

FILED
Apr 16, 2012
Court of Appeals
Division III
State of Washington

NO. 298710-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

RUBEN ZAMORA JURADO, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 298710

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On June 25, 2010, Kennewick Police Department Detectives John Davis, William Dramis, and Mary Buchan went to the defendant's apartment located at 3523 West Hood Avenue in Kennewick, Washington, to contact the defendant regarding an assault investigation. (CP 151; RP August 25, 2010, at 22). The defendant's wife, Aracellia Carrillo Deniz, answered the door at the residence. (CP 151; RP August 25, 2010, at 44-45).

Ms. Deniz was informed in English by the Detectives that they were there to speak with her husband, the defendant. (CP 151; RP August 25, 2010, at 45). Ms. Deniz spoke limited English, but was able to communicate with the officers. (CP 152; RP August 25, 2010, at 12-16, 45, 52, 61-62). Detective Buchan asked Ms. Deniz in Spanish if she could enter her residence. (RP August 25, 2010, at 11-12). Ms. Deniz opened the door, backed away and motioned with her arm for

the detectives present to enter the residence. (CP 152; RP 12, 52-53). No *Ferrier*¹ warnings were given to Ms. Deniz. (CP 152; RP August 25, 2010, at 48).

Ms. Deniz then advised the officers that her husband was sleeping, and led them to a back bedroom where he was located. (RP August 25, 2010, at 48-49). Ms. Deniz then walked part way down the hallway toward a back bedroom, and the officers followed her. (CP 152; RP August 25, 2010, at 8, 48-49, 53). The defendant was found in the bedroom lying in bed asleep. (CP 152; RP August 25, 2010, at 52-53). The defendant was handcuffed and led down the hallway. (CP 152; RP August 25, 2010, at 13).

While Detective Davis was waiting in the living room of the residence, he observed in plain view two firearms on the coffee table, as well as several rounds of ammunition. (CP 152; RP August 25, 2010, at 24-25, 29-30). The two

¹ *State v. Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998).

firearms were in arms-length proximity to a small child that was in the residence. (RP August 25, 2010, at 29). Detective Davis did not have probable cause to believe the firearms were stolen. (CP 152; RP August 25, 2010, at 25). Detective Davis was able to read the serial number on one of the firearms, because it was standing on its bolt carrier. (CP 152; RP, August 25, 2010, at 29, 34). Detective Davis did not move or manipulate the firearm in order to read the serial number. (CP 152; RP August 25, 2010, at 30, 34).

Detective Davis ran the serial number on the firearm, and found it was listed as stolen out of Yakima, Washington. (CP 152; RP August 25, 2010, at 30). Based upon Detective Davis's observations, a search warrant was obtained for the residence, and a Springfield .45 caliber semi-automatic pistol and magazine were seized, as well as a .22 caliber Derringer, .22 caliber bullets, and .38 caliber bullets. (CP 152; RP

August 25, 2010, at 34-35). The .45 caliber firearm was found to be stolen out of Yakima, Washington, and the .22 caliber firearm returned stolen out of Royal City, Washington. (CP 152).

The defendant was charged by Information with Assault in the Second Degree, Alien in Possession of a Firearm, and Possession a Stolen Firearm on June 30, 2010. (CP 1-2). A CrR 3.6 hearing was held on August 25, 2010, and Findings of Fact and Conclusions of Law were entered after the trial court denied Defendant's motion to suppress. (CP 151-153) The Information was amended on April 27, 2011, to Assault in the Fourth Degree, Alien in Possession of a Firearm and Possession, and Possessing a Stolen Firearm. (CP 69-71). The matter proceeded to a Stipulated Facts Trial on April 27, 2011, wherein the defendant was found guilty of all three charges, and a Judgment and Sentenced was entered. (CP 98-124, 125-135).

ARGUMENT

1. THE KENNEWICK POLICE DEPARTMENT DETECTIVES WERE GIVEN PERMISSION BY THE DEFENDANT'S WIFE TO ENTER HER HOME AND SPEAK WITH THE DEFENDANT, AND THUS THEIR ENTRY WAS LAWFUL.

A trial court's denial of a suppression motion is reviewed to determine whether substantial evidence supports the challenged findings of fact and whether the findings support the trial court's conclusions of law. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), overruled on other grounds by *Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007). Evidence is substantial when it is enough "to persuade a fair-minded person of the truth of the stated premise." *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999). Conclusions of law are reviewed de novo. *State v. Mendez*, 137 Wn.2d at 214. Credibility determinations are the province of the trier of fact and are not subject to appellate review.

State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In general, an officer who enters a house with consent may go where the consent allows. *State v. Cotton*, 75 Wn. App. 669, 679, 879 P.2d 971 (1994). The Kennewick Police Department Detectives in this matter were given permission to enter the residence to contact the defendant regarding their assault investigation by the defendant's wife, Ms. Deniz. (CP 152).

Although Ms. Deniz testified that her English is limited, she was able to understand that the Detectives that arrived at her house were law enforcement officers. (RP August 25, 2010, at 61). Ms. Deniz also testified that she understood that the Detectives were at her residence to speak with her husband, the defendant. (RP August 25, 2010, at 61). Additionally, Detective Buchan stated that she asked Ms. Deniz in Spanish if she could enter her residence. (RP August 25, 2010, at 11-12). This

request was heard by the other Detective on the scene. (RP August 25, 2010, at 45-46). Moreover, Ms. Deniz invited the Detectives into her residence by opening the door, backing away and motioning with her arm for the detectives present to enter the residence. (CP 152; RP August 25, 2010, at 12, 24, 45-46). Ms. Deniz then advised the officers that her husband was sleeping, and led them to a back bedroom where he was located. (RP August 25, 2010, at 48-49).

No *Ferrier* warnings were given to Ms. Deniz, but they were not required in this case, because the Detectives were not conducting a search. (CP 152). In *State v. Williams*, 142 Wn.2d 17, 27-28, 11 P.3d 714 (2000), the Court held that no constitutional requirement exists that requires officers warn of the right to refuse entry every time they enter a home to investigate because “[t]o apply the *Ferrier* rule in these situations would unnecessarily hamper a police officer’s ability to investigate complaints and assist the

citizenry." The Court in *State v. Khounvichai*, 149 Wn.2d 557, 564, 69 P.3d 862 (2003), held that there is a fundamental difference between requesting consent to search a home and requesting consent to enter a home for other legitimate investigatory purposes.

When police obtain consent to search a home pursuant to a "knock and talk" they go through private belongings and affairs without restriction. Such an intrusion into privacy is not present, however, when the police seek consensual entry to question a resident. In the instant case, *Williams* and *Khounvichai* are controlling, and thus, although no *Ferrier* warnings were given, they were not required to enter the home to contact the defendant to question him regarding an assault investigation.

The trial judge was the trier of fact in the suppression motion and stipulated facts trial, and as the trier of fact he was entitled to conclude that one witness was more believable

than another. In the instant case, the trial court found that the Detectives' testimony that Ms. Deniz invited them into the home and led them to the bedroom where the defendant was asleep was what actually occurred. Thus, Detective Davis was lawfully in the home at the time he observed the firearm and its serial number.

2. DETECTIVE DAVIS'S OBSERVATION OF THE SERIAL NUMBER ON THE FIREARM, WITHOUT MANIPULATION OR TOUCHING OF THE FIREARM, AND THE SUBSEQUENT CHECK OF THE SERIAL NUMBER TO DETERMINE IF IT WAS STOLEN, WHILE IN THE DEFENDANT'S HOME AFTER BEING INVITED IN, DID NOT CONSTITUTE A SEARCH OR A SEIZURE.

A serial identification number on a product is "quasi-public information" in that it is recorded and used for identification purposes. *State v. Simpson*, 95 Wn.2d 170, 622 P.2d 1199 (1980), *overruled on other grounds by State v. Jones*, 104 Wn. App. 966, 17 P.3d 1260 (2001). The Court in *State v. Murray*, 84 Wn.2d 527, 527 P.2d 1303 (1974), held that an individual had a full privacy interest in the serial number which

was stamped on the bottom of his television set and totally concealed from the view of the police officers in his apartment. Although the number itself was quasi-public in that it was recorded elsewhere and used for identification purposes, the bottom of the television set was a private and fully protected area. *Id.*

In the instant case, the firearm and its serial number were in plain view in the living room that Detective Davis was invited into. (CP 153). The serial number was visible without any manipulation or touching of the firearm, as it was standing on its bolt carrier with the serial number visible. (CP 153). Thus, the defendant would not have a privacy interest in the serial number. Furthermore, no search occurred in this matter. To look at the exterior of an objection from a lawfully obtained vantage point, without

moving the object is neither a search² nor a seizure.³

Based upon his observations, Detective Davis was then lawfully allowed to run the serial number on the firearm to ascertain if it was stolen. The firearm in question was not seized until the search warrant was lawfully executed. (CP 153).

Furthermore, the firearms in question were also a safety concern in the home. Detective Davis testified that there were two firearms and ammunition on the coffee table in the living room within arms reach of a toddler. (RP August 25, 2010, at 29). The toddler's mother, Ms. Deniz, had been in the kitchen cooking prior to officers arriving on the scene, and the defendant was in bed asleep. (CP 152; RP August 25, 2010, at 14).

² *Cardwell v. Lewis*, 417 U.S. 583, 591-92, 94 S.Ct. 2464, 2470, 41 E.Ed.2d 325 (1974) (no search where officers, after lawfully seizing a car merely examined its exterior)

³ *State v. Seagull*, 95 Wn.2d 898, 901-02, 632 P.2d 44 (1981) (no search, or no additional, unjustified search, if officer lawfully at vantage point merely observes "that which is there to be seen.")

Thus, the firearm posed a significant risk of injury or death to the toddler if the child would have grabbed the firearms without any supervision. Thus, although he didn't secure or seize the weapons until a search warrant was executed, Detective Davis most certainly could have under a community caretaking duty.

3. THE TRIAL COURT LISTED THE TOTAL LEGAL FINANCIAL OBLIGATIONS OWED BY THE DEFENDANT IN THE JUDGMENT AND SENTENCE, AND THE ATTACHED COST BILL.

The Judgment and Sentence and Cost Bill entered in this matter clearly set forth the total amount of fees owed by the defendant. (CP 128-29, 135). The Judgment and Sentence states the defendant owes:

1. Restitution in the amount of \$279.81 to Crime Victim's Compensation;
2. \$500.00 Victim assessment, RCW 7.68.035;
3. \$500.00 fine, RCW 9A.20.021;
4. \$100.00 Felony DNA collection fee, RCW 43.43.7541. (CP 128).

The Judgment and Sentence also states the defendant will be charged court costs, and states, "See Attached Cost Bill," RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190, which was in fact attached to the Judgment and Sentence. (CP 128, 135). The Cost Bill sets forth the costs the defendant incurred including:

1. Filing fee \$200.00;
2. Sheriff's Service Fee \$60.00;
3. Witness Fee \$10.00;
4. Attorney's Fee \$700.00. (CP 135).

The Cost Bill then provides a "TOTAL ORDERED AND/OR ASSESSED" portion indicting the total court costs assessed under the cost bill were \$970.00. (CP 135). Thus, the Judgment and Sentence and Cost Bill comply with RCW 9.94A.760 by designating the total amount of legal financial obligations and segregating this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law.

CONCLUSION

Based upon the aforementioned rationale, the defendant's appeal should be denied, the conviction affirmed, and the costs and fees imposed remain.

RESPECTFULLY SUBMITTED this 16th day of April 2012.

ANDY MILLER

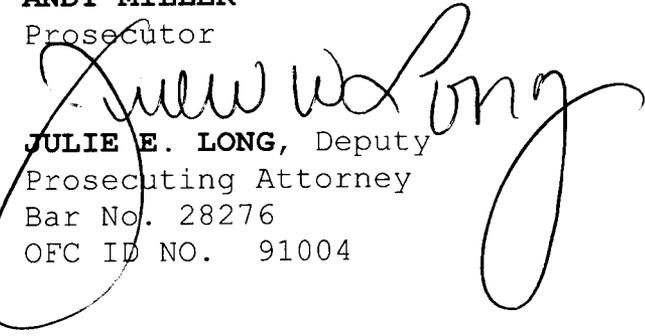
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A large, stylized handwritten signature in black ink, which appears to read "Julie E. Long". The signature is written over the typed name and title of Julie E. Long.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

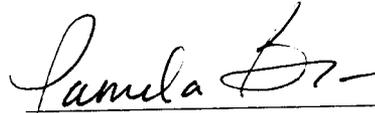
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Signed at Kennewick, Washington on April 16, 2012.



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