



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-15-00023-CR

JESSICA BOYETT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 6th District Court
Lamar County, Texas
Trial Court No. 25505

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss
Dissenting Opinion by Justice Moseley

MEMORANDUM OPINION

Jessica Boyett pled guilty to and was convicted of conspiracy to manufacture methamphetamine in an amount of one gram or more but less than four grams. Jessica was sentenced to five years' imprisonment and was ordered to pay a \$500.00 fine. However, in accordance with the terms of her negotiated plea agreement, Jessica's sentence was suspended, and she was placed on community supervision for three years.

On appeal, Jessica argues (1) that the trial court erred in overruling her motion to suppress evidence because the arresting officer did not have reasonable suspicion to make a *Terry*¹ stop or probable cause to search the vehicle that was stopped and (2) that the trial court erred in overruling her motion to suppress allegedly coerced statements made during a subsequent custodial interrogation. We find no abuse of discretion in the trial court's denial of Jessica's motion to suppress. In her last point of error, Jessica argues that her guilty plea was not supported by legally sufficient evidence. The trial court's certification of Jessica's right to appeal does not grant her the right to appeal this issue. Accordingly, we dismiss Jessica's challenge to the sufficiency of the evidence and affirm the trial court's judgment.

(1) *The Trial Court Did Not Abuse Its Discretion in Concluding that There Was Reasonable Suspicion to Conduct the Stop and Probable Cause to Search the Vehicle*

Jessica and her husband, Rodney Boyett, were stopped by the Paris Police Department (1) on suspicion that they might be purchasing pseudoephedrine to manufacture methamphetamine and (2) for failing to maintain a single lane. As a result of the *Terry* stop, Jessica and Rodney were

¹*Terry v. Ohio*, 392 U.S. 1 (1968).

arrested and charged with the same offense. Jessica and Rodney's motions to suppress the evidence obtained after the stop were heard and denied together.

On appeal, the argument made by Jessica on the suppression issue with regard to the *Terry* stop and the resulting search of the vehicle is identical to the argument made by Rodney in his appeal, which we have decided on this date in cause number 06-15-00024-CR. For the reasons stated therein, we find that the trial court did not abuse its discretion in overruling Jessica's motion to suppress. We overrule Jessica's first point of error.

(2) *No Abuse of Discretion in Denying Jessica's Motion to Suppress Her Videotaped Confession Is Shown*

In her second point of error, Jessica argues that the trial court should have suppressed her videotaped confession because it was obtained as a result of an illegal arrest and was coerced. Since we have already concluded that the confession was not obtained as a result of an illegal seizure or search, we focus our attention on whether Jessica's confession was coerced. On this matter, Jessica argues that she was expressly denied access to counsel and was threatened with the loss of her step-children unless she told the officers what they wanted to hear.

a. *Standard of Review*

"The standard of review for the trial court's ruling on a motion to suppress is abuse of discretion." *Harris v. State*, 468 S.W.3d 248, 254 (Tex. App.—Texarkana 2015, no pet.) (citing *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999); *Freeman v. State*, 62 S.W.3d 883, 886 (Tex. App.—Texarkana 2001, pet. ref'd)). "In a suppression hearing, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony." *Id.* (quoting *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999)). Thus,

“[w]e “should afford almost total deference to a trial court’s determination of the historical facts that the record supports[,] especially when the trial court’s fact findings are based on an evaluation of credibility and demeanor.”” *Id.* (quoting *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000)).

b. Jessica’s Confession and Her Testimony at the Suppression Hearing

After administering *Miranda*² warnings, Officer Leigh Foreman and Detective Tommy Moore interviewed Jessica on the evening of the arrest. In her first interview, Jessica admitted that she used methamphetamine intravenously and that she had used the drug the day before her arrest, but denied ever cooking or selling the drug. Because she became concerned that she was saying too much, Jessica decided to terminate the interview after approximately thirty minutes, at 10:34 p.m. After a short break and more persuasive and persistent questioning, Jessica’s second interview yielded information that Rodney cooked methamphetamine on their Oklahoma property for their personal consumption and that the liquid heat, peroxide, and pseudoephedrine that they were transporting on the day of their arrest were going to be used to make methamphetamine.

During the suppression hearing, Jessica testified that, after she and Rodney had been transported to the police department, Moore threatened her and would not allow her to call a lawyer. According to Jessica, Moore said that she would go to jail for ten years and would not be able to see her step-children or go home until she cooperated with him and told him what he wanted to hear. Foreman denied that Jessica was threatened or coerced and stated that she did not unequivocally ask for an attorney. Moore was not present at the hearing.

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

In his findings of fact, the trial court found that Jessica’s testimony that Foreman and Moore threatened her and denied her right to counsel was not credible. The trial court further found that the videotaped interrogation was admissible.

c. Analysis

“‘[T]he true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort.’” *Harty v. State*, 229 S.W.3d 849, 855 (Tex. App.—Texarkana 2007, pet. ref’d) (quoting *Haynes v. Washington*, 373 U.S. 503, 513 (1963)). “Whether the statement was obtained by coercion or improper inducement must be determined under the totality of the circumstances.” *Id.* “A confession is coerced if the defendant’s will was overborne by the circumstances surrounding the confession.” *Id.* (citing *Dickerson v. United States*, 530 U.S. 428, 434 (2000); *Schneckloth v. Bustamonte*, 412 U.S. 218, 225–26 (1973)). “‘[T]he trial court is the “sole and exclusive trier of fact and judge of the credibility of the witnesses” and the evidence presented at a hearing on a motion to suppress, particularly where the motion is based on the voluntariness of a confession.’” *Colvin v. State*, 467 S.W.3d 647, 657 (Tex. App.—Texarkana 2015, pet. ref’d) (quoting *Delao v. State*, 235 S.W.3d 235, 238 (Tex. Crim. App. 2007) (citations omitted)).

The videotape of her first interrogation demonstrates that Jessica was issued *Miranda* warnings during her first interview, which she acknowledged and claimed that she understood. She then asked questions about her right to speak to an attorney and discussed the matter at length with the investigating officers. Yet, in less than five minutes during her first interrogation, she admitted that she and Rodney used methamphetamine. As the first interrogation progressed,

Jessica became concerned about the effect of her answers and refused to answer certain questions. She then exercised her right to terminate the first interview. However, Jessica did not unequivocally ask to speak with a lawyer.

After a break, Jessica decided to speak with the interrogators again. She was re-issued *Miranda* warnings and, again, claimed that she understood them. Jessica did not unequivocally ask to speak with a lawyer before confessing that she and Rodney were in possession of items with the intent to manufacture methamphetamine on the day of their arrest. The videotape demonstrates that the interrogation was conducted in a typical manner.

Although Jessica claimed that she unequivocally asked for a lawyer and that she was threatened that she would not be able to see her step-children unless she confessed, the videotape contains no information substantiating this claim. Jessica claimed that she was threatened before the interviews, but her demeanor and the decision to terminate the first interview were inconsistent with her claim, or, alternatively, demonstrated that her will was not overborne by any threat. As the sole judge of witness credibility, the trial court determined that Jessica's testimony was not credible. Based on the record before us, we cannot conclude that the trial court abused its discretion in determining that Jessica's will was not overborne by the circumstances of her confession. Thus, we overrule Jessica's second point of error.

(3) *Jessica Cannot Challenge the Sufficiency of the Evidence Supporting Her Plea*

In her last point of error, Boyett challenges the sufficiency of the evidence supporting her guilty plea. “In a plea bargain case[,] . . . a defendant may appeal only: (A) those matters that were raised by written motion filed and ruled on before trial, or (B) after getting the trial court’s permission to appeal.” TEX. R. APP. P. 25.2(a)(2). The appellate record and the trial court’s certification of defendant’s right of appeal is clear that, given the plea agreement, Jessica reserved only the right to appeal the trial court’s ruling on pretrial matters. Thus, we must dismiss this portion of Jessica’s appeal for want of jurisdiction.³ *See Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006).

We affirm the trial court’s judgment.

Josh R. Morriss, III
Chief Justice

DISSENTING OPINION

Jessica and Rodney Boyett (wife and husband), residents of the State of Oklahoma, were each charged in Paris, Lamar County, Texas, with a conspiracy to manufacture methamphetamine. The automobile in which they were traveling was stopped by a Paris, Texas, police officer. A simultaneous suppression hearing was held in both cases, and the trial court refused to suppress the evidence obtained as a result of that traffic stop. If the trial court erred in allowing the evidence flowing from that traffic stop, then the State has no evidence to prosecute either case. Both Jessica

³Jessica raises additional arguments regarding the admission of Rodney’s statements which were not raised before the trial court. She has failed to preserve these issues for our review. *See* TEX. R. APP. P. 33.1.

and Rodney Boyett have filed appeals of their convictions (these bearing our cause numbers 06-15-00023-CR and 06-15-00024-CR). Even though the cases against Jessica and Rodney are not technically “companion cases” because they do not involve charges against the same person, I will make references to both of these cases because I anticipate that they will be released simultaneously by this Court.

The reasons that I dissent from this Court’s ruling on the case against Rodney are, for the sake of brevity, not repeated herein but are incorporated in this dissent by reference. The reasons I dissent in this case include the same reasons set out in the dissent in Rodney’s case, but those reasons are joined by the discussion hereafter.

The majority in this case cites testimony by Jessica among its reasons to affirm the conviction. The problem with that determination rests with the fact that the critical point in time to be examined is the time that Leigh Foreman, the Paris police officer who effected the stop of the Boyett truck, made the decision to make that traffic stop. All of the statements made by Jessica to which the majority refers occurred AFTER Foreman had stopped the Boyett vehicle and not BEFORE the traffic stop. Accordingly, those statements could not have entered into the decision by Foreman to stop the Boyett vehicle.

If one follows the rationale applied by the majority in this opinion, then police officers would be allowed to stop folks’ vehicles on whatever basis they chose, interrogate them endlessly until they divulged some criminal act, charge them with a crime based on that information, and convict them of that charge.

That is not (nor should it be) the law.

I dissent.

Bailey C. Moseley
Justice

Date Submitted: December 30, 2015
Date Decided: February 2, 2016

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