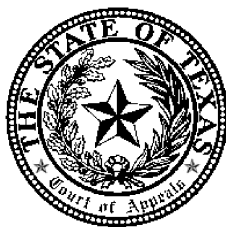


**Affirmed and Opinion filed October 18, 2001.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-00-00297-CR**

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**LUZ MARGARITA AVILA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 230<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 808168**

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**OPINION**

Appellant, Luz Margarita Avila, was charged by indictment with the felony offense of possession of a controlled substance, namely cocaine, with the intent to deliver. The trial court overruled appellant's pre-trial motion to suppress all of the evidence seized by the police, found appellant guilty of the charged offense, and assessed punishment at fifteen years confinement in the Institutional Division of the Texas Department of Criminal Justice. In a single point of error, appellant contends that the trial court erred in denying her motion to suppress. We affirm.

Appellant was arrested on March 8, 1999, at the Bush Intercontinental Airport in Houston, Texas, after a narcotics interdiction officer, Houston police officer Marsha Todd,

conducted a warrantless search of appellant's person and discovered a package of cocaine concealed underneath her clothing. Appellant asserts in her sole point of error that the trial court erred in overruling her motion to suppress all of the evidence seized as a result of the search because her consent to the search of her person was not freely and voluntarily given. Appellant alleges that she does not comprehend the English language and was unable to grasp what was being asked of her or that she had the right to refuse the search. She contends that, because she did not knowingly consent to the search, the search was conducted in violation of the Fourth Amendment to the United States Constitution and Article I, section 9 of the Texas Constitution.

When reviewing a trial court's ruling on a motion to suppress evidence, we apply a bifurcated standard of review. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). We give almost total deference to the trial court's determination of historical facts and review *de novo* the court's application of the relevant Fourth Amendment standards. *Id.* at 327-28. Because the trial court did not make explicit findings of historical facts, we must review the evidence in a light most favorable to the trial court's ruling and assume that the trial court made implicit findings of fact that support its conclusion. *Id.* at 328.

Consent to search is a well-established exception to the warrant and probable cause requirements of the Fourth Amendment and Article I, section 9 of the Texas Constitution. *Corpus v. State*, 30 S.W.3d 35, 39 (Tex. App.—Houston [14th Dist.] 2000, pet ref'd). However, the constitutionality of a consensual warrantless search is contingent upon the validity of the consent. *Carmouche*, 10 S.W.3d at 331. The consent must be given freely and voluntarily. *Id.* The burden to establish the voluntariness of the consent rests upon the State and must be established by clear and convincing evidence. *Id.* However, the determination of voluntariness is a question of fact. *Id.* At a suppression hearing, the trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Banda v. State*, 890 S.W.2d 42, 51 (Tex. Crim. App. 1994). As the trier of fact, the trial court is free to believe or disbelieve all or any part of any witness's testimony. *Durrett v. State*, 36 S.W.3d 205, 208 (Tex. App.—Houston [14th Dist] 2001, no pet. h.).

Consequently, we are bound by the trial court's implicit finding of voluntariness if such a finding is supported by any evidence within the record. *Carmouche*, 10 S.W.3d at 331.

At the hearing on appellant's motion to suppress, Officer Todd testified that she approached appellant pursuant to a tip another officer received from a confidential informant. The informant advised the officer that a Hispanic female wearing baggy clothing would be departing on a mid-day flight to St. Louis carrying a large quantity of cocaine. Officer Todd testified that she discovered appellant sitting at the departure gate for a mid-day flight to St. Louis. She further testified that appellant's appearance matched the description of the alleged drug courier given to her by the other officer. She testified that she approached appellant, accompanied by Harris County Sheriff's Deputy Greg Raider, and asked her a series of questions exclusively in the English language. Officer Todd testified that appellant responded to each question, in English, appropriately and without hesitation. She further stated that she asked appellant for consent to search her bag and her person and received clear, unequivocal permission to conduct each search. Although Deputy Raider did not participate in Officer Todd's conversation with appellant, his testimony recounting his recollection of the conversation mirrored Officer Todd's testimony.

The officers' testimony that appellant evinced a clear comprehension of Officer Todd's request to search and that appellant's consent to the search was clear and unequivocal is sufficient to sustain the trial court's decision to overrule appellant's motion to suppress. Accordingly, we overrule appellant's sole point of error and affirm the decision of the trial court.

/s/ J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed October 18, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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