In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-08-00100-CR

PAUL REYES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 07-05-05016-CR

MEMORANDUM OPINION

Following the denial of his motion to suppress, Paul Reyes entered a guilty plea to possession of a controlled substance, methamphetamine, in an amount of four grams or more but less than two hundred grams. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(d) (Vernon Supp. 2009). The State abandoned the indictment's habitual offender allegations and the trial court sentenced Reyes to fifteen years of confinement in accordance with a plea bargain agreement. The sole issue raised on appeal contends that "[p]robable cause for ordering passengers from a car must be more than a mere hunch

that a crime is being committed." We hold that the trial court did not err in denying the motion to suppress. Accordingly, we affirm the judgment of the trial court.

> Whether a specific search or seizure was reasonable is a mixed question of law and fact and is conducted *de novo*. *Kothe v. State*, 152 S.W.3d 54, 62-63 (Tex. Crim. App. 2004). We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Ford v. State*, 158 S.W.3d 488, 493 (Tex. Crim. App. 2005). We do not engage in our own factual review, rather the trial judge is the sole trier of fact and judge of credibility of the witnesses and the weight to be given to their testimony. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). Trial courts are given almost complete deference in determining historical facts. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). We review the record to determine whether the trial court's ruling is supported by the record and correct under some theory of law applicable to the case. *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003).

St. George v. State, 237 S.W.3d 720, 725 (Tex. Crim. App. 2007).

For Fourth Amendment purposes, both the driver and his passengers are seized in a traffic stop and that seizure must be reasonable to be lawful. *Brendlin v. California*, 551 U.S. 249, 257, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007). In this case, uncontroverted evidence showed the officer stopped the vehicle for expired registration. Reyes concedes that the stop was lawful but argues the continued detention of the vehicle and its occupants was unlawful.

The officer testified that as he approached the vehicle he noticed the passengers were making furtive gestures. The officer conducting the stop noticed the driver was nervous. Once the driver was out of the vehicle, the officer requested and obtained the driver's consent to search the vehicle. At that point, the detention had lasted

approximately ten minutes and the officer had just completed running a check of the occupants' licenses. The officer noticed an open alcohol container and recognized one of the passengers as a known drug user. The officer called for assistance because he was alone in a high crime area with the four occupants of the vehicle.

Reyes was in the back seat of the vehicle on the right. The officer searched the other backseat passenger because that passenger had made furtive gestures and appeared to be extremely nervous. This passenger had a plastic-wrapped syringe in his sock and appeared to be intoxicated. He told the officer that he had last used a few days earlier. The officer detained that passenger in his squad car and returned to the vehicle to speak with the other passengers.

The officer removed Reyes from the vehicle and found a syringe in Reyes's right pocket during a pat-down. The syringe contained a clear liquid and had been used. Reyes claimed to be a diabetic but could not say what kind of diabetes he had. The officer testified that he patted-down Reyes without Reyes's consent because the officer was concerned for his safety. According to the officer, he had seen furtive movements when he approached the vehicle, he suspected the occupants were methamphetamine users, and in his experience methamphetamine users can be extremely dangerous.

Next, the officer talked to the female passenger, then he searched the vehicle. During the search of the vehicle, the officer found plastic baggies and smoking screens for marijuana pipes on the floor in the area where Reyes had been sitting. The officer had felt a baggie in Reyes's left pocket during the initial pat-down. Approximately twenty

minutes into the detention the officer returned to Reyes. Reyes told the officer that if he was not in some type of trouble he did not want to be searched. In the course of a search of Reyes's person, the officer found three baggies containing a crystal substance that field-tested positive for methamphetamine. The officer took Reyes into custody, gave the other backseat passenger citations for possession of drug paraphernalia and an open container, and gave the driver a citation for an expired registration.

Reyes argues that at the time the officer conducted the search of his person the reason for the detention had ended. The record shows that the traffic citation had not yet been issued when the officer asked the driver if he would consent to a search of the vehicle. "After the purpose of a traffic stop has been accomplished, a police officer may ask for consent to search a vehicle; however, if consent is refused, the officer may not detain the occupants or vehicle further unless reasonable suspicion of some criminal activity exists." *Caraway v. State,* 255 S.W.3d 302, 310 (Tex. App.--Eastland 2008, no pet.). In this case, the officer did not need probable cause to search the vehicle because the driver gave his consent to the search of the vehicle. *Houston v. State,* 286 S.W.3d 604, 608-09 (Tex. App.--Beaumont 2009, pet. ref'd), *cert. denied,* 78 U.S.L.W. 3393 (U.S. Jan. 11, 2010) (No. 09-7390). Reyes did not assert a right of control over the vehicle and did not object to a search of the vehicle. *Id.* at 609. An officer conducting a lawful traffic stop "may order a passenger out of the car as a precautionary measure, without reasonable suspicion that the passenger poses a safety risk." *Brendlin,* 551 U.S. at 258. Given that the officer was conducting a valid search of the vehicle, the officer's

decision to frisk Reyes for officer safety was lawful. *See Terry v. Ohio,* 392 U.S. 1, 31, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

Probable cause exists when the totality of the known facts and circumstances are sufficient to allow a person of reasonable prudence to believe that contraband will be found. *Wiede v. State,* 214 S.W.3d 17, 24 (Tex. Crim. App. 2007). When the officer conducted the non-consensual investigatory search of Reyes's person, the officer had recovered syringes from Reyes and another passenger, only one of whom claimed to be diabetic, and had found baggies and screens for smoking marijuana in the vehicle. Furthermore, one of the passengers had admitted to recent methamphetamine use and another was known to the officer to be a methamphetamine user. The officer was aware that Reyes had a baggie in his pocket that contained something. Under the totality of the circumstances, a person of ordinary prudence could conclude the baggie likely contained contraband. At that point, the officer had probable cause to search Reyes. *Id.* We overrule the issue raised on appeal and affirm the judgment.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on October 30, 2009
Opinion Delivered March 17, 2010
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Before McKeithen, C.J., Gaultney and Kreger, JJ.