Affirmed and Opinion filed June 21, 2001.

In The

Fourteenth Court of Appeals

NO. 14-98-01449-CR

JAMES EDWARD GUZMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd Judicial District Court
Harris County, Texas
Trial Court Cause No. 780,650

O P I N I O N

James Edward Guzman was charged with the felony offense of possession of between 4 and 20 grams of cocaine. After the trial court denied his motion to suppress, Guzman entered a plea of no contest. The trial court found him guilty and assessed punishment of five years imprisonment. On appeal, Guzman contends that the trial court erred in denying the motion to suppress because the evidence was obtained as the result of an unlawful search and seizure. We affirm.

I. Background

The trial court heard the motion to suppress solely on submitted affidavits. The State submitted four affidavits from officers involved in the arrest of Guzman. Officer Phillip Galloway's affidavit states that, in early April 1998, he was attempting to locate Guzman to apprehend him on a parole violation warrant and an open arrest warrant. On April 14, Galloway observed a Pontiac Grand Am being driven by Guzman. Also in the car were Guzman's wife, Rita, and one of their children. Galloway radioed for assistance from marked patrol cars. Two units responded and closed in on the vehicle driven by Guzman. Guzman attempted to allude them, but one of the patrol cars pulled around him and blocked his forward progress. By the time Galloway arrived, the uniformed officers had retrieved Guzman from the vehicle, handcuffed him, and put him in the back of a patrol car. Galloway states that Guzman told the officers that both he and his wife owned the car and that Rita Guzman confirmed this. He asked Guzman if they could search the vehicle and Guzman gave verbal consent. He then asked Rita Guzman to sign a consent to search form, and she agreed to do so and did do so. Upon searching the vehicle, they discovered a sunshade case that held four plastic bags containing a white granular substance that later tested positive for cocaine.

James Guzman stated in his affidavit that he did not own the vehicle and that only he, and not his wife, had permission from the owner to use the vehicle. He said that when the patrol cars pulled in front of him, he parked and voluntarily exited the vehicle and laid face down on the ground. Officer Padilla, who Guzman claims had his weapon drawn, handcuffed him, and he was placed in the back seat of a patrol car. He further contends that at no point did he give the officers oral or written consent to search the vehicle.

Rita Guzman stated in her affidavit that after they were stopped, the officers put her and her child in the back of one car and her husband in the back of another. She said that there were at least three officers at the scene and at least two of them had their guns drawn. She states that she does not own the vehicle her husband was driving that day and that she did not have and has never had permission from the owner or her husband to use it. She further states that while she was in the back of the patrol car, a female police officer asked

her to sign a consent to search form. She says that she refused, and the officer left but later returned and told her she had to sign the form or they were going to place her child with C.P.S. and arrest Rita for harboring a fugitive. Rita claims that she did not understand her rights and only signed the consent form because of the officer's threats. She said that she finished middle school but did not attend high school.

Officer Rodolfo Vasquez stated in his affidavit that Guzman did attempt to flee in his vehicle, but Vasquez cut him off. He confirmed that Guzman was handcuffed and placed in the back of a patrol car, that Rita Guzman signed a consent form, and that what appeared to be cocaine was found in a sunglasses case. Officer Michael Legg also stated that Guzman attempted to flee and that Guzman was handcuffed and placed in the back of a patrol car. He further stated that he got a consent form and asked Rita to sign it after reading it to her and explaining there was no obligation to sign it. She then signed the consent form. Officer Jose Padilla stated that Guzman attempted to avoid the marked units, but they managed to stop him, handcuff him, and put him in the back of a patrol car. He further stated that they did not want to take his handcuffs off to get him to sign a request form because he was a very large man and had tried to evade them.

The trial court denied the motion to suppress, stating that Rita Guzman had authority to consent and gave voluntary consent to the search of the vehicle. Guzman then plead no contest, and the trial court found him guilty and assessed five years imprisonment. There were no findings of fact or conclusions of law requested or filed. On appeal, Guzman contends that the trial court erred in denying the motion to suppress because the evidence was obtained as the result of an unlawful search and seizure, citing U.S. CONST. Amend. IV, XIV; TEX. CONST. Art. I, § 9; TEX. CODE CRIM. PROC. ANN. Art. 38.23 (Vernon Supp. 2000).

II. Analysis

When the evidence at a suppression hearing is submitted solely by affidavit, our

review on appeal is *de novo*. *Torrez v. State*, 34 S.W.3d 10, 13 (Tex. App.—Houston [14th Dist.] 2000, pet. filed). This is the case because, with no live witnesses to evaluate, the trial judge is in no better position than this court to determine the legality of the search. *See id*.; *Wynn v. State*, 996 S.W.2d 324, 327 (Tex. App.—Fort Worth 1999, no pet.).

Both the federal and state constitutions prohibit unreasonable searches and seizures. *See* U.S. CONST. Amend. IV; TEX. CONST. Art. I, § 9; *Brimage v. State*, 918 S.W.2d 466, 500 (Tex. Crim. App. 1996). A warrantless search is generally considered unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967); *Reyes v. State*, 741 S.W.2d 414, 430 (Tex. Crim. App. 1987). An exception to this rule exists for when voluntary consent is given to a search by a person with authority to so consent. *See Shneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *Reasor v. State*, 12 S.W.3d 813, 817 (Tex. Crim. App. 2000). The burden of proof is on the State to prove a voluntary consent occurred. *State v. Ibarra*, 953 S.W.2d 242, 243 (Tex. Crim. App. 1997). Under the Texas Constitution, the State must meet its burden by presenting clear and convincing evidence establishing voluntary consent. *Id*. at 244. This burden is greater than that imposed by the federal courts under the Fourth Amendment, i.e. a preponderance of the evidence. *Id*. at 243. We, therefore, shall utilize only the stricter Texas standard in conducting our analysis. *See Carmouche v. State*, 10 S.W.3d 323, 331 (Tex. Crim. App. 2000).

A. Authority to Consent

Guzman first contends that Rita did not have authority to consent to the search because the vehicle did not belong to her and she did not have permission from the owner to use the vehicle. Guzman submitted a vehicle registration as proof that he and his wife did not own the vehicle because someone else did. However, the mere fact that a vehicle is registered in a particular person's name is not conclusive evidence as to ownership of the vehicle. *Pacific Finance Corp. v. Gilkerson*, 217 S.W.2d 440, 443 (Tex. App.—Beaumont 1948, writ ref'd n.r.e.). It merely creates a rebuttable presumption of ownership. *Id*, at 443-44. Officer Galloway rebutted the presumption of ownership in his

affidavit when he stated that both James and Rita Guzman claimed joint ownership of the vehicle. Furthermore, the fact that the Guzman family was riding in the vehicle at the time they were stopped is additional evidence of ownership, as is the fact that James Guzman requested that the police give the car's title to his wife before he was taken to jail.

Furthermore, even if the vehicle did belong to someone else, Rita's claim of ownership, together with the fact that the Guzman family was in possession of the vehicle when the officers stopped them, gave the officers reason to believe she had authority to consent to the search. The doctrine of "apparent authority" was adopted by the United States Supreme Court in *Illinois v. Rodriquez*, 497 U.S. 177 (1990). In that case, the police searched an apartment after receiving permission to do so from the defendant's girlfriend. She called the apartment "ours" and permitted the search. The apartment was, in actuality, leased only to the defendant and not the girlfriend. The court held that a warrantless search does not violate the Fourth Amendment when it is based on the consent of a third party who the officers, at the time of the search, reasonably believed possessed common authority over the premises, even if that person does not, in fact, possess such authority. *Id*. at 179-81.

In *Brimage v. State*, 918 S.W.2d 466 (Tex. Crim. App. 1994), the Texas Court of Criminal Appeals discussed the apparent authority doctrine in its analysis but then declined to validate the search under the doctrine. In that case, the police knew that the person who consented to the search of the premises did not actually live there, and the police had already been told by another visitor at the premises that he did not have any authority to allow a search. *Id*. at 481-82. The court stated that, at a minimum, the police should have inquired further into the basis for the authority to consent. However, the police failed to do this, and the court held that: "On these facts, it cannot be said that the police officers acted reasonably in relying on [the] alleged consent." *Id*. at 482. *See also Riordan v. State*, 905 S.W.2d 765 (Tex. App.—Austin 1995, no pet.)(Onion, J)(doctrine of apparent authority did not validate search where police failed to obtain sufficient information to support a reasonable belief that defendant's mother-in-law had authority

to consent to search).

In the present case, the police stopped the Guzman family while they were driving unaccompanied in a vehicle. There was also evidence that both Rita and James Guzman claimed joint ownership of the vehicle. Under these facts, the officers had a reasonable belief that Rita possessed common authority over the car and thus could consent to the search. There was no reason for the officers to make an additional investigation into the ownership of the vehicle before conducting the search. *See Rodriquez*, 497 U.S. at 179-81; *Brimage v. State*, 918 S.W.2d at 482.

B. Voluntariness of Consent

Guzman next contends that Rita's consent was not voluntary because, as Rita states in her affidavit, she was threatened with the loss of her child and her freedom if she did not sign the form. This claim is not directly refuted in the officers' affidavits, which were filed at the same time as Rita's. Rita claims a female officer made the threats and the only female officer known to be at the scene, Rose Campbell, did not file an affidavit. However, since our review is *de novo*, we may choose to discount the credibility of Rita's self-serving claims of coercion, just as the trial court apparently discounted them.

Furthermore, Rita's claims of coercion are controverted by her signature on the consent form, which states, in part:

> I understand that I have the right to refuse to consent to the search described above and to refuse to sign this form. I further state that no promises, threats, force, or physical or mental coercion of any kind whatsoever have been used against me to get me to consent to the search described above or to sign this form.

Officer Michael Legg stated in his affidavit that he asked Rita to sign the form after reading it to her and explaining that she had no obligation to sign it. These statements, along with the fact that the only signatures on the form belong to Rita and officers Legg and Jose Padilla (as witnesses), further refute Guzman's contention that Rita signed the document only as a result of a female officer's coercion.

Guzman additionally contends that the court should consider that Rita only made it through junior high and did not attend high school in assessing her ability to understand her rights. Generally speaking, "the Constitution presumes that an actor is invested with a vibrant sense of his own constitutional rights and will assert those rights when they are implicated." *Carmouche*, 10 S.W.3d at 333. Even so, the level of sophistication and education of a person should certainly be considered in assessing the degree to which they are capable of understanding their rights. *See United States v. Brown*, 102 F.3d 1390, 1396 (5th Cir. 1996); *Combest v. State*, 981 S.W.2d 958, 962 (Tex. App.—Austin 1998, pet. ref'd). However, we find that Officer Legg's reading of the document to Rita and his explanation to her that she was under no obligation to sign it was sufficient under the circumstances to apprise her of her rights. We find that the State met its burden of proving a voluntary consent to search.

The judgment of the trial court is affirmed.

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D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed June 21, 2001.

Panel consists of Justices Sears, Draughn, and Hutson-Dunn.*

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

* Senior Justices Ross A. Sears, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.