Opinion filed June 4, 2020

In The

Eleventh Court of Appeals

No. 11-18-00153-CR

CYNTHIA ANN BRIDGES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 90th District Court
Stephens County, Texas
Trial Court Cause No. F35424

M E M O R A N D U M O P I N I O N

After the trial court denied in part her motion to suppress evidence, Cynthia Ann Bridges, Appellant, pleaded guilty to the offense of possession of a controlled substance with intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2017). Pursuant to the plea agreement, the trial court sentenced Appellant to confinement in the Institutional Division of the Texas Department of Criminal Justice for a term of forty-five years and assessed a fine of $5,000. In two issues, Appellant challenges the trial court's denial of her motion to suppress. We affirm.

Background Facts

On June 29, 2016, officers from the Breckenridge Police Department went to Appellant's house. The officers had warrants to arrest Appellant and another resident of the house for crimes not relevant here. Before executing any arrest warrants, the officers attempted to gain consent to search the residence for any illegal drugs. After gaining written consent from everyone present at the residence, the officers performed a search of Appellant's bedroom, where they found methamphetamine under Appellant's mattress.

On June 13, 2017, Appellant was indicted for the offense of possession of a controlled substance with intent to deliver one gram or more but less than four grams of methamphetamine. Appellant pleaded not guilty. Appellant subsequently filed a motion to suppress, seeking to suppress the results of the search and statements Appellant made before and after being Mirandized.[1]

At the hearing on the motion to suppress, the trial court reviewed three of the State's exhibits: a body-camera video from Lieutenant Bacel Cantrell at Appellant's house, a body-camera video from Officer Brandon Berkley at Appellant's house, and a body-camera video of Lieutenant Cantrell interviewing Appellant after her arrest. Lieutenant Cantrell's body-camera video showed Lieutenant Cantrell arriving at Appellant's house, knocking on the door, and receiving consent to enter the house from a male resident, who was staying there. Lieutenant Cantrell then attempted to obtain oral consent to search for illegal drugs from Appellant. Although Appellant's response was difficult to hear, the video also showed Appellant and the other residents calmly filling out the written consent-to-search forms. Officer Berkley's body-camera video included footage of Appellant making statements before receiving her *Miranda* warnings. Appellant made some

[1]*See Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966).

statements that were in response to police questioning and some statements by her own volition. In the video of Appellant's interview, Appellant received her *Miranda* warnings before making any incriminating statements.

After the hearing, the trial court suppressed all pre-*Miranda* statements that Appellant made in response to questioning and post-*Miranda* statements that did not relate to the charged offense. The trial court did not suppress the results of the search or pre-*Miranda* statements that Appellant made not in response to police questioning. Following the trial court's ruling on Appellant's motion to suppress, the State and Appellant reached a plea bargain agreement. Appellant pleaded guilty to possession of a controlled substance with intent to deliver, but she preserved her right to appeal the trial court's ruling on her motion to suppress.

Analysis

In her first issue, Appellant argues that the trial court erred in denying Appellant's motion to suppress "certain evidence obtained following an improper search" of Appellant's residence.

We review a trial court's ruling on a motion to suppress under an abuse of discretion standard. *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999). The trial court is the finder of fact at a motion to suppress hearing and may choose to believe or disbelieve any or all of the witnesses' testimony. *Johnson v. State*, 803 S.W.2d 272, 287 (Tex. Crim. App. 1990). Appellate courts must afford almost total deference to the trial court's findings of historical facts that are based on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). Appellate courts should afford the same deference to the trial court's rulings on questions of law when the resolution of those questions turns on an evaluation of credibility and demeanor of the witnesses. *Id.*

Generally, the police must obtain a warrant based upon probable cause before they may search a person's private property. U.S. CONST. amend. IV; TEX. CONST.

art. I, § 9. One of the established exceptions to the general rule is that the police may search a person's property without a warrant if they first obtain voluntary consent. *Guevara v. State*, 97 S.W.3d 579, 582 (Tex. Crim. App. 2003) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973)). The voluntariness of the consent "is a question of fact to be determined from all the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 40 (1996) (quoting *Schneckloth*, 412 U.S. at 248–49). For federal constitutional purposes, the State need only prove voluntariness by a preponderance of the evidence. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002). Under the Texas Constitution, however, the State must prove voluntariness by clear and convincing evidence. *Id.*

The question is whether, under the totality of the circumstances, the consent was voluntary or the product of express or implied coercion. *Schneckloth*, 412 U.S. at 225–29. Consent is voluntary unless the accused's will was "overborne" by police tactics. *See id.* at 225–27. Courts consider various factors in determining the voluntariness issue, including the youth of the accused, the education of the accused, the intelligence of the accused, the constitutional advice given to the accused, the length of the detention, the repetitiveness of the questioning, and the use of physical punishment. *Reasor v. State*, 12 S.W.3d 813, 818 (Tex. Crim. App. 2000). When the record supports a finding that consent was freely and voluntarily given, the appellate court may not disturb that finding. *Johnson*, 803 S.W.2d at 287.

In this case, the trial court did not abuse its discretion in denying in part Appellant's motion to suppress. Before the officers searched Appellant's bedroom for any contraband, Appellant signed a consent form that confirmed that Appellant consented to "a complete search of [her] residence." The consent form also clarified that Appellant's consent was given "voluntarily . . . without threats, promises, or coercion of any kind." As noted above, a search warrant is not required when, as in this case, voluntary consent is given. *Guevara*, 97 S.W.3d at 582.

Appellant argues that the search was invalid because the officers had a warrant to arrest Appellant for a different crime but, instead, attempted to gain Appellant's consent to search the premises for contraband. Appellant urges that the officers' behavior shows "bad faith" in conducting the search. However, the subjective intent of a law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 813 (1996) (stating that "we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers"). Accordingly, we overrule Appellant's first issue.

In her second issue, Appellant similarly argues that "[t]he trial court erred by allowing the consent to search documentation to be admitted despite Appellant being under duress when the documents were executed." This court recognizes that, "[t]o be valid, a consent to search must be positive and unequivocal and must not be the product of duress or coercion, either express or implied." *Heincelman v. State*, 56 S.W.3d 799, 802 (Tex. App.—Eastland 2001, no pet.) (citing *Schneckloth*, 412 U.S. at 248). However, in this case, Appellant fails to explain how Appellant was "under duress" when she executed the consent-to-search form. Appellant showed no evidence of factors "that would tend to show coercion, such as an officer's display of a weapon, threats, promises, deception, physical touching, or a demanding tone of voice or language." *See Meekins v. State*, 340 S.W.3d 454, 464 (Tex. Crim. App. 2011). Moreover, at the hearing on Appellant's motion to suppress, the trial court was presented with videos from officers' body cameras, which showed Lieutenant Cantrell asking Appellant for her consent to search the house and showed Appellant calmly filling out the consent form. Recognizing that appellate courts must afford almost total deference to the trial court's findings of historical facts that are based on an evaluation of credibility and demeanor, we conclude that the trial court did not abuse its discretion when it found that Appellant was not under duress when she

executed the consent form. *See Guzman*, 955 S.W.2d at 89. Therefore, we overrule Appellant's second issue.

This Court's Ruling

We affirm the judgment of the trial court.

KEITH STRETCHER
JUSTICE

June 4, 2020

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

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.[2]

Willson, J., not participating.

[2]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.