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No. 65615-5-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE**

STATE OF WASHINGTON, Respondent,

v.

NICHOLAS LEE MONAGHAN, Appellant.

BRIEF OF RESPONDENT

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INTRODUCTION

Nicholas Monaghan's appeal questions whether a defendant's general and unqualified consent to search a particular area of an automobile authorizes officers to search all containers, locked or unlocked, within the area authorized to be searched pursuant to State v. Mueller, 63 Wn.App. 720, 821 P.2d 1267, *review denied*, 119 Wn.2d 1012 (1992).

Following a traffic stop, Whatcom County Deputy Paz asked Monaghan if he could search the trunk of his vehicle. Monaghan consented and Paz subsequently found three baggies containing methamphetamine in a locked dictionary sized safe found within a zippered container. Based on this evidence, the State charged Monaghan with one count of unlawful possession of a controlled substance.

Monaghan moved to suppress the methamphetamine evidence, initially arguing he did not consent to the search of the trunk of his car, and that even if he did, the search of the locked container exceeded the scope of his consent. Whatcom County Superior Court Judge Stephen Mura declined to exclude the evidence concluding Monaghan consented to the challenged search:

I'm going to find that the general consent, the language in Mueller that a general consent is sufficient to allow the

officers to get into the locked box without additional consent to do so...

CP 35-38, RP 96. Monaghan now appeals.

A. ISSUES

“A general and unqualified consent to search an area for particular items permits a search of personal property within the area in which the material could be concealed.” State v. Mueller, 63 Wn. App. 720, 722, 821 P.2d 1267 (1992). Did the trial court err upholding Deputy Paz’ discovery of methamphetamine when Monaghan consented to the search of the contents of the trunk of his vehicle and did not at any time during the search limit or revoke his consent or assert that any of the contents did not belong to him?

B. FACTS

On July 29th, 2009 Whatcom County Sheriff Deputy High stopped Monaghan’s vehicle for running a stop sign. FF 1. Monaghan was driving. Id. While Deputy High was completing a traffic infraction for Monaghan, he asked Deputy Paz to run a warrants check on one of two passengers whom High recognized as Danielle Fink-Cridder. FF 2. After confirming there was an outstanding warrant for Danielle, Deputy High returned to the vehicle and asked Monaghan for the identity of his passenger. Monaghan said she was his girlfriend and her name was

Amber Smith. FF 3. The passenger however, confirmed she was Danielle Fink-Cridder. FF 3. Fink-Cridder was arrested on her outstanding warrant and Monaghan arrested for Making a False Statement to Law Enforcement. Id. Monaghan was given his Miranda warnings and thereafter asked if he would consent to search his vehicle for weapons. FF 4. Monaghan was informed that his consent was purely voluntary and that he could withdraw or limit his consent at any time. Id. Monaghan then consented to a search of the passenger compartment of his vehicle. Id.

Deputy High began the passenger compartment search but subsequently turned it over to Deputy Paz to enable him (High) to complete Monaghan's traffic infraction. FF 5. Monaghan stood near the rear of his vehicle with another deputy as Deputy Paz searched his car. FF 5. When Deputy Paz popped the trunk a few inches, Monaghan stopped him asking "I thought you were only going to search the passenger compartment." FF 6. Deputy Paz then asked Monaghan, before actually opening up the trunk, if he could search the vehicle's trunk. Id. Monaghan responded "yeah, go ahead." FF 6.

Deputy Paz then searched the trunk and its contents, including a dictionary sized safe inside a soft pack. In full view of Monaghan, Deputy High located the keys from the driver's area of the car and unlocked the container. FF 7. Inside he found three methamphetamine pipes, a baggy

of white crystalline substance inside and other drug paraphernalia. FF 7. At this point, Monaghan was standing by Deputy High's vehicle which was parked directly behind Deputy Paz and Monaghan's vehicle. FF 8. Deputy High's vehicle illuminated Monaghan's vehicle and Deputy Paz' actions. FF 8. Despite Monaghan's earlier question, Monaghan never revoked or limited his consent throughout the search. FF 8.

Monaghan moved to suppress evidence found in the dictionary/safe in the trunk of his car based on the validity and scope of his consent. Monaghan did not contest the validity of the stop or assert that it was a pretext. CP 46-53. After hearing argument, the trial court denied his motion concluding Monaghan gave officers the authority to search the contents of his trunk, including the locked container by consenting to the search and not revoking or placing any limits on that search. Con. of Law 1, 2. Following a stipulated trial, Monaghan was convicted of possession of methamphetamine and given a standard range sentence. CP 22-31. Monaghan now appeals. CP 2-21.

C. ARGUMENT

1. Search did not exceed the scope of Monaghan's Consent.

Monaghan contends the trial court erred by denying his motion to suppress evidence below. Specifically, Monaghan asserts Deputy Paz

exceeded the scope of his general and unqualified consent to search the trunk of his vehicle by searching a locked container found within even though Monaghan knew he could limit or revoke the search and instead stood close by as Deputy Paz examined all of the contents of his vehicle trunk.

Monaghan gave deputies the authority to search the contents of the trunk by giving his general and unqualified consent. Monaghan was previously informed he had the right to refuse, limit or terminate the search at any time and previously did so after Deputy Paz completed the passenger compartment search and began to open the trunk of his vehicle. Nonetheless, when Deputy Paz asked for additional consent to search the vehicle trunk, Monaghan authorized the additional search without limitation. Monaghan then stood within feet of the search, a search that was fully illuminated by Deputy High's headlights, as Deputy Paz searched the trunk, found the locked container, obtained a key from the passenger compartment and then opened the container. Monaghan never limited, objected, protested or revoked his consent throughout this ongoing search. Under these circumstances the trial court appropriately found Monaghan's scope of consent authorized Deputy Paz to search the locked container found within the trunk.

When reviewing a motion to suppress, the appellate court determined whether substantial evidence supports the findings of fact and whether the findings of fact support the conclusion of law. State v. Stevenson, 128 Wn.App. 179, 193, 114 P.3d 699 (2005). Conclusions of law are reviewed de novo. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Monaghan does not challenge the trial court's findings of fact, therefore they are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

The Washington State Constitution provides "no person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. Art. I, §7. A warrantless search or seizure is considered per se unconstitutional unless it falls within one of the few exceptions to the warrant requirement. State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). One of the few exceptions to the warrant requirements is consent. State v. Walker, 136 Wn.2d 678, 682, 965 P.2d 1079 (1998).

In the context of a search, consent equates to a waiver of the warrant requirement. State v. Morse, 156 Wn.2d 1, 8, 123 P.3d 832 (2005). For consent to be valid the state must demonstrate the person voluntarily gave consent, the person granting consent had authority to do so and finally, that the search did not exceed the scope of the consent. *Id.* at 682. A consensual search may go no further than the limits for which

consent was given. State v. Bustamante-Davila, 138 Wn.2d 964, 981, 983 P.2d 590 (1999); State v. Jensen, 44 Wn.App. 485, 491 723 P.2d 443 (1986). Any express or implied limitations or qualifications may reduce the scope of consent in duration, area or intensity. State v. Cotten, 75 Wn.App. 669, 679, 879 P.2d 971 (1994).

In Cotton, for example, FBI agents requested consent to search a residence for evidence connected to a bombing, explaining they were only looking for materials that could be used to make bombs. Cotton at 675-76. While searching the residence however, officers found and seized a shotgun connected to a murder instead of a bombing. The appellate court determined the search and seizure of the shotgun exceeded the scope of consent because consent was predicated on only finding items related to making bombs. Id. at 680.

In contrast here, Deputy Paz specifically asked Monaghan if he could search the trunk of his vehicle and Monaghan agreed, without limitation. Because Monaghan consented voluntarily, had authority to consent and placed no limits on that consent, Deputy Paz' subsequent search was reasonable and authorized pursuant to the consent exception of the Washington State Constitution. State v. Mueller, 63 Wn. App. at 721-22.

In Mueller, a vehicle was stopped for suspicion of driving while intoxicated. General and unqualified consent was thereafter given to the officer to search the vehicle for guns or drugs. During the search, officers found and opened a closed gym bag finding drugs, drug paraphernalia and cash inside. The court held that “[a] general and unqualified consent to search an area for particular items permits a search of personal property within the area in which the material could be concealed. *Id.* at 722, *see also*, State v. Rison, 116 Wn.App. 955, 69 P.3d 362 (2003), State v. Jensen, 44 Wn.App. 485, 492, 723 P.2d 443 (1986) (holding consent to search a vehicle authorized the officer to search the pockets of a jacket in the back seat).

Monaghan argues relying in part on State v. Cole, 31 Wn.App. 501, 643 P.2d 675 (1982) and State v. Cuzick, 21 Wn.App. 501, 585 P.2d 485 (1978), that Monaghan’s general and unqualified consent to search did not authorize Deputy Paz to search the locked container. Cole and Cuzick, however, are distinguishable. Both cases involved the search of personal luggage and, in neither case did the defendant give unqualified consent.

In Cole, the defendant consented to a vehicle search of his hatchback but told officers the suitcases in the back did not belong to him. The court held the vehicle search did not extend to permit officers to

search the contents of the unclaimed luggage because “nothing in the record indicates he [Cole] extended that consent to permit officers to sort through personal belongings in a closed suitcase.” Cole at 505. Similarly in Cuzick, where officers searched the contents of a suitcase found in the back seat of the car and the state argued, amongst other theories, that Cuzick consented to the search, the court found the record was “devoid of any evidence that would arguably extend defendant’s consent to permit the officer to rummage through a suitcase’ containing personal belongings. Cuzick at 505. While the court recognized the personal nature of the luggage searched, the courts holdings in both cases were predicated on the scope of consent given and the fact that nothing in the record demonstrated either gave unqualified consent to search the personal luggage at issue.

Contrary to Cole and Cuzick, Monaghan did not place limits on what Deputy Paz could search within the trunk. As the trial court found, Monaghan initially gave his consent to search the passenger compartment of his vehicle for weapons. Findings 4. Monaghan was informed his consent was voluntary and that he could withdraw or limit his consent at any time. *Id.* Monaghan then later consented to expand the scope of the search by additionally authorizing Deputy Paz to also search the trunk of his vehicle, with no constraints. Findings 6. Deputy Paz, within full view

of Monaghan who was standing nearby, searched Monaghan's trunk including the contents of a locked dictionary safe found within the trunk. Findings 7, 8. At no time did Monaghan express concern, limit or attempt to stop Deputy Paz' search.

Moreover, Monaghan's actions during the search imply he consented to the search of the locked container. In State v. Bustamonte-Davila, 138 Wn.2d 964, 983 P.2d 590 (1999), an INS agent went to the defendant's residence and approached the front door. Defendant looked out the window, acknowledged the agent and then in response to their knocks, opened the door. When the agents asked to enter, the defendant stepped back from the open door and did not object to their entry. The agents subsequently observed and seized a rifle found in plain sight. The defendant moved to suppress this evidence arguing he did not consent to the agent's entry. The court held that while the defendant did not expressly consent to the agents' entry, he nonetheless impliedly waived his right to argue they did not have consent to enter the residence by his conduct.

Similarly here, Monaghan gave unqualified consent to search the contents of the trunk. Monaghan's failure to object, protest, limit or revoke his consent as the search continued demonstrates his unqualified consent was broad and implies the search of the locked container was

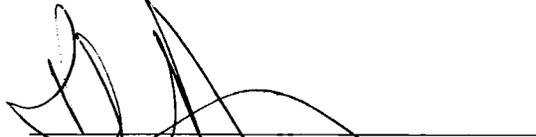
within the scope of consent to search given. Particularly where Monaghan was in a position to closely observe Deputy Paz' actions and where he previously stopped Deputy Paz between the search of the passenger compartment and trunk to question the scope of the search. Because Monaghan's consent was voluntary and unqualified and he acted in a manner that implied the scope of his consent included the locked container, Deputy Paz' search was authorized under the State and federal constitution. Therefore, the methamphetamine evidence found pursuant within the locked container in the trunk was admissible below as evidence of Monaghan's guilt. State v. Mueller, 63 Wn.Ap. 720.

The trial court correctly rejected defendant Monaghan's attempts to suppress evidence that defendant possessed methamphetamine. Monaghan was fully informed that he could refuse, limit or revoke his consent at any time. Monaghan nevertheless chose to authorize officers to search the trunk of his car. In doing so, Monaghan consented to search all of the contents, locked and unlocked. Had the scope of Monaghan's consented been restricted, he would have objected or revoked his consent. Monaghan didn't object however, because he consented to the search engaged in.

D. CONCLUSION

The State of Washington respectfully requests this court to affirm defendant's conviction and dismiss this appeal.

DATED this 10 day of February, 2011.



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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I placed in the U.S. mail with proper postage thereon, or otherwise caused delivery of Brief of Respondent to Appellant's counsel, addressed as follows:

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Legal Assistant 2/17/2011
Date