IN THE SUPREME COURT OF THE STATE OF NEVADA

TRACEY LEWIS BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51130

FILED

AUG 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of burglary while in possession of a dangerous or deadly weapon, two counts of robbery with the use of a deadly weapon of a victim 60 years of age or older, one count of attempted robbery with the use of a deadly weapon of a victim 60 years of age or older, and two counts of battery of a victim 60 years of age or older with intent to commit a crime and with use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Tracey Lewis Brown raises several issues; however, we focus solely on his contention that the police lacked sufficient justification under the Fourth Amendment to conduct a warrantless search of his girlfriend's home.[1] For the reasons set forth below, we agree with Brown.

[1]Brown also contends that the witnesses' show-up identification and in-court identifications were unnecessarily suggestive and unreliable. In light of our decision, we need not reach these additional issues.

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"It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." Payton v. New York, 445 U.S. 573, 586 (1980) (quoting Coolidge v. New Hampshire, 403 U.S. 443, 477 (1971)). This basic presumption may be overcome only by showing exigent circumstances or consent to search. Steagald v. U.S., 451 U.S. 204, 211 (1981).

During trial, the State informed the jury that the police effectuated their entry into the home after Brown's girlfriend voluntarily signed a consent-to-search card. This is incorrect. To explain, the record demonstrates that the police first entered the home and forcefully removed Brown's girlfriend before she signed the consent-to-search card.

On appeal, the State fails to make a claim of exigent circumstances. Therefore, in order to overcome the presumption of unreasonableness, the State must demonstrate that Brown's girlfriend gave legally sufficient consent to search. Here, the State contends that the officers' warrantless intrusion into the home did not violate Brown's constitutional rights because his girlfriend's consent to search was voluntarily given. We disagree.

The mere fact that the consent is given voluntarily "does not mean that [the] consent is not tainted by a prior Fourth Amendment violation." See U.S. v. Furrow, 229 F.3d 805, 813 (9th Cir. 2000), overruled on other grounds by U.S. v. Johnson, 256 F.3d 895 (9th Cir. 2001). In this case, the girlfriend's consent to search was tainted by the officers' unlawful entry into the home. This taint may be purged, however, if the consent to search was "'sufficiently an act of free will.'" See Brown v. Illinois, 422 U.S. 590, 599 (1975) (quoting Wong Sun v. United States, 371 U.S. 471, 486 (1963)) (noting that consent to search following illegal

seizure is valid only if the evidence is found by means sufficiently distinguishable so as to purge the primary taint).

In this case, Brown's girlfriend signed the consent-to-search card just moments after she was forcefully removed from her home at gunpoint. The temporal proximity between the officers' unlawful intrusion and the girlfriend's consent to search was immediate, and there were no intervening circumstances. See id. at 603-04 (setting forth considerations relevant to determining whether evidence is tainted by preceding illegal action). Therefore, we conclude that the girlfriend's consent to search was not sufficiently an act of free will to purge the taint of the unlawful entry. Accordingly, we

ORDER the judgment of the district court REVERSED.

Parraguirre, J.

Douglas, J.

Pickering, J.

cc: Hon. Valerie Adair, District Judge
Joel M. Mann, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk