Affirmed and Opinion filed August 10, 2000.

In The

Fourteenth Court of Appeals

———————————

NO. 14-99-00578-CR

———————————

ROBERT COLEMAN HAYES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Cause No. 786,536

O P I N I O N

Robert Coleman Hayes appeals a conviction for felony cocaine possession on the ground that the trial court erred in overruling his motion to suppress evidence because the State failed to prove that his consent to the search producing the evidence was voluntarily given. We affirm.

Background

Based on information from an informant, Houston Police Officer Panfilo Galvan prepared an affidavit for a warrant to: (1) search a "business/nightclub," referred to as Cardi's, located in a strip shopping center at 9301 Bissonnet in Houston; and (2) arrest appellant.

While executing the warrant, Galvan approached appellant in the parking lot, identified himself as a police officer, stated that he had a search and arrest warrant, and asked appellant if he had any illegal drugs at his business. Appellant responded affirmatively and led Galvan to an office on the second floor of the building (the "office") where Galvan found cocaine. Appellant was indicted for possession with intent to manufacture or deliver cocaine weighing more than 4 grams and less than 200 grams.

Appellant's motion to suppress evidence argued that the warrant was invalid for several reasons, including that the warrant failed to describe the premises to be searched with sufficient particularity. The motion also asserted that the search exceeded the scope of the warrant. The State argued that the warrant was valid on its face and that appellant had consented to the search of his office. The trial court ruled that the warrant was valid and that although the search exceeded the scope of the warrant, the State had proved that appellant's consent to the search was knowingly and voluntarily given. It therefore denied the motion to suppress. Appellant thereafter pleaded guilty and was sentenced to ten years probation and fined. He now appeals the trial court's denial of his motion to suppress based only on the issue of consent. Appellant argues that his consent was coerced and that the State failed to meet its burden, under either state or federal law,[1] to prove otherwise.

Standard of Review

When reviewing a trial court's ruling on a motion to suppress evidence, we give almost total deference to the court's determination of historical facts but review its application of search and seizure law *de novo*. *See Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). If the trial court fails to make explicit findings of historical fact, we review the evidence in the light most favorable to the trial court's ruling. *See id*. at 328. Also, if the trial judge's decision is correct on any theory of law applicable to the case, it will be upheld, even if the trial court gave an incorrect reason for its decision. *See Jones v. State*, 982 S.W.2d

---

[1] The State must prove the voluntariness of a consent to search by clear and convincing evidence under the Texas Constitution, but only by a preponderance of the evidence under the United States Constitution. *See Carmouche v. State*, 10 S.W.3d 323, 331 (Tex. Crim. App. 2000).

386, 389 (Tex. Crim. App. 1998), *cert. denied*, 120 S.Ct. 444 (1999). Because we conclude, as discussed below, that the trial court's denial of the motion to suppress can be affirmed on the basis that the search did not exceed the scope of the warrant, we confine our discussion to that element.[2]

Scope of the Warrant

In the trial court, appellant asserted that the search exceeded the scope of the warrant because the premises described in the warrant was a strip shopping center, *i.e.*, a multi-unit property, and the area searched was not part of Cardi's nightclub but instead the office of a business owned and operated separately from the nightclub.

The scope of a lawful search pursuant to a warrant is defined not only by the object of the search as described in the warrant, but also by the places in which there is probable cause to believe it will be found. *See Maryland v. Garrison*, 480 U.S. 79, 84 (1987). In *Maryland*, the warrant was to search "the premises known as 2036 Park Avenue third floor apartment." *See id*. at 80. Unknown to the police when the warrant was issued and the search was conducted, was that the third floor was actually divided into two apartments, one occupied by McWebb and one by Garrison. *See id*. at 80. Although the warrant had technically described the entire third floor, probable cause had been established only as to McWebb's apartment. *See id*. at 85. Before the officers discovered that they were searching Garrison's apartment rather than McWebb's, they discovered contraband for the possession of which Garrison was convicted. *See id*. at 80. The Court observed that if the officers knew or should have known before discovering the contraband in Garrison's apartment that the third floor actually contained two apartments rather than one, they would have been obligated to confine their search to McWebb's apartment. *See id*. at 85-87. However, because it was not unreasonable that the officers only became aware of the existence of two apartments after finding the

---

[2] Because the trial court found the warrant to be valid and appellant has not challenged that finding on appeal, the validity of the warrant is not before us in this appeal.

contraband, the officers' execution of the warrant was reasonable and did not violate Garrison's Fourth Amendment rights. *See id*. at 88-89.

In this case, Galvan's affidavit to obtain the search warrant stated that a confidential informant had told him that appellant was the owner of Cardi's, that appellant was actively selling cocaine from the location of 9301 Bissonnet, and that the suspected place was controlled by appellant. The informant had also reported being involved in a drug transaction in which an individual known as "Rich" had walked to the office of the business and returned with the quantity of cocaine that he had sold to the informant. The affidavit further stated Galvan's belief that Rich and appellant were concealing cocaine inside the office of Cardi's at 9301 Bissonnet.

The warrant in this case described the premises to be searched, in part, as follows:

> Now, therefore, you are commanded to enter a *business/nightclub where the address is 9301 Bissonnet,* Houston, Harris County, Texas. . . . The *business/nightclub consists of a two story structure* located in the southeast corner of a strip center mall. This structure also has a mirrored wall directly in front of the business. . . . This business/nightclub is situated on the south side of Bissonnet with the front door facing west. The numbers 9301 are not visible outside the business/nightclub but *it does carry the address of 9301 Bissonnet* in the Southwestern Bell Business white pages. The name "Cardi's" is also displayed on the front door of the business.

The warrant thus described the portion of 9301 Bissonnet containing the entire two-story structure in which Cardi's was located. Moreover, the affidavit supporting the warrant gave probable cause to believe that drugs might be found in any portion of the two-story structure controlled by appellant, especially any office area. Therefore, we do not agree with appellant that the lawful scope of the warrant was limited to only the portion of the two-story structure occupied by Cardi's nightclub.[3]

---

[3] Although we do not address the voluntariness of appellant's consent to the search, we note that if the scope of the warrant extended only to Cardi's and because Galvan did not ask to search the second floor office, appellant's consent to such a search could not have been given in acquiescence to a claim of lawful authority because no such claim was made with regard to the second floor office,

However, even if it had been, Galvan testified during the hearing on the motion to suppress that he believed at the time that the entire two-story structure was the nightclub and did not learn until later that the second floor was not Cardi's business office. The two-story structure is part of a one-story strip shopping center of which only the center portion containing Cardi's is a two-story structure and has a mirrored glass exterior. The outside of the two-story structure did not indicate that more than one business was housed within it. There was only one entrance into the structure and one sign outside it which read "Cardi's." Access to the second floor of the two-story structure is through the same entrance as Cardi's. However, once inside that entrance, there is a sign advertising "New Era," the business owned by appellant in which the cocaine was found.

The fact that the office was on a floor above the nightclub did not alone signify that it was not affiliated with it, nor did the difference in names, in that a business can legally operate under a name different than that in which it is owned or registered. Most importantly, however, the facts that appellant was believed to be an owner of Cardi's and that he *led* Galvan to the second-floor office after being presented with the search warrant would lessen any reason Galvan might otherwise have had to question whether the second floor office was part of the nightclub. Under these circumstances, even if the warrant is interpreted as authorizing a search of only the nightclub portion of the two-story structure, Galvan reasonably perceived the second-floor office as part of the nightclub, and his conduct was consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment. *See Maryland*, 480 U.S. at 88-89.

Because the validity of the warrant is unchallenged and the search of appellant's office did not exceed the scope of the warrant, appellant has not demonstrated that his Fourth Amendment rights were violated by it. Therefore, we overrule appellant's point of error and

---

either by the warrant or by Galvan. In that event, to the extent appellant failed to read the location described in the warrant or merely assumed it pertained to the place where he knew drugs were located, the oversight did not render his consent involuntary or invalidate the scope or execution of the warrant.

affirm the judgment of the trial court.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed August 10, 2000.

Panel consists of Justices Yates, Fowler, and Edelman.

Do not publish — TEX. R. APP. P. 47.3(b).