IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE WILLIAM GIBBS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39643

FILED

JUN 03 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of thirty counts of the offenses of manufacture of a controlled substance; conspiracy to manufacture a controlled substance, trafficking in a controlled substance; use of a minor in producing pornography; lewdness with a child under the age of fourteen; possession of visual presentation depicting sexual conduct of a person under sixteen years of age; sexual assault with a minor under fourteen years of age.

Detective Marcus Martin testified he received an anonymous tip that a residence contained a methamphetamine lab. Martin and several police officers went to the residence and after disclosing to the co-owners, Ronald Barry Deussen, Sr. and Sherry Contner, that they were there to verify a tip on a possible methamphetamine lab, the owners gave the officers permission to search the residence. Appellant George Williams Gibbs was lying on a couch when the officers entered. Based on statements by Deussen and items in plain view consistent with methamphetamine, the officers further obtained a telephonic search warrant to search the residence. Officers found methamphetamine, methamphetamine paraphernalia, items used to manufacture methamphetamine, and a methamphetamine lab in the residence. Officers also found a safe, which contained three videotapes of Gibbs

sexually assaulting two minors, and three paraphernalia kits used to ingest methamphetamine.

Gibbs' jury trial commenced on November 19, 2001. The videotapes were admitted as evidence. After a two-day trial, the jury found Gibbs guilty of one count of manufacturing or compounding methamphetamine, one count of conspiracy to manufacture methamphetamine, and one count of trafficking. The jury also convicted Gibbs of four counts of using a minor in producing pornography, eleven counts of lewdness with a child under the age of fourteen, three counts of possession of visual presentation depicting sexual conduct of a person under sixteen years of age, and nine counts of sexually assaulting a minor under fourteen years of age. Gibbs was sentenced to imprisonment for two consecutive life sentences, a consecutive ten years, and several concurrent sentences, including eleven life sentences.

Gibbs argues that Deussen and Contner involuntarily consented to a search of their home because of coercion by law enforcement.[1] The State argues that Gibbs does not have standing to challenge the search of the residence and the safe because he did not have a legitimate expectation of privacy in those areas.[2] Gibbs was Deussen's

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[1]See Sparkman v. State, 95 Nev. 76, 79, 590 P.2d 151, 154 (1979) (noting that consent cannot be "the product of deceit or coercion, express or implied").

[2]Odoms v. State, 102 Nev. 27, 30, 714 P.2d 568, 570 (1986) (holding that a defendant has standing to challenge a search if he has a legitimate expectation of privacy in areas searched).

houseguest and had clothing and paperwork at the residence.[3] Gibbs did not expressly disclaim ownership of the safe, as he first stated it was his, Deussen stated it was Gibbs', and videotapes of Gibbs were found in the safe.[4] Therefore, we hold that Gibbs had a reasonable expectation of privacy in the residence and the safe, and thus, has standing to challenge the search and seizure of evidence in this case.

A warrant is not required to search a residence if the owner voluntarily consents to a search of the premises.[5] "Voluntariness is a question of fact to be determined from the totality of the circumstances."[6] While eight to nine armed detectives went to the residence, only three detectives went to the door. The detectives were not visibly armed and Martin testified he wore street clothes. He also testified that he told Contner when she answered the door exactly why the police officers were there; they had received a tip there was a methamphetamine lab on the premises. Martin testified that Contner, who he knew in advance was a co-owner of the home, gave them permission to enter the residence. Deussen, who detectives knew was the other co-owner of the home, came down the hallway and the detectives again explained why they were there. Deussen admitted at trial that he gave police officers permission to search

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[3]See Minnesota v. Olson, 495 U.S. 91, 98 (1990) (holding that "a houseguest has a legitimate expectation of privacy in his host's home").

[4]See State v. Taylor, 114 Nev. 1071, 1078, 968 P.2d 315, 321 (1998) (holding that "a disclaimer of ownership of the subject property must be express for standing purposes").

[5]Howe v. State, 112 Nev. 458, 463, 916 P.2d 153, 157 (1996).

[6]Canada v. State, 104 Nev. 288, 290-91, 756 P.2d 552, 553 (1988).

his home. Martin testified that Deussen signed a consent to search form.[7] We hold, therefore, that clear and convincing evidence supports a finding that consent was voluntary and the search was not unreasonable.[8]

Gibbs argues that police officers conducted a warrantless search of the locked safe. A search is reasonable if "it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized."[9] Gibbs does not contest the validity of the telephonic warrant that was obtained after a protective sweep and prior to the officers' decision to proceed with opening the safe. The warrant stated that officers could seize any item associated with manufacturing controlled substances. "[I]f a warrant sufficiently describes the premises to be searched, this . . . justif[ies] a search of the personal effects therein . . . if those effects might contain the items described in the warrant," even if the personal effect is locked.[10] Martin testified that premises in which methamphetamine is produced frequently have safes which contain "funds elicited from their drug sales, chemicals, finished product, [and] recipes." We hold the warrant permitted officers to search the safe.

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[7]See Sparkman, 95 Nev. at 79, 590 P.2d at 154 (holding that a consent to search form is persuasive evidence of a voluntary consent).

[8]See State v. Johnson, 116 Nev. 78, 81, 993 P.2d 44, 46 (2000) (noting that the State must prove voluntary consent by clear and convincing evidence).

[9]United States v. Place, 462 U.S. 696, 701 (1983).

[10]United States v. Gomez-Soto, 723 F.2d 649, 654 (9th Cir. 1984) (holding that officers could open locked briefcase because it could contain items described in the warrant).

Gibbs argues there is insufficient evidence to support his conviction for one count of sexually penetrating a minor under the age of fourteen. This court reviews the evidence in a light favorable to the prosecution and determines whether a rational juror could have found the defendant committed the crime beyond a reasonable doubt.[11] Gibbs bases this argument on the fact that the minor testified Gibbs never placed his penis in her vagina. However, she premised this with the statement "[n]ot that I remember." She was only six or seven years old when this sexual conduct occurred and fourteen when she testified. The jury viewed the admitted videotapes and could have found penetration occurred because Gibbs was on top of the minor from behind and was moving her hips. Afterwards, the minor was crying and Gibbs attempted to comfort her. Thus, we hold substantial evidence supports the jury's verdict for this offense.[12]

Gibbs argues that there is insufficient evidence to support his conviction for conspiring to manufacture, manufacturing, and trafficking methamphetamine. During the search of the master bedroom, officers found several pipes used to ingest methamphetamine, mirrors, razor blades, jars containing liquids used to produce methamphetamine, as well as methamphetamine itself. The officers also discovered a methamphetamine lab in a suitcase in the closet in the master bedroom. Detective Richard Sanchez testified that in his training and experience the

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[11]Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984).

[12]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (holding this court will not overturn a jury's verdict if it is supported by substantial evidence).

person in possession of the lab was manufacturing methamphetamine. The jury could have determined that Gibbs possessed or accessed these methamphetamine items because officers found, in the master bedroom, his work identifications and an envelope addressed to him at the residence. Plus, Gibbs had lived at the residence on and off for three to four months. Additionally, the safe was located in the closet in the master bedroom next to the methamphetamine lab. The jury could have found Gibbs owned the safe because he first told officers he did, Deussen stated it was Gibbs', and videotapes of Gibbs were in the safe. When opened, the safe smelled like fresh methamphetamine and officers found three paraphernalia kits used to ingest methamphetamine under the videotapes of Gibbs. Moreover, Martin testified that Gibbs told him he had access to the bedroom and that he helped with the manufacturing of methamphetamine. Thus, we hold that sufficient evidence supports Gibbs' convictions relating to methamphetamine.[13] Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

[13]Id.

cc: Hon. Jackie Glass, District Judge
Paul E. Wommer
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk