

State v. Cazares Sosa

Court of Appeals of Washington, Division Three
August 16, 2012, Filed
No. 29956-2-III

Reporter

2012 Wash. App. LEXIS 1954; 2012 WL 3527894

THE STATE OF WASHINGTON, *RESPONDENT*, v. JORGE LUIS CAZARES SOSA, *APPELLANT*.

NOTICE: RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

Subsequent History: Reported at [State v. Cazares Sosa, 2012 Wash. App. LEXIS 2006 \(Wash. Ct. App., Aug. 16, 2012\)](#)

Prior History: [*1] Appeal from Grant Superior Court. Docket No: 10-1-00221-1. Judgment or order under review. Date filed: 05/09/2011. Judge signing: Honorable John D Knodell.

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Judges: AUTHOR: Dennis J. Sweeney, J. WE CONCUR: Stephen M. Brown, J., Kevin M. Korsmo, C.J.

Opinion by: Dennis J. Sweeney

Opinion

¶1 SWEENEY, J. — This appeal follows the court's refusal to suppress evidence seized by police following a consensual search and convictions for two counts of second degree unlawful possession of a firearm. The court first granted a motion to suppress after the court expressed concerns about the State's failure to show the specifics of a search of a closet. The court later granted the State's motion to reconsider and allowed an officer to testify that guns were in plain view when he opened a closet door. We conclude that the court's rulings were well within its discretionary authority and that the motion to suppress was properly denied.

FACTS

¶2 The facts here are undisputed. Police responded to a report of shots being fired [*2] at a trailer in Mattawa, Washington, on April 24, 2010. Eyewitnesses identified Jorge Cazares Sosa as one of a group of approximately five involved in the shooting. The eyewitnesses watched as the five people fled the scene after the shooting and were able to give the officers their general direction of travel.

¶3 The officers first went to the nearby home of Mr. Cazares Sosa's mother to search for him. She consented to the search. Police determined that Mr. Cazares Sosa was not there. The officers then went to Mr. Cazares Sosa's residence at 200 East 4th Street, No. 110. They had talked to Mr. Cazares Sosa at that location in the past and knew he owned that residence. The officers also knew that Mr. Cazares Sosa had lived at the residence for some time and was not renting or leasing the property to a roommate or cotenant.

¶4 Mr. Cazares Sosa came out of the home and gave the officers permission to search inside for other people. Officer Jose Chiprez opened a coat closet door in a hallway and saw two shotguns in plain view against the back wall.

¶5 Victor Castillo was also in the house but he did not live there nor did he claim that the firearms belonged to him. The officers obtained a search [*3] warrant and secured the two firearms.

¶6 The State charged Mr. Cazares Sosa with two counts of alien in possession of a firearm and two counts of unlawful possession of a firearm in the second degree. The State dismissed the two counts of alien in possession of a firearm before trial.

¶7 Mr. Cazares Sosa moved to suppress evidence on the grounds that he did not have authority to consent to the search of the residence and, even if he did, he limited his consent to a search only for people. And he argued that the search of the closet exceeded the scope of his consent. The State called two of the officers involved in the search, Officer John Ingersall and Officer Anthony Valdivia. Officer Ingersall testified about the events leading up to the search of Mr. Cazares Sosa's residence, specifically that Mr. Cazares Sosa consented to the search of his house and accompanied Officer Ingersall during the search. Officer Ingersall was not present when Officer Chiprez located the two shotguns, but later examined the closet after the weapons were removed and concluded that it was big enough to conceal a person.

¶8 Officer Valdivia testified to essentially the same facts as Officer Ingersall. He added that he [*4] and other officers had had multiple contacts with Mr. Cazares Sosa in the past at both of the residences searched. He testified that the officers knew that Mr. Cazares Sosa had been living at that address for about one year.

¶9 The State rested. Mr. Cazares Sosa did not testify or call any witnesses at the suppression hearing. The court then asked for argument. The court interrupted the State's closing and asked how the State could meet its burden of proving the officers did not exceed the scope of consent to search without testimony from Officer Chiprez. The State argued that the only issue raised on the scope of the search was whether the closet where the shotguns were found was large enough to conceal a person and Officer Ingersall's testimony was sufficient on that question. The court disagreed and granted Mr. Cazares Sosa's motion to suppress on the ground that the State failed to present evidence as to how the shotguns were situated in the closet.

¶10 The State moved for reconsideration and attached Officer Chiprez's report. The State argued that Mr. Cazares Sosa's motion to suppress was limited to whether a person could fit in the closet, not whether the shotguns were found in plain [*5] sight. The State maintained, nonetheless, that Officer Chiprez would testify that he did in fact find the shotguns in plain view upon opening the closet door. The court granted the State's motion and allowed Officer Chiprez to testify.

¶11 Officer Chiprez testified that he entered Mr. Cazares Sosa's residence and went down a hallway before opening the closet door. He described the closet as a standard coat closet with some clothing hanging inside. He immediately saw two shotguns standing up against the wall of the closet in the back right corner. He did not need to move any of the clothing to see the firearms.

¶12 Mr. Cazares Sosa then called Victor Castillo, the other occupant in his home on the night of the search. Mr. Castillo gave conflicting testimony as to the manner in which the closet was searched; the court ultimately did not find his testimony credible. The court concluded that the two shotguns were found in plain view while searching a coat closet large enough to hide a person and reversed its previous ruling to suppress.

¶13 The court found Mr. Cazares Sosa guilty of two counts of second degree unlawful possession of a firearm following a stipulated bench trial.

DISCUSSION

RECONSIDERATION [*6] OF MOTION TO SUPPRESS

¶14 Mr. Casares Sosa contends the court should not have granted the State's motion to reconsider its suppression order nor should it have permitted additional testimony. We review a trial court's grant of a motion for reconsideration

for an abuse of discretion. [Rivers v. Wash. State Conf. of Mason Contractors, 145 Wn.2d 674, 684-85, 41 P.3d 1175 \(2002\)](#) (quoting [Burnet v. Spokane Ambulance, 131 Wn.2d 484, 494, 933 P.2d 1036 \(1997\)](#)). Discretion is abused when it is exercised in a manifestly unreasonable manner or on untenable grounds. *Id.* (quoting [Burnet, 131 Wn.2d at 494](#)).

¶15 A court generally has wide discretion to fashion a hearing during any stage of proceedings where guilt is not at issue. [State v. Wolken, 103 Wn.2d 823, 829, 700 P.2d 319 \(1985\)](#). A defendant must first support a suppression motion with an affidavit or document setting forth the facts he or she anticipates will be elicited during a hearing. [CrR 3.6\(a\)](#). The court then decides whether a hearing is necessary. [CrR 3.6\(a\)](#). The court may then proceed with a hearing or not. [State v. McLaughlin, 74 Wn.2d 301, 303, 444 P.2d 699 \(1968\)](#).

¶16 Here the court elected to proceed with a hearing and reconsidered:

The argument [*7] that was being made in the brief was that if the police are looking in the closets, that's beyond the scope of a search for a person, and so it regretfully may not have been fair for me to rule upon that until we heard from Officer Chiprez.

Report of Proceedings (RP) (Feb. 15, 2011) at 10. The court had the discretion to reconsider the matter and hear from Officer Chiprez. See [Wolken, 103 Wn.2d at 829](#). Mr. Cazares Sosa's brief was limited to the scope of consent and not whether the guns were in plain view. So the absence of Officer Chiprez during the first hearing was understandable.

¶17 The decision to reconsider and allow additional testimony was well within the court's discretionary authority.

SUPPRESSION MOTION

¶18 Mr. Cazares Sosa contends evidence of the shotguns should have been suppressed because the State failed to establish that he had authority to consent to the search and, even if he did have the authority to consent, the search of the closet exceeded the scope of his consent.

¶19 We review the court's denial of a suppression motion to determine whether substantial evidence supports the trial court's factual findings and whether those findings support its conclusions of law. [State v. Bliss, 153 Wn. App. 197, 203, 222 P.3d 107 \(2009\)](#). [*8] The trial court is required to enter written findings of fact and conclusions of law at the conclusion of a suppression hearing. [CrR 3.6\(b\)](#); see also [State v. Head, 136 Wn.2d 619, 622-23, 964 P.2d 1187 \(1998\)](#); [State v. Cruz, 88 Wn. App. 905, 909, 946 P.2d 1229 \(1997\)](#). We may overlook the absence of written findings, but only where the court clearly and comprehensively states in its oral opinion the basis of its decision. [Cruz, 88 Wn. App. at 907-08](#).

¶20 The court here failed to enter written findings or conclusions following the hearings. However, neither party takes issue with their absence or claims any prejudice. The court concluded after the first hearing that Mr. Cazares Sosa had the authority to consent to the search of the residence because he was living in the house at the time:

The three issues that have been brought up by the defendant is whether the defendant had given authority and had authority to the search, had authority to consent to the search. The argument being that there is not enough evidence that he, Mr. Sosa, lived at this house. And as pointed out in the State's brief, the question is, isn't whether Mr. Sosa lived at the house as we have seen from many cases but whether [*9] he had authority to consent to the search and we have fact patterns with roommates or landlords and the like and it is from the point of view of the, the officers there and while I shouldn't say that, it may not be from the point of view of the officers, it is just whether or not there is sufficient evidence produced in Court to support the fact that Mr. Sosa had authority to consent to the search and I believe there was sufficient evidence produced by the State which shows that Mr. Sosa was living at this house at that time and therefore had the authority to consent to the search.

RP (Feb. 9, 2011) at 44. Officer Ingersall testified that Mr. Cazares Sosa emerged from the house when they arrived. Officer Valdivia testified that he and other officers knew Mr. Cazares Sosa had lived at the residence for about one year based on previous contacts. Substantial evidence then supports the finding that Mr. Cazares Sosa lived at the residence. And that finding supports the legal conclusion that he had the authority to consent to the search.

¶21 Officer Chiprez testified that the shotguns were easily visible when he opened the closet door. Substantial evidence supports the finding that the shotguns [*10] were in plain view and immediately recognizable. And that finding supports the conclusion that the firearms were admissible.

¶22 We affirm the convictions.

¶23 A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to [RCW 2.06.040](#).

Korsmo, C.J., and Brown, J., concur.