11-13-2012

State v. Flores Respondent's Brief Dckt. 39649

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39649
	)	
vs.	)	
	)	
ROBERT ALAN FLORES, JR.,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

HONORABLE JOEL E. TINGEY
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Robert Alan Flores Jr. appeals from his conviction for possession of a controlled substance with the intent to deliver. Specifically, Flores challenges the denial of his suppression motion.

Statement of the Facts and Course of the Proceedings

The district court found the following undisputed facts:

> On April 24, 2011, at approximately 2:00 a.m., police officers arrived at Modesta Castro's home in response to her calling 911 to report suspicious activity in the area. Castro told dispatch that people were trying to break into her apartment through the balcony door, the front door and through a back window. She reported seeing 12 "low-rider" cars and trucks and one person "standing on a fence." She stated that her adult son was spending the night at her apartment and that he was checking out the doors while she spoke with dispatch. At one point during the 911 recording, Castro said to someone, "did they leave yet?" Castro reported that she did not feel safe and that she had taken anxiety medication and heart medication to deal with the situation.
>
> Sargent [sic] Galbreaith and Officer Lasher arrived on scene first, within five minutes of receiving the call. Castro invited Galbreaith and Lasher into her home and explained the circumstances that prompted her 911 call. Shortly thereafter, Officer Steel and Officer Nelson arrived on scene. The officers did not notice any suspicious activity outside Castro's home.

(R., pp.74-75.) From this point, the version of events testified to by the parties present varies.

Ms. Castro testified she answered the door with a 12-inch knife in her hand and carried it around her apartment while the police were there. (Tr., p.29, L.17 – p.31, L.25.) Sergeant Galbreaith testified he did not see Ms. Castro in

possession of a knife and had she answered the door with a knife in her hand he would "need [her] to get rid of the knife before [he] went anywhere with [her]." (Tr., p.38, L.12 – p.39, L.10.) Officer Steel testified he did not see Ms. Castro with a knife either. (Tr., p.75, Ls.9-14.) Although Ms. Castro had indicated to the 911 dispatcher her adult son was checking the doors in the apartment, law enforcement officers did not see him when they arrived at the apartment. That, in addition to the lack of anything suspicious outside the apartment led officers to be concerned they might be dealing with a "mental health issue." (Tr., p.39, Ls.11-16.) When officers looked for Ms. Castro's adult son in the bedrooms of the apartment and were unable to find him, they became more concerned for her mental health. (Tr., p.39, L.17 – p.42, L.5; p.75, L.15 – p.77, L.7.) While the police were searching for Ms. Castro's son, Flores ultimately came out of the closet in his mother's room where he had been hiding. (Tr., p.42, L.8 – p.44, L.23; p.77, L.10 – p.79, L.25.) Although Officer Steel testified Ms. Castro gave him permission to search the closet where Flores had been hiding (Tr., p.82, L.12 – p.83, L.1), Ms. Castro testified that no one asked her if they could search her closet or her apartment (Tr., p.110, L.15 – p.111, L.9) but conceded if they had asked for her consent she would have given it because there were no drugs in her house that she was aware of (Tr., p.113, L.24 – p.115, L.10).

The search of the closet where Flores hid in his mother's apartment yielded a WinCo produce bag containing methamphetamine. (Tr., p.83, L.4 – p.84, L.8.) Flores was arrested and the state charged him with trafficking in methamphetamine. (R., pp.19-20.) Flores filed a motion to suppress the

"evidence obtained as a result of the warrantless search and seizure conducted" in the case. (R., pp.47-48.) At the hearing on the motion to suppress, the state did not contest Flores' standing to attack the search of the closet, conceded Flores was an overnight guest at his mother's home. (Tr., p.2, Ls.7-10.) This left the voluntariness of Ms. Castro's consent to search as the only issue to be litigated. Following a hearing on the motion, the district court entered a written findings, conclusions, and order on motion to suppress denying the motion because it found "law enforcement was given permission to search the subject closet where the drugs were located." (R., p.81.)

Flores entered a conditional plea of guilty to the amended charge of possession of a controlled substance with the intent to deliver, reserving his right to appeal the denial of his motion to suppress. (R., pp.86-87, 91-93; Tr., p137, L.17 – p.146, L.6.) The court sentenced Flores to two years fixed followed by 10 years indeterminate. (R., p.102-105; Tr., p.164, Ls.11-19.)

Flores timely appeals. (R., pp.106-109.)

ISSUE

Flores states the issue on appeal as:

> Did the district court err when it denied Mr. Flores' motion to suppress?

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Flores failed to show that the district court erred in denying his suppression motion?

ARGUMENT

Flores Has Failed To Show That The District Court Erred In Denying His Suppression Motion

A. Introduction

The district court concluded, based on the "credibility, memory, and consistency of testimony" at the hearing on the motion to suppress, that "consent was given for a search of the subject closet." (R., p.78.) Flores argues on appeal "that the district court's conclusion that his mother consented to the search of the closet was clearly erroneous." (Appellant's brief, p.8.) Substantial evidence supports the district court's finding, based on the totality of the circumstances, that Flores' mother voluntarily consented to the officer's search of the closet. Flores has failed to show clear error in the court's determination.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous but exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-6, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004). Whether a consent to search was voluntary is a question of fact, the determination of which is reviewed on appeal for clear error. State v. Reynolds, 146 Idaho 466, 472, 197 P.3d 327, 333 (Ct. App. 2008); State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008). At a suppression hearing,

the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999). "Findings will not be deemed clearly erroneous if they are supported by substantial evidence in the record." Stewart, 145 Idaho at 648, 181 P.3d at 1256 (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

C. Flores Has Failed To Show That The District Court Erred By Finding That Flores' Mother Consented To The Search Of The Closet In Her Bedroom

A warrantless search conducted pursuant to valid consent does not violate the Fourth Amendment. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted); State v. Hansen, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003); State v. Varie, 135 Idaho 848, 852, 26 P.3d 31, 35 (2001). Consent is valid if it is free and voluntary. Bustamonte, 412 U.S. at 225-26 (citations omitted). The voluntariness of an individual's consent is a question of fact to be determined based upon the totality of the circumstances. Varie, 135 Idaho at 852, 26 P.3d at 35 (citing Bustamonte, 412 U.S. at 248-49). In order to be valid, consent cannot be the result of duress or coercion, either direct or implied. Bustamonte, 412 U.S. at 248. The mere presence of officers asking for consent to search is not sufficient, as a matter of law, to constitute improper police duress or coercion. See United States v. Watson, 423 U.S. 411 (1976). Instead, the court must consider all of the surrounding circumstances and find consent involuntary only if "coerced by threats or force, or granted only in submission to a

claim of lawful authority ...." State v. Hoisington, 104 Idaho 153, 158, 657 P.2d 17, 22 (1983) (quoting Bustamonte, 412 U.S. at 233).

Flores contends on appeal that the testimony by Ms. Castro at the suppression hearing that she was never asked for permission to search and she never gave the searching officer permission to enter her home was more credible than the testimony of Officer Steel. (Appellant's brief, p.8.) However, the record supports the district court's ultimate finding that the testimony of the officers was more credible in this case.

Although Flores argues the credibility of Officer Steel was undermined (Appellant's brief, p.8), the district court, after listening to all of the evidence presented, made a contrary determination as to the credibility of the witnesses. The "power to assess the credibility" of witnesses at a suppression hearing "is vested in the trial court." State v. Valero, ___ Idaho ___, 285 P.3d 1014, 1015 (Ct. App. 2010). "This court will accept the trial court's findings of fact unless they are clearly erroneous." State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). Here, the testimony at the suppression hearing offered by the state was that Officer Steel asked Ms. Castro for permission to search the closet her son had been hiding in for evidence of drugs based on the officer's observations that Flores was under the influence of drugs and behaving in an odd manner, and Ms. Castro told Officer Steel he could search. (Tr., p.79, L.14 – p.83, L.3.)

Ultimately, the district court found the testimony of the officers more credible than that of Flores' mother who appeared confused at the time of the incident as well as during her testimony. The district court was in the best

position to determine the credibility of these witnesses and since its determination is supported by the record in this matter, it should stand. Flores has failed to show that the district court's determination that Ms. Castro consented to the search of the closet in her home was clearly erroneous and therefore has failed to establish the district court erred in denying Flores' motion to suppress.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Flores' motion to suppress.

Dated this 13th day of November 2012.

NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of November 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SHAWN F. WILKERSON
STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm