IN THE SUPREME COURT OF THE STATE OF NEVADA

JUDE TROY CZIBOK,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35951

FILED

NOV 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Jude Troy Czibok appeals his conviction, pursuant to a jury verdict, of trafficking in a controlled substance. The district court sentenced Czibok to twenty-five years imprisonment and a $10,000.00 fine. Czibok argues that (1) the search of his hotel room was unconstitutional, (2) the district court erred by admitting evidence seized from Czibok's person during his arrest, and (3) the prosecutor unconstitutionally exercised a peremptory challenge against the only Native American on the jury venire panel.

On October 8, 1999, Czibok checked into the Fallon Holiday Inn Express. On October 10, 1999, while cleaning Czibok's room, hotel staff noticed what appeared to be a glass pipe in a drawer. Hotel personnel informed police of this discovery, and Investigator Paul Loop of the Fallon Police Department came to the scene.

Investigator Loop questioned the staff about the pipe. He then examined the trash which the staff had removed while cleaning Czibok's room. The trash contained a small plastic bindle with methamphetamine residue. Loop then sought a search warrant for Czibok's hotel room. In the search warrant affidavit, Loop attested to (1) the hotel staff's sighting of a glass pipe, (2) the methamphetamine residue in Czibok's trash, (3) information from informants that Czibok sold narcotics, (4) Czibok's arrest record in California for narcotics offenses, and (5) the fact that Czibok was a convicted felon. The judge granted a search warrant.

Loop and other police officers searched Czibok's hotel room and found marijuana. Loop then arrested and handcuffed Czibok based on the marijuana found in his hotel room. Loop searched Czibok and removed his wallet and examined the wallet's contents and found a plastic

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bag containing approximately 38.76 grams of methamphetamine. Loop then interrogated Czibok without delivering Miranda[1] warnings.

Based on the methamphetamine found in Czibok's wallet, the State charged Czibok with trafficking in a controlled substance. The district court granted Czibok's motion to suppress his post-arrest statements under Miranda v. Arizona.[2] The district court denied Czibok's motion to suppress the methamphetamine. The jury convicted Czibok of trafficking in a controlled substance.

The search warrant

Czibok contends that the search warrant was invalid because Investigator Loop presented false and misleading information in his search warrant affidavit, and that absent such information, probable cause did not support the warrant. Czibok argues that the district court erred in denying his motion to suppress all evidence seized as a result of this search.

Probable cause to issue a search warrant exists where "there is a fair probability that contraband . . . will be found in a particular place."[3] A search warrant is void where the affiant knowingly or recklessly attests to false statements, and absent those false statements the affidavit does not establish probable cause.[4] While Czibok asserts that certain statements in Loop's affidavit were false, he does not present any evidence that Loop made these statements knowing of their falsity or with reckless disregard of the truth. This type of blanket allegation of knowledge or recklessness, unsupported by evidence, is insufficient to set aside a search warrant.[5]

Czibok also argues that Loop attested to Czibok's narcotics arrests and felony conviction, but did not explain that Czibok's conviction

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[1]Miranda v. Arizona, 384 U.S. 436 (1966).

[2]384 U.S. at 444.

[3]See United States v. Stanert, 762 F.2d 775, 778-79 (9th Cir. 1985) (citing Illinois v. Gates, 462 U.S. 213, 238 (1983)).

[4]See Franks v. Delaware, 438 U.S. 154, 155-156 (1978).

[5]See Franks, 438 U.S. at 171.

was unrelated to the narcotics arrests.[6] Loop's affidavit merely accurately stated that Czibok was registered as an ex-felon. This statement was not misleading.

Further, even without this information, the search warrant was supported by probable cause. Loop truthfully attested that hotel staff had seen a glass pipe in Czibok's room, that Czibok's trash contained methamphetamine residue and that local informants had associated Czibok with narcotics sales. This information established probable cause to believe that contraband would be found in Czibok's hotel room. Accordingly, we hold that the district court did not err in denying Czibok's motion to suppress.

Warrantless search

Czibok next argues that the district court erred in failing to exclude the methamphetamine seized during his arrest. First, Czibok claims that the district court should have suppressed this evidence as fruit of the poisonous tree because the government would not have discovered the evidence but for an illegal act.[7] Czibok argues that the contraband was discovered as a result of the non-Mirandized interrogation. This argument lacks merit. The non-Mirandized interrogation was not an illegal act. Furthermore, the evidence was discovered prior to the custodial interrogation.

Second, Czibok argues that the methamphetamine was illegally seized in a warrantless search. Warrantless searches are per se unreasonable, unless the search falls under one of few exceptions.[8] The State argues that the search of Czibok's wallet falls under the "inevitable discovery" exception to the warrant requirement. The inevitable discovery exception permits the admission of illegally seized evidence if the government can prove by a preponderance of the evidence that the police inevitably would have discovered the evidence through lawful means.[9]

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[6]Czibok also contends that the informants lied to Loop, but does not explain how this equates to knowing or reckless falsity on Loop's part.

[7]See Alward v. State, 112 Nev. 141, 156, 912 P.2d 243, 253 (1996).

[8]Id. at 151, 912 P.2d at 249-50.

[9]Proferes v. State, 116 Nev. ___, ___, 13 P.3d 955, 958 (2000).

Here, Investigator Loop searched Czibok as he was being placed under arrest for possession of the marijuana found in his motel room. Under the standard booking process, a police officer would have inventoried all items in Czibok's possession, including the contents of his wallet. This type of inventory search is proper.[10] Thus, the drugs inevitably would have been discovered via proper means. Accordingly, we hold that the methamphetamine found in Czibok's wallet was properly admitted at trial.

Batson challenge

Czibok's final point of appeal is that the prosecutor acted in a racially discriminatory manner to exclude Native Americans from the jury venire panel. During jury voir dire, the State peremptorily challenged Theresa Montgomery, the only Native American on the venire panel.

The Equal Protection Clause of the Fourteenth Amendment mandates that prosecutors not exclude potential jurors based on race.[11] A defendant wishing to attack a prosecutor's peremptory challenges must make a prima facie showing of intentional discrimination.[12] The prosecutor then has the burden of producing a race-neutral explanation for the challenge.[13] The trial court must then make a finding whether the proffered explanation is merely a pretext for intentional discrimination.[14] This court affords the district court's decision great deference and will set aside only a clearly erroneous conclusion.[15]

Here, the prosecutor offered two race-neutral reasons for excluding Montgomery, including the fact that the Churchill County District Attorney had previously prosecuted her. "'[A]ssociation with the criminal justice system is a facially neutral reason to challenge

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[10]See Collins v. State, 113 Nev. 1177, 1181-82, 946 P.2d 1055, 1058-59 (1997).

[11]See Batson v. Kentucky, 476 U.S. 79 (1986).

[12]See id. at 94.

[13]See id. at 97.

[14]See id. at 98.

[15]See Libby v. State, 115 Nev. 45, 55, 975 P.2d 833, 839 (1999) (citing Hernandez v. New York, 500 U.S. 352, 365 (1991).

[venirepersons].'"[16] The prosecutor reasonably could have believed that the prior prosecution had biased Montgomery against the Churchill County District Attorney. Montgomery's "attitude" during voir dire, indicating hostility to the prosecution, could have further bolstered this belief. We hold that the district court's conclusion that the prosecutor did not engage in intentional discrimination was not clearly erroneous.[17]

Having considered Czibok's arguments, we find them to be without merit and therefore

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. David A. Huff, District Judge
Marc P. Picker
Attorney General
Churchill County District Attorney
Churchill County Clerk

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[16]See Doyle v. State, 112 Nev. 879, 889, 921 P.2d 901, 908 (1996) (quoting Clem v. State, 104 Nev. 351, 355, 760 P.2d 103, 106 (1988)).

[17]Because we find that the district court did not err in excluding Montgomery from the jury, we need not consider Czibok's argument that the district court erred in failing to grant a continuance so that he could seek a writ of mandamus on this issue.