Affirmed and Memorandum Opinion filed February 18, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01101-CR

THE STATE OF TEXAS, Appellant

V.

ANTHONY DON HUTCHINSON, Appellee

On Appeal from the 21st District Court
Washington County, Texas
Trial Court Cause No. 15,237

MEMORANDUM OPINION

Appellee Anthony Don Hutchinson was charged by indictment with knowingly possessing, with intent to deliver, cocaine in an amount of four grams or more but less than 200 grams. He was arrested after a traffic stop revealed cocaine in his possession. Appellee filed a motion to suppress all evidence seized by law enforcement officers in connection with his detention and arrest, and all written and oral statements made by him to any law enforcement officials in connection with the case, claiming there was no reasonable suspicion or probable cause for the initial stop and detention. Following a hearing, the trial court granted his motion to suppress and the State timely filed a notice of appeal. We affirm.

I. BACKGROUND

Deputy Mark Whidden, a patrol deputy with the Washington County Sheriff's Office, had previously worked in the local jail. As a result of his work in the jail, Whidden knew appellee personally and was aware that he had been incarcerated for, among other things, driving with a suspended license. Sometime before the stop in question in this case, Whidden saw appellee in a parking lot standing next to a white vehicle. At that time, Whidden checked the status of his driver's license and learned that it was suspended.

On March 9, 2008, Whidden saw appellee driving the white vehicle and pulled him over. It is undisputed that it was a warrantless stop. After stopping appellee, Whidden asked him to exit the vehicle. He advised appellee that he knew he did not have a driver's license; appellee "shruggingly agreed" while walking to the back of the vehicle.[1] Whidden testified that because appellee's prior offenses would result in a Class B misdemeanor charge for the current offense, department policy required the officer to arrest appellee and transport him to jail. While performing a pat-down search of appellee, Whidden discovered a large bundle of cocaine hidden in his sock.

Appellee filed a motion to suppress the State's evidence resulting from the traffic stop. He asserted that his state and federal constitutional rights had been violated because Whidden did not have reasonable suspicion or probable cause to stop and detain him. At the motion-to-suppress hearing, Whidden testified that he stopped appellee because the prior driver's license check Whidden performed showed a suspended license. At the

[1] When he pulled appellee over, Whidden called dispatch to report where he was and who he was with. A license check was again initiated, but Whidden did not have the results at the time he engaged appellee in conversation or discovered the contraband.

hearing, Whidden stated that he performed that check "within the week" prior to the March 9, 2008 stop.[2]

The trial court granted the motion to suppress, but did not issue any findings of fact or conclusions of law. The record does not contain any request for findings of fact or conclusions of law. This appeal timely ensued.

II. ANALYSIS

A. Standard of Review

Ordinarily, we apply a bifurcated standard of review to a trial court's ruling on a motion to suppress evidence. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002); *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). We give almost total deference to the trial court's determination of historical facts that depend on credibility and we review the trial court's application of the law to the facts under a de novo standard of review. *Maxwell*, 73 S.W.3d at 281; *Carmouche*, 10 S.W.3d at 327. But when the trial court grants a motion to suppress without explanation after a hearing, such as this one, where the only evidence is the testimony of the arresting officer, we apply an "almost total deference" standard of review to the trial court's ruling. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000) (en banc) (quoting *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)).

This deferential standard applies because there may not be a "concrete" set of facts that may be implied from the trial court's ruling. *Id.* For example, the trial court may have disbelieved the officer on a material fact, or it may not know what the facts are, but, based on the officer's demeanor, appearance, and credibility, it knows that the facts are

[2] After the hearing, however, the State filed a correction to Whidden's testimony. The State attached records showing the driver's license check had actually occurred approximately twenty days before the March 9, 2008 stop.

not what the witness has described.[3] *Id.* In such a case, the trial court may not have a set of historical facts to which it may apply the law, and the determination of probable cause rests entirely on the credibility of the witness.[4] *Id.* Thus, we must apply the "almost total deference" standard of review to the trial court's ruling. *See id.*

B. Law and Application

When a police officer conducts a warrantless stop, the State must show that the officer had reasonable suspicion to believe that an individual was violating the law. *See Terry v. Ohio*, 392 U.S.1, 21 (1968); *Woods v. State*, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997); *Aviles v. State*, 23 S.W.3d 74, 76–77 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). A traffic detention is warranted when a person commits a traffic offense in an officer's presence. *See Aviles*, 23 S.W.3d at 77. The Texas Transportation Code prohibits a person from operating a motor vehicle without a proper license. TEX. TRANSP. CODE ANN. § 521.021 (Vernon 2007). A person who operates a vehicle without a valid license commits a traffic offense. *See id.* § 521.025(c) (Vernon Supp. 2009).

Here, Whidden stated that he stopped appellee because he believed appellee was operating his vehicle without a valid driver's license. Whidden testified that he based his belief on the fact that he had run a license check on appellee within the week before the traffic stop, which indicated that appellee's license was suspended. As noted above, Whidden was the only witness to testify at the motion-to-suppress hearing.

[3] In a motion-to-suppress hearing, the trial court is the sole trier of fact and the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Id.* at 856.

[4] We recognize that the Court of Criminal Appeals recently modified *State v. Ross*, and concluded that where the losing party requests findings of fact and conclusions of law, the trial court must issue them so that the reviewing court will know the basis of the trial court's ruling. *See State v. Cullen*, 195 S.W.3d 696, 699 (Tex. Crim. App. 2006). However, in those cases where the losing party does not request findings of fact or conclusions of law, as in this case, the standards of review set forth in *Ross* continue to control. *Id.*

In *Ross v. State*, the Court of Criminal Appeals was presented with a similar situation: at the motion to suppress hearing, the only testimony was that of the arresting officer. 32 S.W.3d at 854. The trial court granted the motion to suppress without entering findings of fact or conclusions of law, and without giving any indication as to the basis for its ruling. *Id.* The *Ross* Court concluded that there were two possible theories that would support the trial court's ruling: (1) the testimony of the arresting officer was credible, but the facts established by that testimony did not constitute probable cause, or (2) the trial court did not find the arresting officer's testimony credible. *Id.* at 856–57. The Court concluded that the arresting officer's testimony, if believed, established probable cause for the defendant's arrest. *Id.* at 857. Thus, the *Ross* Court concluded that the trial court did not find the arresting officer's testimony credible. *Id.* Employing the "almost total deference" standard of review, the Court held that the trial court did not abuse its discretion in granting the motion to suppress. *Id.*

Like the Court of Criminal Appeals in *Ross*, we conclude that there are two possible theories for the trial court's ruling in this case: either Whidden's testimony was credible, but the facts established by his testimony do not constitute reasonable suspicion for the initial detention or probable cause for the arrest, or the trial court did not find Whidden's testimony credible. We conclude that Whidden's testimony, if believed, added up to reasonable suspicion for the initial stop.[5] Yet the trial court granted appellee's motion to suppress. Thus, we must conclude that the trial court, as the sole trier of fact and judge of credibility, did not find Whidden's testimony credible. And the trial court was not required to believe Whidden's testimony, even if uncontroverted. *See id.* In other words, the trial court had discretion to disbelieve the testimony of Whidden. *See id.* Applying the "almost total deference" standard of review mandated by the facts

[5] As noted *supra*, the State supplemented the record with evidence that Whidden did run a license check on appellee sometime prior to the traffic stop; however, the check was actually run twenty days before the traffic stop, not the "less than a week" timeframe to which Whidden testified at the suppression hearing.

of this case, we cannot say the trial court abused its discretion in granting the motion to suppress. *See id.* We therefore overrule the State's issue.

II. CONCLUSION

Having overruled the State's sole issue, we affirm the trial court's ruling.

/s/ Leslie B. Yates
Justice

Panel consists of Justices Yates, Anderson, and Boyce.
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