was voluntary. *Id*. A trial court must look to the totality of the circumstances surrounding the purported consent to determine whether the consent was, in fact, voluntary. *Id*. A showing that a suspect has been warned that he does not have to consent to the search and has a right to refuse is of evidentiary value in determining whether a valid consent was given. *Allridge v. State*, 850 S.W.2d 471, 493 (Tex. Crim. App. 1991),

When we review a trial court's decision on a motion to suppress, we afford almost total deference to a trial court's determination of historical facts that the record supports, especially where the court's determinations are based on an evaluation of a witness's credibility and demeanor. *See Guzman v. State*, 955 S.W.2d 95, 98 (Tex. Crim. App. 1997). We grant that same level of deference to a trial courts' determination of mixed questions of law and fact if the resolution of those ultimate questions turns upon an evaluation of a witness's credibility and demeanor. *Id*.; *Victor v. State*, 995 S.W.2d 216, 224 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd).

Appellant argues that several factors suggest his consent was not voluntary: (1) the trial court was sufficiently concerned about appellant's command of the English language that it provided an interpreter; (2) appellant did not deny having signed the English-language forms, but contested that the signatures on the Spanish-language forms were his; (3) it was uncontested that some law enforcement officers entered the apartment before appellant signed the consent form; (4) appellant's wife, Johnson, was the primary go-between for the transaction and the cocaine was found in the apartment where Johnson lived, while evidence showed that appellant at the time was spending much of his time at another address.

The trial court heard different accounts of the events surrounding the signing of the

consent forms. Appellant, who testified through a translator, told jurors that he does not speak English and that he signed the English-language forms involuntarily. He denied signing the Spanish-language forms at all. Two Spanish-speaking police officers testified, however, that appellant did sign the Spanish-language consent forms, one of the officers agreeing that appellant was not coerced or threatened. Officer Almanza testified that he explained the forms to appellant in Spanish. The consent forms themselves inform the signer of the constitutional right to refuse a search without a warrant. Such a warning in the consent form is of evidentiary value in determining whether the signer gave valid consent. *See Allridge*, 850 S.W.2d at 493. The officers testified that they did not display their firearms when they requested appellant sign the forms and that appellant was not at that time handcuffed. The trial court was entitled to believe the officers' testimony over that of appellant and to find that appellant signed the Spanish-language forms voluntarily. Also, although it is undisputed that law officers entered the apartment before appellant signed the forms, there is evidence that the investigators were invited in by appellant to avoid public embarrassment. The evidence also shows that officers did a security sweep of the apartment for their own safety, but that they did not search the apartment until appellant signed the consent forms. As for the suggestion that the cocaine was Johnson's, the ownership of the cocaine is a question for the fact-finder. We defer to the trial court's decision.

We defer to the trial court's evaluation of the credibility and demeanor of the witnesses. The trial court did not abuse its discretion in denying appellant's suppression motion.

III. Conclusion

Having overruled appellant's single point of error, we affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed May 3, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Chief Justice Paul C. Murphy sitting by assignment.