# State v. Ferrier

1996 | Cited 0 times | Court of Appeals of Washington | November 27, 1996

BRIDGEWATER, J. -- Debra M. Ferrier appeals her Kitsap County conviction for manufacturing marijuana. She contends that (1) the criminal prosecution placed her in double jeopardy because the police had already forfeited cash and personal property seized from her home along with the marijuana; (2) she did not receive proper notice of the forfeiture proceeding; (3) she was denied a Sixth Amendment right to counsel in the forfeiture proceeding; and (4) her consent to search was invalid because the police used a coercive "knock and talk" procedure. We find no merit in these arguments and affirm.

Ferrier moved before trial to suppress evidence, CrR 3.6, and to dismiss the criminal charge on the ground of double jeopardy. The trial court denied both motions. We take the following summary of the facts from the findings of fact entered by the superior court in denying the motions.

On April 19, 1993, Bremerton police officers interviewed Eric Ferrier, the defendant's minor son. Eric told them that his mother was growing marijuana at her home at 810 Cogean Street, Bremerton. At 1:14 p.m., four officers, all wearing clearly marked police jackets, arrived at the home. Two of them knocked on the front door, identified themselves as police, and asked to speak with the defendant. She let them into the home, whereupon they said that they suspected she was growing marijuana and asked for permission to search. They showed her a consent to search form, which Sergeant Cox "went over" with her, and which she signed. They did not tell her that she could "revoke" consent, and they did not give her the Miranda warnings. Ferrier then led the police into a locked room that contained some 68 marijuana plants and related growing equipment. They also found $2,120 in cash in Ferrier's purse. The defendant's two small grandchildren were present during this incident. The police permitted Ferrier to attend to the children, made no threats, and allowed a neighbor to sit with Ferrier while they dismantled the grow operation. She cooperated with the officers at all times.

Ferrier testified to a different version. She said that when she opened the door, the police just came inside without asking and stated their suspicions about the marijuana grow. She told them to get a search warrant. They said that officers would have to stay there to preserve evidence. She said that she then signed the consent form, without reading it and under duress, because the police threatened to call Child Protective Services to take away the grandchildren. The trial court accepted the officers' version of events, however, and disbelieved Ferrier's claim of coerced consent.

Nine days after the search, on April 28, 1993, the Bremerton Police, using a certified letter addressed to the Cogean Street address, sent Ferrier a notice of seizure and intent to forfeit the money and growing equipment. The notice was returned undelivered to its sender. Ferrier had moved to Idaho

after the search and could not remember if she gave the post office a forwarding address. On June 5, 1993, the police department considered the property to have been forfeited. On February 15, 1994, the State filed its criminal information charging Ferrier with manufacturing marijuana.

We first consider Ferrier's double jeopardy arguments. She argues that the civil forfeiture placed her in jeopardy before jeopardy attached a second time in the criminal case, that the notice of intent to forfeit was defective, and that she was denied assistance of counsel in the forfeiture.

RCW 69.50.505(c) requires the seizing police agency, within 15 days after seizure, to give notice of seizure and intent to forfeit to "any person having any known right or interest" in the property. And RCW 69.50.505(d) provides that "if no person notifies the seizing law enforcement agency in writing of [a] claim of ownership or right to possession of" the seized personal property within 45 days of the seizure, "the item seized shall be deemed forfeited." Thus could the Bremerton police declare Ferrier's property forfeited.

Ferrier's double jeopardy issues all lack merit. Preliminarily, we note that she seems to want it both ways: For this court to invalidate the forfeiture because of failure of notice and absence of counsel, yet to hold that the forfeiture had sufficient efficacy to place her in jeopardy. In any event, the case law does not support her: The Sixth Amendment right to counsel attaches in a civil case only where a liberty interest is at stake, see In re Grove, 127 Wash. 2d 221, 229 n.6, 897 P.2d 1252 (1995), and forfeiture is not such a case, United States v. $292,888.04 in U.S. Currency, 54 F.3d 564 (9th Cir. 1995); and the mailing of notice to Ferrier's last known address was consistent with due process. See State v. Rogers, 127 Wash. 2d 270, 898 P.2d 294 (1995); State v. Baker, 49 Wash. App. 778, 745 P.2d 1335 (1987).

Moreover, Ferrier's arguments assume that the civil forfeiture of her property subjected her to jeopardy for purposes of the Double Jeopardy Clause. But since this case was before the trial court, two opinions have been filed that undercut her position. First, in State v. Anderson, 81 Wash. App. 636, 639, 915 P.2d 1138 (1996), this court held that jeopardy does not attach in a civil forfeiture proceeding unless the person claiming a violation of double jeopardy is a party to the forfeiture. Inasmuch as Ferrier never answered the forfeiture notice and did not become a party to those proceedings, she cannot claim to have been subjected to jeopardy by them.

In addition to Anderson, and even more conclusive, is the U.S. Supreme Court's recent opinion in United States v. Ursery, U.S. , 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996), in which the Court held generally that in rem civil forfeitures are neither punishment nor criminal in nature for purposes of the Double Jeopardy Clause. Thus, because jeopardy never attached in the forfeiture proceedings against Ferrier's property, it attached for the first time in the criminal prosecution.

Finally, we consider Ferrier's contention that the "knock and talk" police procedure resulted in an invalid consent under both the state and federal constitutions. We understand "knock and talk" to

mean that the officers, although without probable cause to search and lacking a warrant, appeared at her front door in force and asked for permission to search. See State v. Graffius, 74 Wash. App. 23, 24, 871 P.2d 1115 (1994). Ferrier argues that in this case, the police intimidated and coerced her into admitting them and consenting to the search.

In determining if consent was voluntary, and therefore valid under the Fourth Amendment and Const. art. I, sec. 7, we examine the totality of the circumstances, including: (1) whether Miranda warnings were given, (2) the education and intelligence of the consenting person, (3) whether the consenting person was told that she could refuse consent, (4) whether the police made any express or implied claims of authority to search or enter, (5) previous illegal police activity, (6) the defendant's degree of cooperation, and (7) police deception as to identity or purpose. State v. McCrorey, 70 Wash. App. 103, 111-12, 851 P.2d 1234 (citing State v. Flowers, 57 Wash. App. 636, 645, 789 P.2d 333, review denied, 115 Wash. 2d 1009, 797 P.2d 511 (1990)), review denied, 122 Wash. 2d 1013 (1993). The presence of any one of these coercive factors does not establish an involuntary consent, but several of them may result in a finding that consent was coerced. Flowers, 57 Wash. App. at 645; Wayne R. LaFave, Search and Seizure sec. 8.2(b) at 644 (3d ed. 1996).

Here, Miranda warnings were not given, and Ferrier was not told that she could refuse consent. But Ferrier was 40 years old, had completed the 11th grade in school, and seemed intelligent and lucid in her testimony; the police did not claim authority to search or enter; there is no indication of deception or previous illegal police activity; and the trial court found that Ferrier cooperated with the police. Taking these factors altogether, we hold that her consent was voluntary. See Flowers, 57 Wash. App. at 645-46.

Ferrier contends that the police simply barged in without invitation and obtained written consent to search by threatening to have CPS remove the grandchildren. The trial court found otherwise, finding that Ferrier "allowed" the police to come in, that the police did not make any such threat, and that Ferrier signed the form voluntarily. The trial court has discretion to believe or disbelieve any witness, and we will defer to findings of fact that reflect the court's resolution of matters of credibility so long as substantial evidence supports the findings. See McCrorey, 70 Wash. App. at 114; Flowers, 57 Wash. App. at 646. Because substantial evidence in the form of police testimony supports the trial court's findings, we must accept as true that the police made no threats and obtained Ferrier's voluntary consent to enter and search the house.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur:

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