Affirmed and Opinion filed May 24, 2001.

In The

Fourteenth Court of Appeals

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NOS. 14-99-01154-CR & 14-99-01155-CR

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MARTHA REYES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause Nos. 806,780 and 806,781

O P I N I O N

The State charged appellant, Martha Reyes, by indictment with felony possession of marijuana and heroin in cause numbers 806,780 and 806,781 respectively. Prior to trial, appellant filed a motion to suppress evidence that officers found as a result of a search of her home. In support of her motion to suppress, appellant argued at the court below and on appeal that the consent she gave allowing the officers to search her premises was involuntarily given. The trial court denied appellant's motion to suppress. Appellant then pled guilty and was punished by three years' confinement in the Texas Department of Criminal Justice, Institutional Division for the marijuana possession, and three years' confinement for

possession of cocaine. This appeal followed.

FACTUAL BACKGROUND

Officers from the Pasedena Police Department's narcotics division had been investigating appellant's son because the officers had received information that appellant's son was selling marijuana out of his residence. The officers, while surveilling appellant's son, saw him leave his house twice, apparently to make a delivery of marijuana. The second time he left the house, he delivered to the officers' informant. At that time, the officers arrested appellant's son and found two pounds of marijuana in his car. The officers thought that they would find more marijuana at appellant's house, and went there to look.

When appellant answered the door, the officers told her that they had arrested her son for possession of marijuana. Officer Burleb Powers asked appellant for consent to search the premises for more marijuana. He read a consent form out loud to appellant. Appellant asked to read over it herself. She then signed the consent form. The search yielded 5.5 grams of marijuana and 2.7 grams of heroin, both of which were located in appellant's bedroom.

Appellant testified that she was not threatened or forced to sign the consent, but that Officer Powers' tone made her feel that she had to sign the form. Officer Powers testified that appellant signed the consent form within three to four minutes of his arrival. However, appellant said that, although she signed it within 10 minutes of Officer Powers' arrival, she had refused to sign it at least seven different times.

DISCUSSION AND HOLDING

I. Standard of Review

Appellate courts should afford almost total deference to a trial court's rulings on "application of law to fact questions," also known as "mixed questions of law and fact," if the resolution of those ultimate questions turns on an evaluation of credibility and demeanor of the witnesses. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). Appellate courts may review *de novo* "mixed questions of law and fact" not falling within this category. *Id*.

Therefore, because the trial court's decision to grant or deny the motion to suppress turned on the court's assessment of witness credibility and demeanor, we will review the record applying a deferential, abuse of discretion standard of review.

A ruling on a motion to suppress lies within the sound discretion of the trial court. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). At the hearing on the motion, the trial court serves as the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Id*.; *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). Therefore, absent a clear showing of an abuse of discretion, we will not disturb the trial court's ruling.

II. Consent

A warrantless police entry and search of a habitation is presumptively unreasonable. *Roth v. State*, 917 S.W.2d 292, 299 (Tex. App.—Austin 1995, no pet.). However, there are exceptions to the warrant requirement that can rebut the presumption of unreasonableness. One such exception is when voluntary consent to search a habitation is given by one with authority to give it. *Id*. The consent is invalid unless it is positive and unequivocal, and it must not be the product of duress or coercion. *Allridge v. State*, 850 S.W.2d 471, 493 (Tex. Crim. App. 1991). In Texas, the State must prove by clear and convincing evidence that the consent was freely and voluntarily given, in order to survive a motion to suppress. *State v. Ibarra*, 953 S.W.2d 242, 245 (Tex. Crim. App. 1997).

In determining whether the consent was freely and voluntarily given, we must look to the totality of circumstances. *Schneckloth v. Bustamante*, 412 U.S. 218, 277 (1973); *Roth*, 917 S.W.2d at 300. Appellant contends that she was afraid, and found herself in an oppressive state because eight officers were present at her home when she was asked to sign the consent to enter form. The record reflects, however, that only Officer Powers was present at appellant's door. The other seven officers apparently were dispersed at different areas around the house to prevent anyone from fleeing. Though appellant testified that Officer Powers' tone made her feel she had to sign the consent form, she also testified that she was not threatened. According to the testimony of both Officer Powers and of appellant, appellant agreed to sign the consent form within 10 minutes of Officer Powers' initial request that she sign it. The form was read to her, she read the form herself, and then she signed it. Viewing the totality of

circumstances in a light most favorable to the trial court's ruling, we hold that the trial court did not err in concluding that there was clear and convincing evidence that appellant's consent to the officers to search her residence was voluntarily made.

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

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed May 24, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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