Affirmed and Memorandum Opinion filed June 3, 2010.

In The

Fourteenth Court of Appeals

NOS. 14-08-00804-CR, 14-08-00786-CR

CEDRIC D. HORTON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause Nos. 1145506, 1145507

MEMORANDUM OPINION

Appellant Cedric D. Horton challenges his convictions for possession of a controlled substance and felon-in-possession of a firearm, claiming the trial court erred in denying his motion to suppress evidence seized during his detention and arrest. We affirm.

I. Factual and Procedural Background

Following a traffic stop, appellant was charged by indictment with two offenses: (1) possession of a controlled substance and (2) being a felon in possession of a firearm. Appellant filed a motion to suppress evidence seized by law enforcement officers as the fruit of an allegedly illegal search and seizure. The evidence appellant sought to suppress consisted of a pill bottle with 14 crack cocaine rocks, a clear plastic bag with 23 grams of crack cocaine, a .380 caliber pistol, any testimony by the officers concerning such evidence, and any written or oral statement made by appellant to the officers.

At a hearing on appellant's motion, the State stipulated that there was no warrant for appellant's arrest. Viewing the evidence in the light most favorable to the trial court's ruling,[1] the record from the hearing reflects the following:

Officer Vaughn, in an unmarked police vehicle, was conducting surveillance of a parking lot in a high-traffic narcotics area. Officer Vaughn observed a man exit a parked vehicle and then enter a vehicle driven by appellant, which had just arrived. Based on his experience, Officer Vaughn believed that he was witnessing the beginning of a narcotics transaction. Officer Vaughn then followed the vehicle as it left the parking lot. He observed appellant commit a traffic violation by failing to signal a right turn. By radio communication, Officer Vaughn notified Officer Novak and Officer Abel to pursue appellant in marked police cruisers.

Officer Abel and Officer Novak testified that they learned of the suspected narcotics transaction and traffic violation by radio communications with Officer Vaughn, a plain-clothes officer. Officer Novak and Officer Abel each pursued appellant in their respective patrol vehicles and activated emergency lights and sirens to notify appellant to pull over. Both Officer Novak and Officer Abel testified that appellant's vehicle slowed before coming to a stop, which, based on their experiences, indicated that the occupants of the vehicle were trying to conceal contraband or trying to retrieve a weapon. However, neither officer saw these overt movements inside the vehicle as it slowed.

After the vehicle stopped, Officer Novak and Officer Abel approached the vehicle with caution and with their weapons drawn because of the possible threat of weapons in the vehicle. Officer Vaughn then arrived on the scene and approached the passenger's

[1] *Baldwin v. State*, 278 S.W.3d 367, 369 (Tex. Crim. App. 2009).

side of the vehicle; he did not have his weapon drawn. Officer Vaughn testified that he saw movement inside the vehicle and saw the occupants storing a pill bottle in the vehicle's center console. He alerted the other officers to movement inside the vehicle. His role at the scene was to continue to conduct surveillance.

Because Officer Vaughn alerted the officers to movement within the vehicle, Officer Novak ordered appellant to exit the vehicle. Officer Novak observed a slight bulge in the front of appellant's waistband, which the officer knew from experience is a common place to conceal a weapon. Officer Novak conducted a pat-down of appellant, located a pistol and a razor blade, and placed appellant under arrest for possessing a weapon. Officer Novak checked appellant's criminal record to determine whether appellant's criminal history prohibited him from carrying a weapon. Officer Abel searched and arrested the passenger, Robert Duane Johnson.

At some point thereafter, two other officers arrived on the scene. Officer Novak recalled that he may have assisted the other officers in searching appellant's vehicle. Officers recovered crack cocaine from the vehicle's center console. Officer Novak and Officer Vaughn each confirmed that appellant's vehicle was searched after appellant and Johnson were searched and arrested; Officer Abel did not know whether the vehicle was searched before or after Officer Novak recovered the gun from appellant.

Appellant testified and admitted that the narcotics belonged to him; he placed the narcotics in the center console before the evening in question. He claimed that he was handcuffed, searched, and that the gun slid from his waistband into his underwear as he exited the vehicle. He claimed that the officers recovered the gun from his underwear in a subsequent search after he alerted officers to the location of the gun. Although appellant claimed that the vehicle was searched before the officers found the gun, he testified that he was standing beside the vehicle with an officer as other officers searched his vehicle. Johnson testified that officers searched him and appellant at the same time. Johnson claimed to be in custody in the back of a police cruiser when he saw the officers search appellant's vehicle; but Johnson testified that officers searched the vehicle before recovering the gun from appellant.[2]

The trial court did not rule on the motion at the conclusion of the hearing, but ultimately denied appellant's motion to suppress. Appellant waived his right to a jury and judicially confessed to committing the charged offenses. The trial court sentenced appellant to five years' confinement for each cause number with the sentences to run concurrently. The trial court certified appellant's right to appeal the denial of his motion to suppress.

II. Analysis

In a single issue on appeal, appellant claims the trial court erred in overruling the motion to suppress. Appellant argues that the weapon and narcotics should have been suppressed because the officers conducted an unlawful stop and search of appellant and his vehicle. According to appellant, because the arresting officer did not witness the traffic violation and because the testimony at the hearing was not sufficient to prove that appellant failed to use a turn signal, there were no lawful grounds for the stop.

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). At a suppression hearing, the trial court is the sole finder of fact and is free to believe or disbelieve any or all of the evidence presented. *Wiede v. State*, 214 S.W.3d 17, 24 (Tex. Crim. App. 2007). We give almost total deference to the trial court's determination of historical facts that depend on credibility and demeanor, but review de novo the trial court's application of the law to the facts if resolution of those ultimate questions does not turn on the evaluation of credibility and demeanor. *See Guzman*, 955 S.W.2d at 89. When, as in this case, there are no written findings of fact in the record, we uphold the ruling on any theory of law applicable to the case and presume the trial

[2] Although somewhat unclear, the record reflects that Johnson pleaded "guilty" to a charged offense related to this case because he violated terms of his probation in an unrelated case.

court made implicit findings of fact in support of its ruling so long as those findings are supported by the record. *State v. Ross*, 32 S.W.3d 853, 855–56 (Tex. Crim. App. 2000). We view a trial court's ruling on a motion to suppress "'in the light most favorable to the trial court's ruling.'" *See Wiede*, 214 S.W.3d at 24 (quoting *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006)). If supported by the record, a trial court's ruling on a motion to suppress will not be overturned. *Mount v State*, 217 S.W.3d 716, 724 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

A warrantless arrest is permitted only when probable cause for an arrest exists and at least one of the statutory exceptions to the warrant requirement is met. *McGee v. State*, 105 S.W.3d 609, 614 (Tex. Crim. App. 2003). A peace officer may lawfully stop a motorist who commits a traffic violation when the officer has probable cause to believe a traffic violation has occurred. *Garcia v. State*, 827 S.W.2d 937, 944 (Tex. Crim. App. 1992). A peace officer may make a warrantless arrest of any person who commits a traffic violation. TEX. TRANSP. CODE ANN. § 543.001 (Vernon 1999); *see* TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon 2005) ("A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view."); *Vafaiyan v. State*, 279 S.W.3d 374, 380 (Tex. App.—Fort Worth 2008, pet. ref'd) (providing that a violation of Texas traffic laws constitutes probable cause to arrest). Under the Texas Transportation Code, a motorist commits a traffic violation if the motorist turns without first properly signaling for at least one hundred feet prior to making the turn. TEX. TRANSP. CODE ANN. § 545.104 (Vernon 1999); *see Vafaiyan*, 279 S.W.3d at 380.

Appellant asserts that Officer Vaughn's testimony was insufficient to establish probable cause to arrest for a traffic offense. According to the record from the suppression hearing, Officer Vaughn witnessed appellant failing to signal a right turn and communicated this information to Officer Novak and Officer Abel. Officer Novak testified that at the time of the stop, he knew from Officer Vaughn's radio communications that appellant had violated a traffic ordinance by failing to signal a turn from West Sam Houston onto Green Fork Road. Officer Vaughn arrived on the scene when appellant was stopped and continued to conduct surveillance. Although appellant testified that he used a turn signal, as sole judge of the witnesses' credibility at the suppression hearing, the trial court could have decided to believe the officers' testimony and disbelieve appellant's testimony. *See Weide*, 214 S.W.3d at 24. Proof of the actual commission of the offense is not a statutory prerequisite to arrest under article 14.01(b) or in developing probable cause to arrest. *See Valencia v. State*, 820 S.W.2d 397, 400 (Tex. App.—Houston [14th Dist.], 1991 pet. ref'd) (rejecting argument that arrest was not valid because it was not certain that appellant committed all elements of a traffic offense). The record reflects that the officers' testimony was sufficient to establish probable cause to arrest appellant for a traffic violation. *See Vafaiyan*, 279 S.W.3d at 380 (deferring to trial court's findings that officers' observations of the accused's failure to signal a turn were sufficient to constitute probable cause for the stop).

Appellant also contends that there were no lawful grounds for the stop because Officer Novak did not personally observe a traffic violation. However, when there has been some cooperation among police officers, a reviewing court may consider the cumulative information known to those cooperating officers at the time of the stop when determining whether probable cause to arrest exists. *See Woodward v. State*, 668 S.W.2d 337, 344 (Tex. Crim. App. 1982) (holding that the sum of the information known to the cooperating officers at the time of an arrest or search by any of the officers involved may be considered when determining whether the officers had sufficient probable cause); *see also Hoag v.* State, 728 S.W.2d 375, 380 (Tex. Crim. App. 1987) (involving reasonable suspicion developed from cumulative information known to cooperating officers). In this case, the officers maintained radio communications regarding the suspected narcotics transaction and traffic offense and then worked together to effectuate appellant's arrest. Furthermore, even though Officer Vaughn observed the traffic violation, he is not required to personally effectuate the warrantless arrest as long as he observed the offense, effectively participated in the arrest, and was fully aware of the circumstances of the arrest. *See Astran v. State*, 799 S.W.2d 761, 764 (Tex. Crim. App. 1990) (involving officer who observed offense, was part of a combined effort to arrest the drug offender, offered description of offender, and maintained radio contact with arresting officers, all of which satisfied the requirements of article 14.01(b)). The record in this case supports an implied finding of fact by the trial court that appellant's traffic violation provided probable cause for his warrantless arrest.

Officers are not prohibited from searching an arrestee incident to lawful arrest; therefore the officers' search of appellant was proper. *See McGee*, 105 S.W.3d at 615 (providing that a person may be subject to a search incident to a lawful arrest). After Officer Novak ordered appellant from the vehicle, he searched appellant and recovered a gun and razor blade from appellant's waistband. Officer Novak checked appellant's criminal history to determine whether he was permitted to carry a weapon. After stopping a vehicle for a traffic offense, a peace officer may make an additional arrest for any other offense discovered during the investigation. *Valencia*, 820 S.W.2d at 399. According to the record, Officer Novak and Officer Abel each testified that appellant was then arrested for possession of the weapon in addition to the traffic violation.

Police may search a vehicle incident to a recent occupant's lawful arrest in two instances: (1) when the arrestee is unrestrained by officers and is within reaching distance of the passenger compartment at the time of the search or (2) when it is reasonable to believe that the passenger compartment of the vehicle contains evidence relevant to the offense of arrest. *Arizona v. Gant*, — U.S. —, 129 S. Ct. 1710, 1719, 1723, 173 L. Ed. 2d 485 (2009). Absent these two justifications, a search of an arrestee's vehicle will be unreasonable unless the officer obtains a warrant to show that another exception to the warrant requirement applies. *Id.* at 1723–24.

Appellant testified at the suppression hearing that he stood with an officer beside his vehicle during the officers' search of his vehicle; however, he also testified that he was handcuffed and searched as he exited the vehicle. Officer Novak could not recall when he placed handcuffs on appellant. Based on the record, the officers likely would not have been justified in searching appellant's vehicle to prevent him from reaching into the passenger compartment at the time of the search. *See id.* at 1719 nn.2–3; *see also Hill v. State*, 303 S.W.3d 863, 875 (Tex. App.—Fort Worth 2009, pet. ref'd) (determining no justification existed for officers' search under the first justification in *Gant*).

Police may search a vehicle if there is a reasonable belief that additional evidence relevant to the arrest could be found in the vehicle. *See Gant*, 129 S. Ct. at 1714. The record reflects that upon finding the weapon and conducting a check of appellant's criminal history, the officers arrested appellant for possession of the weapon. The officers could not have had a reasonable belief that evidence relevant to the traffic violation, which served as the initial reason for stopping appellant, could be found within the passenger compartment of the vehicle. *See Gant*, 129 S. Ct. at 1719 (citing cases in which officers could have no expectation to find evidence related to various driving infractions within the passenger compartment of a vehicle).

However, it would be reasonable to believe that additional evidence relevant to appellant's arrest for possession of a weapon could be located inside the passenger compartment of the vehicle. *See id.* at 1719; *Hill*, 303 S.W.3d at 875 (justifying officers' search of vehicle on basis that additional evidence relevant to the accused's arrest for possession of crack cocaine could be found within the vehicle); *see also Thornton v. United States*, 541 U.S. 615, 617–18, 124 S. Ct. 2127, 2129, 158 L. Ed. 2d 905 (2004) (involving search of a vehicle justified by arrest for narcotics following a traffic stop, as approved by *Gant*). The officers' search of the vehicle was permissible because there was reasonable belief that additional evidence of appellant's arrest related to his possession of the weapon could be found in the vehicle. *See Gant*, 129 S. Ct. at 1719; *see also Hill*, 303 S.W.3d at 875–76 (distinguishing *Gant* on the basis that officers were justified in the vehicle's search not because of a traffic violation, but for the crack cocaine seized from plain view for which the accused was arrested following the traffic stop). The record supports the trial court's implied findings of fact that appellant's warrantless arrest was legally justified and that the evidence gathered after his arrest did not warrant suppression. *See Hill*, 303 S.W.3d at 875. We cannot say that the trial court abused its discretion in denying appellant's motion to suppress. *See id.* We overrule appellant's sole issue on appeal and affirm the trial court's judgment.

/s/ Kem Thompson Frost
Justice

Panel consists of Justices Frost, Boyce, and Sullivan.

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