IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JONRAY FLYNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44605

FILED

AUG 18 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of level-one trafficking in a controlled substance. Third Judicial District Court, Lyon County; Archie E. Blake, Judge. The district court sentenced appellant Robert Jonray Flynn to serve a prison term of 12 to 32 months.

On August 5, 2004, Flynn was arrested on numerous charges, including felony battery with a deadly weapon. Flynn protested his innocence of the battery allegations and consented in writing to a search of his automobile and trailer. In addition to the written consent form, Lyon County Sheriff's Deputies received a search warrant authorizing the search of Flynn's automobile and trailer "to cover [their] bases." During the search, a sheriff's deputy observed two hide-a-key containers underneath the truck bed rail of the vehicle; inside each container was a small plastic bag of methamphetamine. For the methamphetamine, Flynn was charged with one count of level-one trafficking in a controlled substance.

Flynn filed a pretrial motion to suppress the methamphetamine evidence. The State opposed the motion. After conducting a suppression hearing, the district court denied the motion.

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Thereafter, Flynn pleaded guilty to one count of level-one trafficking but, in doing so, expressly preserved in writing the right to appeal the district court's ruling on his pretrial suppression motion.[1]

Flynn first contends that the district court erred in denying his motion to suppress because the search exceeded the scope of his consent. In particular, Flynn argues that his consent was limited to a search for weapons allegedly used in the battery that could not possibly fit inside the hide-a-key containers searched by the deputies. We conclude that Flynn's contention lacks merit.

A search conducted pursuant to consent "must be limited to the terms of the consent and '[w]hether the scope of consent has been exceeded is a factual question to be determined by examining the totality of the circumstances.'"[2] The standard for determining the scope of consent is "what would the typical reasonable person have understood by the exchange between the officer and the suspect?"[3] In discussing the scope of a general consent, this court has recognized that a general consent to search a vehicle reasonably includes consent to search unlocked containers within the vehicle where drugs may be found.[4] The district court's

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[1]See NRS 174.035(3). The assault and battery allegations against Flynn were never prosecuted.

[2]State v. Johnson, 116 Nev. 78, 81, 993 P.2d 44, 46 (2000) (quoting Canada v. State, 104 Nev. 288, 291, 756 P.2d 552, 553 (1988)).

[3]Florida v. Jimeno, 500 U.S. 248, 251 (1991).

[4]Johnson, 116 Nev. at 82, 993 P.2d at 46-47 (Rose, J., concurring) (quoting Jimeno, 500 U.S. at 251).

determination of the scope of consent will not be disturbed on appeal if supported by substantial evidence.[5]

In this case, after adjudging the credibility of the witnesses, the district court found that the search did not exceed the scope of the consent because the consent included a search for methamphetamine. The district court's finding is supported by substantial evidence. In particular, the general consent form signed by Flynn authorized the Lyon County's Sheriff's Office to search his residence and vehicle and remove "whatever documents, or items or property whatsoever which they deem pertinent to their investigation." At the suppression hearing, Flynn admitted that, before signing the consent form, he told one of the deputies that he had one-quarter to one-half pound of marijuana in his trailer. Additionally, Deputy Peter Spinuzzi testified that he interviewed Flynn for one hour and, in addition to the battery allegations, they discussed Flynn's drug activity including his involvement with methamphetamine. Finally, Deputy Brian Veil testified that he interviewed Flynn about drug use and sales, and that the consent to search given by Flynn "was for all narcotics." Accordingly, we conclude that the district court did not err in finding that the search did not exceed the scope of the consent because, under the totality of the circumstances, a reasonable person would have believed that the deputies' "investigation" would include a search for controlled substances.

Assuming the search did not exceed the scope of the consent, Flynn argues that the search was nonetheless invalid because the search exceeded the scope of the search warrant. The search warrant listed the

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[5]Id. at 80, 993 P.2d at 44-45.

items to be seized as a hammer, a hunting knife, and documents establishing control of the hammer and knife.[6] Flynn notes that the deputies attached the written consent form as an exhibit to the application for the search warrant[7] and argues therefore that "the search warrant supersedes any consent." In support of his argument, Flynn cites to Groh v. Ramirez.[8] We conclude that Flynn's contention lacks merit.

At the suppression hearing, the district court ruled that the search was conducted pursuant to a valid consent, and that the "consent did not become part of the warrant." We conclude that the district court did not err in so ruling. As a preliminary matter, we note that Flynn has failed to cite any authority supporting his contention that the deputies' actions of obtaining a search warrant, in addition to written consent, somehow supersedes or vitiates the written general consent to search.[9] In fact, Ramirez, the case relied upon by Flynn, does not involve a search conducted pursuant to written consent and is therefore inapposite. To the

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[6]We note that the search warrant was somewhat ambiguous because although controlled substances were not listed as an item to be seized, the warrant stated that the evidence sought would "tend to show the possible crime(s) of . . . [p]ossession of a controlled substance, Marijuana, in excess of an ounce a felony in violation of N.R.S. 453.366."

[7]Also attached to the application as exhibits were photographs of the victim's injuries, as well as the victim's written statement alleging that Flynn had battered her.

[8]540 U.S. 551 (2004) (holding that search was invalid because warrant did not describe with particularity the things to be seized).

[9]See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

extent that Flynn argues that the warrant incorporated the consent form by reference, thereby limiting the scope of the consent, we reject that contention.[10] We note that the search warrant did not reference the consent form and, in fact, the consent form was only attached to the application for the warrant, not the warrant itself. Moreover, the testimony at the suppression hearing indicated that the deputies applied for a search warrant in an abundance of caution "to cover their bases" to ensure the legality of the search. We therefore conclude that the fact that the consent form was attached to the application for a search warrant did not vitiate or narrow the scope of the consent. Accordingly, the district court did not err in denying the motion to suppress.

Having considered Flynn's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

[10]See generally State v. Gameros-Perez, 119 Nev. 537, 78 P.3d 511 (2003) (discussing the incorporation by reference doctrine).

cc: Hon. Archie E. Blake, District Judge
Law Office of Kenneth V. Ward
Attorney General Brian Sandoval/Carson City
Lyon County District Attorney
Lyon County Clerk