

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST SESSION, 1997

FILED
December 1, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

V.

JERE LOWELL JOSEPH,

Appellant.

) C.C.A. NO. 02C01-9604-CC-00219
)
)
) DYER COUNTY
)
) HON. JOE G. RILEY, JUDGE
)
)
) (POSSESSION OF COCAINE
) WITH INTENT TO SELL)

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OPINION FILED _____

AFFIRMED

THOMAS T. WOODALL, JUDGE

OPINION

The Defendant, Jere Lowell Joseph, appeals as of right, reserving a certified question of law pursuant to Rule 37(b)(2)(iv) of the Tennessee Rules of Criminal Procedure from his conviction of possession with intent to sell or deliver cocaine over 0.5 grams. The trial court denied Defendant's motion to suppress evidence seized as a result of a search of a trailer in Dyer County where Defendant occasionally resided. The specific certified question of law before this court, as set forth in Defendant's brief is as follows:

Whether Dyersburg Police Department Officer Roberts' actions of climbing to the third step at 818 Vernon Street to knock on the Defendant's trailer door to "request an interview" with another occupant were a warrantless search for the purposes of the Fourth Amendment of the United States Constitution and Article I, Section 7 of the Constitution of the State of Tennessee.

After a review of the record, the briefs filed by the parties, and the applicable law, we affirm the judgment of the trial court.

We initially note that we are limited in our review of this case to the precise issue stated in the certified question of law. State v. Pendergrass, 937 S.W.2d 834, 836-37 (Tenn. 1996); State v. Preston, 759 S.W.2d 647, 650 (Tenn. 1988).

On December 21, 1995, Officer Ernie Roberts of the Dyersburg Police Department received information from a confidential informant that a young man had been seen on Bruce Street with a "good amount" of cocaine on him. Officer Roberts observed the area for about 45 minutes before seeing a young man who fit the description given to him by the informant. He called for back-up and then

watched the young man enter a trailer home at 818 Vernon Street. The man Roberts saw enter the trailer was not the Defendant. Officer Roberts waited for the young man to come back out of the trailer, but he never did. However, he knew that Teresa Spence lived in the same trailer because she had cooperated with him in the past. Roberts testified that Ms. Spence had previously told him “any way she could ever help the police department, let her know.” After a short while, Roberts decided to go knock on the door and ask Ms. Spence to step outside and speak with him. Officer Roberts testified that he wanted to find out the name of the young man he observed enter her trailer “for investigative purposes maybe later on down the road.” As Officer Roberts walked up to the trailer he saw the shadow of someone hurriedly go by the window of the door and then fade away. Officer Roberts then climbed the steps leading to the door, and knocked on it. He testified that he stood on the top step when knocking in order to protect himself from possibly being shot by one of the occupants of the trailer. Standing on the top step allowed the officer to position himself appropriately on the “strong side” of the door. The steps were eight inches wide and were not secured with railings.

As he knocked on the door, Officer Roberts saw the Defendant through the top window pane of the front door. The Defendant was kneeling on the floor over an open vent, holding a table plate covered with what appeared to be rock cocaine. There were three panes of glass in the door, but only the top one was clear glass. Roberts testified that he observed the Defendant only through the top clear window pane. Officer Roberts stated that he certainly did not “expect to see a man with a plate full of cocaine standing in the door looking at [him].” Roberts immediately hollered, “Open the Door. Police. Now.” No one came to

the door, so Officer Roberts yelled the same thing two or three more times. He then attempted to open the door, but his hand slipped from the door knob causing him to step back into the yard.

At this point he told Officer Jason Salyards, also of the Dyersburg Police Department, what he had observed through the window and asked him to open the door. Officer Salyards opened the door and Officer Roberts went into the trailer. The Defendant was still kneeling on the floor, but the plate was empty with "a lot of white chunky substance laying just inside the vent." Roberts handcuffed the Defendant, and then asked Teresa Spence for permission to search the rest of the trailer without a warrant. Ms. Spence gave him permission and Roberts seized the cocaine and further discovered additional cocaine residue and several razor blades on the living room table. Officer Roberts also seized approximately \$700 in cash from the Defendant's pants pocket, as well as an additional \$27 in cash from his hand.

The "party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). The credibility of witnesses, the weight of the evidence, and the resolution of conflicts in the evidence are all matters entrusted to the trial judge as trier of fact. Id. Thus, the factual findings of the trial court in suppression hearings are presumptively correct on appeal and will be upheld unless the evidence preponderates against them. Id.

In the narrow issue presented here, the Defendant claims that Officer Roberts' actions of climbing to the top step of the trailer to request an interview with Ms. Spence amounted to an illegal warrantless search. This Court finds that the actions of Officer Roberts do not amount to a search, and therefore, no Fourth Amendment protection attaches. In State v. Byerly, our supreme court noted the following:

Not every observation made by a government agent amounts to a search within the meaning of the Fourth Amendment. The police may take note of anything that is evident to any of their senses, as long as they are in a place where they have a right to be, and as long as they do not resort to extraordinary means to make the observation. . . . These observations are fully usable to provide probable cause to obtain a search or arrest warrant or for the police to conclude that exigent circumstances exist requiring immediate seizure.

635 S.W.2d 511, 513 (Tenn. 1982); see also State v. Hurley, 876 S.W.2d 57, 67 (Tenn. 1993).

This Court has observed that one does not have an expectation of privacy "in the front of his residence which leads from the public way to the front door." State v. Baker, 625 S.W.2d 724, 727 (Tenn. Crim. App. 1981). Clearly Officer Roberts had a right to knock on the front door to question a lady who had cooperated with the police in the past. Furthermore, he had a right to stand on the top step in order to protect himself from possible violence by the occupants of the trailer. Officer Roberts observed what any person would have been able to observe from the same position. The observation Officer Roberts made from the top step was one which was "clearly visible, readily observable and open to public gaze." Byerly, 635 S.W.2d at 513.

This case is distinguishable from State v. Bowling, where an officer “got down on his hands and knees with his head almost touching the ground and looked into the garage.” 867 S.W.2d 338, 342 (Tenn. Crim. App. 1993). In that case the officer resorted to an extraordinary method of observation, whereas Officer Roberts’ actions here were but a “mere nonintrusive observation.” Byerly, 635 S.W.2d at 515. Based upon the record, we hold that Officer Roberts’ actions of climbing to the third step to knock on the trailer door was not a warrantless search violative of Defendant’s rights guaranteed by the Fourth Amendment of the United States Constitution or Article I, Section 7 of the Constitution of the State of Tennessee.

We therefore affirm the judgment of the trial court.

THOMAS T. WOODALL, Judge

CONCUR:

DAVID G. HAYES, Judge

JERRY L. SMITH, Judge