STATE V. EDUARDO L.

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
EDUARDO L.,
Child-Appellant.

No. 33,620

COURT OF APPEALS OF NEW MEXICO

December 10, 2014

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Marci Beyer, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldridge, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

CYNTHIA A. FRY, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge, MICHAEL E. VIGIL, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Judge.

{1} Child appeals a judgment of delinquency following his conditional plea to a charge of residential burglary. This Court issued a calendar notice proposing to affirm on the basis that NMSA 1978, Section 32A-2-14 (2009), as interpreted in *State v. Javier*

M., 2001-NMSC-030, 131 N.M. 1, 33 P.3d 1, did not require Child to be advised of his right to remain silent before his permission was sought to search three purses that he was carrying at the time of his arrest. *See State v. Candace S.*, 2012-NMCA-030, ¶ 28, 274 P.3d 774 (holding that officer's failure to advise child of her right to remain silent "did not render the [results of field sobriety testing] inadmissible because her performance of the FSTs did not constitute statements subject to suppression"); *State v. Carlos A.*, 2012-NMCA-069, ¶ 19, 284 P.3d 384 (finding "no provision in the Children's Code giving children greater rights under the Fourth Amendment than an adult enjoys"). Child has filed a memorandum in opposition to that proposed disposition.

{2} In his memorandum, Child continues to argue that the district court should have suppressed evidence resulting from the search of those purses. Child's argument in that regard, however, does not provide any basis for distinguishing this case from *Candace S.* and *Carlos A.*, both of which involved similar consent, given without first being advised of the right to remain silent. As a result, the rule described in those cases is applicable here: Section 32A-2-14 does not give children any greater right to be free from unreasonable searches and seizures than is afforded to adults under the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. *Carlos A.*, 2012-NMCA-069, ¶ 19.

{3} Child's memorandum in opposition also suggests, for the first time, that he made an incriminating statement prior to the search—that the purses belonged to him—and that that statement should have been suppressed. [MIO 9] Setting aside the question of how that statement would have been useful to the prosecution at trial, we note that the docketing statement in this appeal, like the motion to dismiss before the district court, focused on the question of whether Child's consent to a search was valid, and not whether his statement regarding ownership of the purses was admissible. [DS 3-4, RP 54-55] Because Child now seeks to raise the issue of whether that statement should have been suppressed, we construe Child's argument as a motion to amend his docketing statement, and consider whether such an amendment should be granted.

{4} In summary calendar cases, this Court will grant a motion to amend the docketing statement if the motion (1) is timely, (2) states all facts material to a consideration of the issue sought to be raised, (3) explains how the issue was properly preserved or why it may be raised for the first time on appeal, (4) demonstrates just cause by explaining why the issue was not addressed in the docketing statement, and (5) complies in other respects with the appellate rules. *See State v. Rael*, 1983-NMCA-081, ¶¶ 7, 10-11, 100 N.M. 193, 668 P.2d 309. In his memorandum in opposition, Child does not explain how the issue he now seeks to raise was preserved and it does not appear from the record that the issue was, in fact, preserved for review in this Court.

{5} Before the district court, Child's motion to suppress relied upon the Fourth Amendment as well as Article II, Sections 4 and 10 of the New Mexico Constitution, *Javier M.*, and *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963) (dealing with the "fruit of the poisonous tree" doctrine"). [RP 54] Notably, that motion did not ask the district court to suppress any statement pursuant the Fifth Amendment or Article II,

Section 15 of the New Mexico Constitution. [Id.] Instead of seeking suppression of Child's initial exchange with the officer who arrested him, that motion complained of "evidence that was located because [C]hild answered questions and gave consent to search, which was requested without the benefit of advice of his rights," and sought suppression of "[a]ny evidence discovered as the result of the search of [C]hild and the belongings he was carrying, and any subsequent statements made by [C]hild." [RP 54-55] Thus, Child's motion before the district court was not directed at any statements he made prior to the request for consent to search the purses. Instead, that motion sought suppression of physical evidence obtained by searching the purses and subsequent statements, which were characterized as being "fruit of the poisonous tree." [Id.]

{6} Because Child's statement regarding ownership of the purses was made prior to the search at issue in this case, Child's motion did not seek suppression of that statement, and that issue is not preserved for review. We, accordingly, deny the motion to amend the docketing statement in order to raise this newly-asserted argument. Further, because the requirements for a voluntary consent to a search are unaltered by Section 32A-2-14, and for the reasons stated in this Court's notice of proposed disposition, we affirm the judgment of the district court.

{7} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

MICHAEL E. VIGIL, Judge