IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1549-15

THE STATE OF TEXAS

v.

SHIRLEY COPELAND, Appellee

ON STATE'S PETITION FOR DISCRETIONARY REVIEW FROM THE ELEVENTH COURT OF APPEALS VICTORIA COUNTY

HERVEY, J., delivered the opinion of the Court in which MEYERS, JOHNSON, KEASLER, ALCALA, RICHARDSON, and NEWELL, JJ., joined. KELLER, P.J., filed a dissenting opinion in which YEARY, J., joined.

O P I N I O N

Shirley Copeland was charged with possession of a dangerous drug after police searched the vehicle she was in and found prescription pain medication in a plastic bag. She filed a motion to suppress, arguing that the search of the car was illegal. The trial court granted the motion and sua sponte issued findings of fact and conclusions of law. This is the State's third appeal from the trial court's ruling granting the motion to

suppress.[1]

The State's initial appeals focused on whether the police had the consent of the driver and Copeland to search the vehicle. In the first appeal, we held that Copeland could not deny consent for police to search the vehicle when the driver and registered owner of the vehicle did consent to the search. *State v. Copeland*, 399 S.W.3d 159 (Tex. Crim. App. 2013). In the next appeal, we held that the State did not procedurally default its argument at trial or on appeal that the *driver* freely and voluntarily gave his consent to search his vehicle. *Copeland*, No. PD-1802-13, 2014 WL 5508985 (Tex. Crim. App. Oct. 22, 2014) (not designated for publication). We then remanded the cause again, instructing the court of appeals to determine if there was an alternative theory of law upon which to uphold the ruling of the trial court. *Id.* Specifically, we noted that, in her motion to suppress, Copeland argued that the length of her detention was unreasonable but that the State did not challenge that argument on appeal. *Id.* On remand, the court of appeals held that the State procedurally defaulted the length-of-detention issue. *State v. Copeland*, No. 13-11-00701-CR, 2015 WL 7039545, at *3 (Tex. App.—Corpus Christi Feb. 24, 2016) (not designated for publication). It reasoned that, because the State argued at trial that the length of Copeland's detention was reasonable, the issue was a theory applicable to the case, and as a result, the State was obliged to make that argument on appeal or forfeit it

[1]We have previously explained the facts and procedural history of this case in detail, so we address only the matters necessary for disposition of this appeal. *See State v. Copeland*, No. PD-1802-13, 2014 WL 5508985 (Tex. Crim. App. Oct. 22, 2014) (not designated for publication).

through inaction. *Id.*

The State appealed, and we exercised our discretionary review power to determine (1) whether the court of appeals erred when it held that the State procedurally defaulted the length-of-detention issue, and (2) whether the court of appeals properly performed the analysis instructed by this Court.[2] Because we agree with the court of appeals that the State procedurally defaulted the length-of-detention issue on appeal, we will affirm the judgment of the court of appeals.

FACTS

Police were staking out a suspected drug house when they saw a vehicle pull up. The passenger got out of the car and went inside of the house for a few minutes before returning and leaving. While driving away, the driver failed to come to a complete stop at a stop sign. The police initiated a traffic stop, and during the stop, police asked to search the vehicle because they believed that Copeland was in possession of narcotics. The driver consented to the search but Copeland did not. During the search, police found a makeup bag with a tin box in it. In that box, police found a pipe and a small bag

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[2]The precise grounds for review state,

(1) Did the Court of Appeals commit reversible error by holding that the State procedurally defaulted on an issue that both the trial court and the Court of Appeals treated as a non-case dispositive issue when the case was first up for appeal?

(2) Did the Court of Appeals fail to properly perform the review it was instructed to conduct by the Court of Criminal Appeals?

containing a powdery substance. They also found another plastic bag containing two white pills, which were later identified as Tramadol. The driver was issued a warning and allowed to leave, but the police arrested Copeland and charged her with possession of a dangerous drug. *See* TEX. HEALTH & SAFETY CODE § 483.041(a). She filed a motion to suppress, arguing that the length of her detention was impermissibly long and that, alternatively, the police did not have consent to search the vehicle. The trial court granted her motion.

ANALYSIS

When reviewing a trial court's ruling on a motion to suppress, appellate courts uphold the ruling of the court if it is correct under any "theory of law applicable to the case," even if the trial court did not rely on that theory in making its ruling. *Calloway v. State*, 743 S.W.2d 645 (Tex. Crim. App. 1988). A "theory of law" is applicable to the case if the theory was presented at trial in such a manner that the appellant was fairly called upon to present evidence on the issue. *Copeland*, 2014 WL 5508985, at *4–5. If the appellant fails to argue a "theory of law" applicable to the case on appeal, that argument is forfeited. *Id.* at *6. On the other hand, if a legal argument was not a theory of law applicable to the case, then the appellant has no obligation to preserve that argument for appeal.

Upon request of the losing party, a trial court must issue essential findings of fact and conclusions of law that justify its ruling. *State v. Cullen*, 195 S.W.3d 696, 698–99

(Tex. Crim. App. 2006). "Essential findings" means that "the trial court must make findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court's application of the law to the facts." *State v. Elias*, 339 S.W.3d 667, 674 (Tex. Crim. App. 2011) (quoting *Cullen*, 195 S.W.3d at 699). In issuing its essential findings, trial courts have an obligation to ensure that they are "adequate and complete, covering every potentially dispositive issue that might reasonably be said to have arisen in the course of the suppression proceedings." *Id.* at 676 (quoting *Ross v. State*, 32 S.W.3d 853, 860 (Tex. Crim. App. 2000) (Womack, J., concurring)). The essential-findings rule exists to ensure that appellate courts resolve issues presented on appeal "based on the reality of what happened at the trial court level rather than on appellate assumptions that may be entirely fictitious." *Id.* at 674 (punctuation omitted) (quoting *Ross*, 32 S.W.3d at 674).

There is no dispute here that Copeland argued in her motion to suppress that the length of her detention was unreasonable, that the State defended that allegation at the suppression hearing, or that the State failed to raise the issue on appeal. However, the State argues that, because the trial court's findings and conclusions did not address the length-of-detention issue, it was not a theory of law applicable to the case. The State further asserts that it would be unreasonable to require parties to litigate issues that neither the trial court nor the appellate court treated as potentially case dispositive to avoid forfeiture of those issues.

We agree with the State that it appears that the trial court did not believe that the length-of-detention issue was dispositive and that the court had an obligation to issue all essential findings of fact. *Elias*, 339 S.W.3d at 674. In that respect, the trial court erred because it should have addressed the potentially case-dispositive, length-of-detention argument advanced by Copeland. However, the error by the trial court does not lead to the conclusion that the length-of-detention issue was not a theory of law applicable to the case. Whether a "theory of law" is applicable to a case does not turn on the completeness of a trial court's findings. Rather, the only question is whether that theory of law was litigated at the trial-court level. In this case, both parties agree that the length-of-detention argument was made at the suppression hearing. As a result, we hold that the question of whether the length of Copeland's detention was reasonable was a theory of law applicable to the case.

We disagree with the State, however, that it is unfair to require it to have made the length-of-detention argument on appeal even though the trial court did not consider that issue to be dispositive. The State was aware of the arguments it could make to justify the discovery of the drugs, as is evident by its arguments at the suppression hearing. It was also aware (or should have been) that, if it lost the motion to suppress, it would need to make those arguments on appeal if it hoped to have the ruling of the judge reversed.[3] Also

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[3] *State v. Esparza*, 413 S.W.3d 81, 85 (Tex. Crim. App. 2013) (explaining that the *Calloway* rule was adopted in 1988) (citing *Calloway v. State*, 743 S.W.2d 645, 651–52 (Tex. Crim. App. 1988)).

of note is the fact that the State did not object to the findings and conclusions despite knowing that one of its critical alternative arguments had not been addressed.[4] In short, we agree with the State that the trial judge had a duty to issue all "essential" findings and conclusions and that it failed to do so here, but the judge's error does not lead to the conclusion that the State should be relieved of its separate duty to preserve error for review. We hold that the State procedurally defaulted its length-of-detention argument because, although it was a theory of law applicable to the case, the State failed to advance that argument on appeal, and we affirm the judgment of the court of appeals.[5]

Delivered: October 12, 2016

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[4]The essential-findings rule has been the law for over a decade. *Cullen*, 195 S.W.3d at 699.

[5]Given our disposition of the State's first ground, we overrule its second ground asking whether the court of appeals failed to perform the analysis required by this Court on remand.