Affirmed and Memorandum Opinion filed March 4, 2010

In The

Fourteenth Court of Appeals

NO. 14-08-00971-CR

LARAUN OMAR HENDERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 1146334

MEMORANDUM OPINION

Laraun Omar Henderson was found guilty of being a felon in possession of a firearm and sentenced to thirty years' confinement in the Institutional Division of the Texas Department of Criminal Justice. Henderson's sole issue on appeal is the trial court erred in failing to grant his motion to suppress. We affirm.

I

Leonard Howard, the complainant, stated that on December 18, 2007, he broke up a fight between Laraun Omar Henderson and his female companion. The complainant testified that Henderson was angry with him for getting involved in the incident, so

Henderson followed him to the complainant's uncle's house and threatened him with a gun. The complainant's wife called the police, but Henderson fled the scene. The complainant testified that about an hour later his daughter informed him that Henderson's vehicle was parked outside their apartment. The complainant's wife again called the police, and this time, Corporal Joe Belmares responded to the dispatch. The complainant explained the situation to Corporal Belmares and told him that Henderson had a gun.

Corporal Belmares testified that he decided to initiate a traffic stop on the suspect's vehicle to investigate the complaint. He stated that he followed Henderson and he pulled him over because Henderson failed to signal before he turned right. Due to the nature of the dispatch, Corporal Belmares frisked Henderson for weapons and proceeded to look into the vehicle with his flashlight. Corporal Belmares testified that the driver's-side door was open and he could see both the sight and hammer of a gun protruding from a compartment in the door. He then arrested Henderson for being a felon in possession of a firearm.

Contrary to Corporal Belmares's testimony, Henderson stated that the traffic stop was improper. Henderson testified that he did not know that the gun was in his vehicle and that Corporal Belmares could not have seen the gun because his driver's-side door and compartment in the door were closed. He also argued that although he did speak with the complainant on the day of the incident, he never threatened the complainant with a gun.

After hearing all of the evidence, the jury convicted Henderson of the offense of felon in possession of a firearm. Henderson pleaded "true" to two enhancement paragraphs, and the jury sentenced Henderson to thirty years' confinement. This appeal followed.

II

Henderson contends that the trial court erred in failing to grant his motion to suppress because the traffic violation he allegedly committed was not fully proven at the

suppression hearing. The State argues that Henderson waived this issue because he never asserted the argument in either his motion to suppress or during the hearing for his motion to suppress. The State contends that even if Henderson did not waive the issue, the trial court did not abuse its discretion in denying the motion to suppress because Corporal Belmares reasonably suspected Henderson committed a traffic violation, and Henderson admitted he failed to signal before he turned. We agree with the State.

We generally review a trial court's decision to grant or deny a motion to suppress using an abuse-of-discretion standard. *Swain v. State*, 181 S.W.3d 359, 365 (Tex. Crim. App. 2005). During the suppression hearing, the trial court is the exclusive trier of fact and judge of the witnesses' credibility. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000); *Mason v. State*, 116 S.W.3d 248, 256 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd). An appellate court affords almost total deference to the trial court's determination of historical facts supported by the record, especially when the trial court's findings are based on an evaluation of credibility and demeanor. *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). We afford the same amount of deference to a trial court's ruling on mixed questions of law and fact if the resolution turns on evaluating credibility and demeanor. *Johnson*, 68 S.W.3d at 652; *Guzman*, 955 S.W.2d at 89. We review de novo, however, those mixed questions of law and fact not turning on credibility or demeanor. *Johnson*, 68 S.W.3d at 653 (citing *Guzman*, 955 S.W.2d at 89). If the trial court's ruling is reasonably supported by the record and is correct on any theory of law applicable to the case, the reviewing court must sustain it on review. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996); *Flores v. State*, 172 S.W.3d 742, 748 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

The Texas Rules of Appellate Procedure require a party to preserve error for appellate review by demonstrating the error on the record. Tex. R. App. P. 33.1(a); *see Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1995). The party must make the

complaint, objection, or motion in a timely manner and "state[] the grounds for the ruling that the complaining party [seeks] from the trial court with sufficient specificity to make the trial court aware of the complaint." Tex. R. App. P. 33.1(a)(1)(A). In raising the complaint on appeal, the party must ensure the point of error is the same as the complaint or objection made during trial. *Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002); *Turner v. State*, 805 S.W.2d 423, 431 (Tex. Crim. App. 1991) (citing *Thomas v. State*, 723 S.W.2d 696, 700 (Tex. Crim. App. 1986)). Therefore, if a party's objection at trial does not correspond with its issue on appeal, the party has waived the issue. *Broxton*, 909 S.W.2d at 918. A motion to suppress is simply a specialized objection to the admissibility of evidence. *Rothstein v. State*, 267 S.W.3d 366, 373 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd) (citing *Galitz v. State*, 617 S.W.2d 949, 952 n.10 (Tex. Crim. App. 1981)). Courts have concluded that a party can waive error if (1) his suppression motion makes *global* arguments supported only by constitutional and statutory provisions, and (2) he fails to argue any specified grounds during the hearing on the motion to suppress. *See Swain*, 181 S.W.3d at 365 (emphasis added).

On appeal, Henderson argues that the trial court should have granted his motion to suppress because the arresting officer never testified that Henderson was within 100 feet of the intersection or turn when he failed to signal; hence, the traffic violation was not proven. In Henderson's written motion to suppress, he argues, "The defendant['s] . . . arrest and detention was made . . . contrary to Article 1, Section 9 of the Texas Constitution and Chapter 14 of the Texas Code of Criminal Procedure. The fruits of the arrest and detention should be suppressed pursuant to Article 38.23 of the Texas Code of Criminal Procedure." This suppression argument comports with the definition in *Swain* of a global argument. *See id.* But Henderson did assert more specified grounds during the hearing on the motion to suppress. He argued that Corporal Belmares did not have probable cause to arrest him because the offense was not committed within Corporal Belmares's view and the complainant's accusation was not credible. Next, Henderson complained that the officer actually turned on his emergency lights before Henderson

made a traffic violation; therefore, he only turned right to pull over in response to the emergency lights. Finally, Henderson contends that unless his failing to turn caused a "dangerous situation," an officer would not have probable cause to stop and arrest him. Although Henderson did make specific arguments during his hearing on the motion to suppress, those arguments do not address his contention on appeal. Because his argument on appeal does not comport with any of his arguments either in his motion to suppress or at the suppression hearing, he has failed to preserve error on the issue.[1] *See* Tex. R. App. P. 33.1(a). Therefore, we overrule Henderson's sole issue.

* * *

For the foregoing reasons, we affirm the trial court's judgment.

/s/ Jeffrey V. Brown
Justice

Panel consists of Justices Frost, Brown, and Boyce.
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Even if Henderson did not waive this issue, the trial court did not abuse its discretion in denying the motion to suppress because the trial court could have concluded that the officer had a reasonable belief that Henderson committed a traffic violation. Section 545.104(a) of the Transportation Code states "[a]n operator shall use the signal authorized by Section 545.106 to indicate an intention to turn, change lanes, or start from a parked position." Tex. Transp. Code Ann. § 545.104(a) (Vernon 1999). Corporal Belmares testified multiple times that Henderson "failed to signal." Although Henderson argues that subsection (b) of the statute is applicable—signaling "continuously for not less than the last 100 feet of movement of the vehicle before the turn"—the fact that Henderson did not signal at all makes this provision irrelevant. *See* Tex. Transp. Code Ann. § 545.104(b). Therefore, the more applicable provision is subsection (a). Additionally, we give almost total deference to the trial court's determination of historical facts supported by the record, especially when the trial court's findings are based on an evaluation of credibility and demeanor. *Johnson*, 68 S.W.3d at 652–53. So even though Henderson's testimony conflicts with Corporal Belmares's testimony concerning the traffic violation, we defer to the trial court to make an evaluation of the credibility of the witnesses and their accounts of the events.