



Thursday, September 29th, 2011

*Tiffany Caldwell v. State, Tonya Caldwell v. State, and Connie Caldwell v. State
Cause Nos. 05-10-01669-CR, 05-10-01670-CR, and 05-10-01671-CR
Fifth District Court of Appeals*

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The Facts

Child Protective Services (CPS) wished to investigate the welfare of children living in a house reportedly used in manufacturing drugs. CPS requested that the police go to the house along with the CPS caseworker in order to ensure the caseworker's safety. Several police officers went to the house and when they arrived, they knocked on the door. A young child answered, and she said, "Come in." As the officers entered the house, the girl turned around and said, "It's the police." The officers saw a man sitting at the kitchen table. He appeared nervous and claimed that he did not live in the house. According to one of the officers, the man claimed that no one else was in the house. However, two women came out of the back room, and the officers testified that they heard a toilet flush. A third woman came out of the bathroom. The officers then searched the house and found drugs. Prior to their initial search, the police did not have a search warrant.

The three women in the house were Tonya Caldwell, Tiffany Caldwell, and Connie Caldwell. Tonya and Tiffany Caldwell were indicted for criminally negligent child abandonment and endangerment. Connie Caldwell was indicted on drug charges.

The Trial Court Proceeding

The Caldwells contend that the police conducted an unconstitutional search of the house. In particular, they argue that the police did not have the authority to enter the house and then conduct the search. In the trial court, Tonya Caldwell filed a motion to suppress the evidence that was obtained during the search. The trial court judge denied the motion. All of the Caldwells then pled guilty to the various crimes with which they were charged.

The Appeal

Tonya Caldwell appeals the trial court's denial of her motion to suppress. She argues that the police search was unconstitutional and that the drugs found during the search cannot be used as evidence against her. She asks the appellate court to reverse the trial court's decision on her motion. Although the trial court record does not indicate that they filed their own motions to suppress, Tiffany and Connie Caldwell also argue that the search was unconstitutional and the drugs cannot be used as evidence against them.

The appeal will be heard by the Fifth District Court of Appeals of Texas. Because the Caldwells are appealing the trial court's decision, they are the "Appellants." The State of Texas, which prevailed in the trial court, is the "Appellee." After the appeal was filed, the Caldwells submitted a legal document called a "brief," describing the legal arguments in support of their position. The State also submitted a brief addressing the issues raised by Appellants.

The Attorneys

Each party is represented by experienced attorneys. The attorneys prepared the briefs and will present the parties' arguments to the appellate court. The Caldwells (Appellants) are represented on appeal by Larry Finstrom of Dallas, Texas. The State (Appellee) is represented by Michael McLelland, Kaufman County Criminal District Attorney, and Sue Koriath, Assistant Criminal District Attorney for Kaufman County.

The Oral Argument

The Fifth District Court of Appeals will hear this appeal on September 29, 2011, at the Belo Mansion in Dallas. The Appellants and the Appellee will each have twenty minutes to address the court. During this time, the attorneys will present their arguments, and the judges will ask questions regarding the case and applicable law. The Appellants' lawyer will argue first, followed by the Appellee's lawyer. Once the Appellee's attorney has concluded its arguments, the Appellants' attorney will have five more minutes for a final rebuttal argument.

Fifth District Court of Appeals

The Fifth District Court of Appeals is an intermediary court, which hears both civil and criminal cases and has jurisdiction over appeals from both district and county courts located in Dallas, Collin, Grayson, Hunt, Rockwall, and Kaufman Counties. The court consists of a Chief Justice and twelve other judges, all of whom are elected and hold their offices for terms of four years. Ordinarily, three judges will preside over oral arguments. After an oral argument, the judges will review the briefs and the trial record. After they have fully considered the case, the three judges will vote and decide the outcome of the case. For a panel of three to reach a final decision, two of the three judges must agree. Decisions issued by the Fifth District Court of Appeals can be appealed to either the Texas Supreme Court, which hears only civil cases, or the Texas Court of Criminal Appeals, which hears only criminal cases. To learn more about the Fifth District Court of Appeals, visit <http://www.5thcoa.courts.state.tx.us/>.

The Legal Standard

The Fifth District Court of Appeals reviews decisions of trial courts. The Court of Appeals does not preside over trials, and no new witnesses or evidence can be introduced during an appeal. The appellate court's role is to review the trial court's record to see if any legal errors occurred. The record includes the transcripts from the trial, including the jury selection process, and all evidence that was introduced during the trial. In this case, the Court of Appeals will review the trial court's decision for abuse of discretion. The Court of Appeals generally will accept the trial court's findings of fact.

The Disputed Issues

I. Did the trial court abuse its discretion by denying the motion to suppress evidence that was purportedly found in violation of the United States Constitution?

The Caldwells contend that the police searched the house in violation of the Fourth Amendment to the United States Constitution. The Constitution protects citizens against unreasonable searches and seizures. Absent exigent circumstances, the police generally cannot conduct a search unless they first obtain a search warrant or obtain consent from someone who has authority to give it. The Caldwells argue that the child who answered the door could not give valid consent for the police to enter the house. Additionally, the Caldwells claim that once

inside, the police should not have searched the house without a search warrant. As a result, the Caldwells argue that the drugs found in the house could not be used as evidence against them.

The Appellee responds that the Caldwells are not in a position to object to the search because it is not clear from the testimony before the trial court that any of the Caldwells owned the house that was searched or that they lived there. The Appellee also argues that the police had the authority to enter the house because the child gave them permission to do so, and the man sitting in the kitchen did not object. Once inside, the police had the authority to search the house to ensure their own safety and that of the CPS caseworker. The police had reason to suspect that the house was unsafe because it was reportedly used in manufacturing drugs, the man in the kitchen behaved suspiciously, and the police heard a toilet flush, which is a common way to quickly dispose of drugs. The Appellee further argues that the case against the Caldwells does not rest on the drugs found during the initial search of the house.

II. Can the Court of Appeals hear the appeals of Tiffany and Connie Caldwell, despite the fact that there is no record that they themselves filed motions to suppress?

Generally, in order for an appellate court to consider a motion to suppress, the motion must first be filed in the trial court. The trial court record does not reflect that Tiffany and Connie Caldwell filed a motion to suppress similar to the one filed by Tonya Caldwell. This raises the issue of whether Tiffany and Connie Caldwell's objections to the search of the house have been preserved for appeal. The Caldwells argue that Tonya Caldwell's motion to suppress is sufficient to allow the Fifth District Court of Appeals to hear their claims. The Appellee responds that the Court of Appeals cannot entertain Tiffany and Connie Caldwell's appeals.

The Decision and the Opinions

After the attorneys present their oral arguments, the Fifth District Court of Appeals may take several weeks or months to decide the appeal. The Fifth District Court of Appeals' decision and any opinions written by the judges will be made available for review at <http://www.dallasbar.org/appealing/>. In addition, the opinions can be accessed using the case numbers (05-10-01669-CR, 05-10-01670-CR, and 05-10-01671-CR) at http://www.5thcoa.courts.state.tx.us/search_c.htm. It is also possible to register your email address for updates on the cases. To register, go to <http://courtstuff.net/5th/Register.html>. You will need to register with the court's vNotice! system first and then send emails to caseinfo@courtstuff.com with "Subscribe 05-10-01669-CR," "Subscribe 05-10-01670-CR," and "Subscribe 05-10-01771-CR" in the subject lines. For more detailed instructions on this process, go to <http://www.5thcoa.courts.state.tx.us/vNotice.htm>.