IN THE
TENTH COURT OF APPEALS

No. 10-15-00206-CR

THE STATE OF TEXAS,

Appellant

v.

DON WOFFORD,

Appellee

From the 13th District Court
Navarro County, Texas
Trial Court No. C35924-CR

MEMORANDUM OPINION

Don Wofford was charged with possession of a controlled substance with the intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(d) (West 2010). The trial court granted Wofford's motion to suppress the evidence and his statements. Because the trial court did not err in granting the motion to suppress, the trial court's order is affirmed.

BACKGROUND

Wofford was arrested during a traffic stop. He was removed from the vehicle in which he was a passenger and was subjected to two pat-downs. During the second pat-down, Deputy Shane Richards felt what he believed to be a methamphetamine pipe in Wofford's pocket. When Richards asked Wofford to confirm Richards's suspicion, Wofford replied, "Damn." The pipe was removed from Wofford's pocket, Wofford was handcuffed, and, after he was given his *Miranda* warnings, Wofford confessed that methamphetamine was in the passenger side of the vehicle and that it belonged to him.

The State raises three issues on appeal relating to the trial court's conclusions of law supporting its ruling on the motion to suppress.

REASONABLE SUSPICION

In its first issue, the State contends that the trial court erred in determining Deputy Richards had no reasonable suspicion to detain Wofford. Specifically, the State argues Wofford's continued detention was based on reasonable suspicion. In response, Wofford disagrees with the State and also takes issue with certain findings of the trial court, including whether Wofford appeared nervous when the driver was initially contacted by Richards. Neither party contends the initial traffic stop was unreasonable.

Standard of Review

When reviewing a trial court's ruling on a motion to suppress, we view the evidence in the light most favorable to the trial court's ruling. *State v. Robinson*, 334

S.W.3d 776, 778 (Tex. Crim. App. 2011); *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony. *Wiede v. State*, 214 S.W.3d 17, 24-25 (Tex. Crim. App. 2007). Therefore, we give almost total deference to the trial court's rulings on (1) questions of historical fact, even if the trial court's determination of those facts was not based on an evaluation of credibility and demeanor; and (2) application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007). But when application-of-law-to-fact questions do not turn on the credibility and demeanor of the witnesses, such as the determination of reasonable suspicion, we review the trial court's ruling on those questions de novo. *Hereford v. State*, 339 S.W.3d 111, 118 (Tex. Crim. App. 2011); *Carmouche v. State*, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000). If the trial court makes findings of fact, as it did here, we determine whether the evidence supports those findings. *Robinson*, 334 S.W.3d at 778. We then review the trial court's legal rulings de novo unless the findings are dispositive. *Id*.

Traffic Stop

In an investigatory stop, the totality of the circumstances – the whole picture – must be taken into account. *Carmouche v. State*, 10 S.W.3d 323 (Tex. Crim. App. 2000). A detention based on reasonable suspicion must be temporary and last no longer than is necessary to effectuate the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500, 103 S.

Ct. 1319, 75 L. Ed. 2d 229 (1983). An extension of the detention beyond effectuation of the purpose of the stop must be supported by reasonable suspicion that occurred before the purpose for the original stop ended. *See Davis v. State*, 947 S.W.2d 240, 245 (Tex. Crim. App. 1997) (no reasonable suspicion for continued detention when based only on officer's conclusion during initial detention that appellant did not appear to be someone on a business trip); *Richardson v. State*, ___ S.W.3d ___, No. 10-14-00217-CR, 2015 Tex. App. LEXIS 7066 (Tex. App.—Waco July 9, 2015, no pet.) (no reasonable suspicion for continued detention). *Accord Madden v. State*, 242 S.W.3d 504, 516-517 (Tex. Crim. App. 2007) (facts from prior to and obtained during stop provided sufficient reasonable suspicion for continued detention).

Reasonable suspicion exists if an officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person actually is, has been, or soon will be engaged in criminal activity. *Castro v. State*, 227 S.W.3d 737, 741 (Tex. Crim. App. 2007). Otherwise stated, those specific, articulable facts must show unusual activity, some evidence that connects the detained individual to the unusual activity, and some indication that the unusual activity is related to crime. *Derichsweiler v. State*, 348 S.W.3d 906, 916 (Tex. Crim. App. 2011).

Articulable Facts

While watching a house where illegal drug activity was suspected to see if a

specific person with a felony warrant would arrive at the house, Richards saw Wofford sitting in the passenger seat of a car parked in front of the house. Richards knew Wofford had been involved in "drug-related activities" and had recently been released from jail for a "possession charge." A person came out of the house, got in the car in which Wofford was the passenger, and drove off. Richards followed the car and after observing two traffic offenses, stopped it. After a momentary verbal exchange with Richards, the driver handed Richards his driver's license and registration. Richards then had the driver exit the car, and Richards returned to his patrol unit to run a warrant and driver's license check on the driver and a warrant check on Wofford. Richards walked back to the driver, questioned him further, and asked for consent to search the car. The driver would not consent to the search.

Once consent to search was denied, Richards had Wofford removed from the vehicle by another deputy who had arrived and requested a drug dog to search the car. Three minutes later, the warrant check was completed, and the check revealed Wofford had no warrants. But Richards decided to detain Wofford and the driver after Richards learned the driver was less than forthcoming in admitting the full extent of his criminal history.[1]

[1] The driver admitted to some theft convictions in his conversation with Richards but left out others, such as indecency with a child, failure to ID, and engaging in organized criminal activity.

Application

By the time the warrant check on Wofford was completed, Wofford had done nothing to give Richards reasonable suspicion to continue to detain him.[2] The State admits that the only facts Richards had for detaining Wofford was Wofford's presence in a vehicle outside a house where drug activity was suspected and Wofford's "drug-related activities." By themselves, neither of these facts establish reasonable suspicion. *Hamal v. State*, 390 S.W.3d 302, 308 (Tex. Crim. App. 2012) (criminal history); *Gurrola v. State*, 877 S.W.2d 300, 303 (Tex. Crim. App. 1994) (high-crime reputation of the area). Even combined, these facts are not enough to support reasonable suspicion. There was no other evidence than these generalities regarding the alleged drug activity at the house and Wofford's "drug-related activities." The warrant check revealed one drug-related conviction. Further, Wofford did not go into the house. And there was no witnessed exchange of anything between the driver and Wofford as the driver came out of the house. The information Richards had amounted to only a hunch, rather than reasonable suspicion, that Wofford may have been involved in criminal activity.

Further, although the trial court found Wofford appeared nervous after Richards made the traffic stop, this does not render the trial court's determination erroneous. Richards testified that Wofford would not look at him and appeared nervous when

[2] The State does not question whether Wofford, as a passenger, could challenge the search of the car in which he was riding. Nevertheless, Wofford could challenge the search because the events that led to the search and discovery of the drugs in the car was "come at by exploitation of the appellant's continued detention and removal from the vehicle." *Lewis v. State*, 664 S.W.2d 345, 348 (Tex. Crim. App. 1984).

Richards made his initial contact with the driver during the traffic stop. From the video, however, it is not apparent how Richards would have been able to make that determination at that point in time. In the approximately 20 second initial contact with the driver, Richards does not appear to have looked at the passenger area of the vehicle. Nevertheless, even if Wofford appeared nervous, the trial court's finding did not override the weight of the other factors, or lack of them, when the totality of the circumstances is used in the evaluation and determination that reasonable suspicion did not exist.

CONCLUSION

Based on this record and based on the standard of review, we find the trial court did not err in concluding Richards did not have reasonable suspicion to detain Wofford. The State's first issue is overruled. Because we overrule the State's first issue, we need not address the State's second and third issues[3] which depend upon a favorable determination of the State's first issue. Accordingly, the trial court's order granting Wofford's motion to suppress is affirmed.

TOM GRAY
Chief Justice

[3] The State's second and third issues are: "Having the Appellee sit in the back of the patrol car did not constitute an arrest" and "Miranda Warnings are only required when there is custodial interrogation." Both of these incidents occurred after Wofford was illegally detained.

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Affirmed
Opinion delivered and filed April 7, 2016
Do not publish
[CR25]