



NUMBER 13-15-00419-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

GLENWOOD HAMMONS,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 377th District Court of
Victoria County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras¹ and Longoria
Memorandum Opinion by Justice Longoria**

Appellant Glenwood Hammons was charged by indictment with one count of possession with intent to deliver a substance in Penalty Group 1 (specifically, cocaine) in

¹ Justice Dori Contreras, formerly Dori Contreras Garza. See TEX. FAM. CODE ANN. § 45.101 *et seq.* (West, Westlaw through 2015 R.S.).

an amount of one gram or more but less than four grams, a second-degree felony. See TEX. HEALTH & SAFETY CODE ANN. § 481.112(c) (West, Westlaw through 2015 R.S.). By one issue, Hammons argues that the trial court erred by denying his motion to suppress. We conclude that the search conducted was legal because Hammons gave his voluntary consent. We affirm.

I. BACKGROUND

Officer Troy Gilliam of the Victoria Police Department testified that on March 3, 2014, he was on patrol when he observed a Buick LeSabre making a wide right turn, which is a violation of the Texas Transportation Code. See TEX. TRANSP. CODE ANN. § 545.101 (West, Westlaw through 2015 R.S.). Gilliam initiated a traffic stop of the vehicle and established that the driver of the vehicle was a female named Ruby. According to Officer Gilliam, Hammons was in the passenger seat. Officer Gilliam testified that Ruby appeared nervous when he made contact with her. He also testified that Ruby continually avoided eye contact with him when he asked her about the presence of drugs. Officer Gilliam asked for identification, and Ruby handed him a credit card before handing him a driver's license. According to Officer Gilliam, he wanted to question Ruby in private, apart from Hammons, because she was acting suspiciously. After another officer arrived at the scene, Gilliam asked Ruby in private for consent to search the vehicle. Ruby responded that the vehicle belonged to Hammons. Gilliam testified that he spoke with Hammons and acquired consent to search the vehicle and to pat down Hammons.

Officer Gilliam testified that when he performed a pat-down search of Hammons, he felt several lumps in his pocket. Hammons indicated to him that the lumps in his pocket were wads of money. According to Gilliam, he requested Hammons to remove the money

from his pocket and Hammons did so. The money in his pocket amounted to just under \$10,000. However, in addition to the money, Hammons pulled two blue circular containers from his pocket. Officer Gilliam claimed that when he asked Hammons what was in the container he said that he did not know. Officer Gilliam testified that he asked Hammons to open the container, which he did; inside was a white, rock-like substance, which was later confirmed to be cocaine.

On May 16, 2014, Hammons was charged with possession with intent to deliver cocaine. In February of 2015, the State filed notice of its intent to enhance the punishment range by showing that Hammons was a habitual offender. See TEX. PENAL CODE ANN. § 12.42(d) (West, Westlaw through 2015 R.S.). The State later amended the indictment to drop the accusation against Hammons from possession with intent to deliver a substance to simple possession of a controlled substance.

On July 31, 2015, Hammons filed a motion to suppress. Without naming any specific violations, Hammons argued that his constitutional and statutory rights had been violated. On August 10, 2015, the trial court held a hearing on Hammons's motion to suppress. At the hearing, Hammons did not dispute that he voluntarily gave consent to search his vehicle and his body or that he voluntarily opened the containers. His only argument was that Officer Gilliam had no reasonable suspicion to extend the traffic stop. The trial court denied his motion to suppress. A jury found Hammons guilty of the crime as charged in the indictment, and the trial court imposed a sentence of twenty-five years' imprisonment. This appeal followed.

II. MOTION TO SUPPRESS

In his only issue on appeal, Hammons argues that Gilliam lacked reasonable suspicion to extend the traffic stop and search his car and his body for drugs.

A. Standard of Review and Applicable Law

In reviewing a trial court's ruling on a motion to suppress, we employ a bifurcated standard, giving almost total deference to a trial court's determination of historic facts and mixed questions of law and fact that rely upon the credibility of a witness, but applying a de novo standard of review to pure questions of law and mixed questions that do not depend on credibility determinations. See *State v. Kerwick*, 393 S.W.3d 270, 273 (Tex. Crim. App. 2013). The record is reviewed in the light most favorable to the trial court's determination, and the judgment will be reversed only if it is arbitrary, unreasonable, or "outside the zone of reasonable disagreement." *State v. Dixon*, 206 S.W. 3d 587, 590 (Tex. Crim. App. 2006).

Police officers are not required to have a reasonable suspicion to ask a person for consent to search. See *Ohio v. Robinette*, 519 U.S. 33, 37 (1996); see also *Hernandez v. State*, 190 S.W.3d 856, 862 (Tex. App.—Corpus Christi 2006, no pet.) (holding that "constitutional prohibitions . . . do not come into play when a person gives free and voluntary consent to search"). Once a traffic stop is completed, an officer may ask the occupants of the vehicle whether they possess contraband and may further request consent to search without having reasonable suspicion; if the request for consent is denied, then the officer may not detain the occupants any longer without reasonable suspicion of criminal activity. See *Simpson v. State*, 29 S.W. 3d 324, 328 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

B. Discussion

Hammons has not challenged the legality of the initial traffic stop, that he voluntarily consented to the search of his person, or that he voluntarily consented to opening the containers in his pocket, either before the trial court or on appeal. Hammons's only contention is that Officer Gilliam lacked reasonable suspicion to conduct the search. However, as noted above, officers do not need to possess a reasonable suspicion to simply request consent to search. See *Robinette*, 519 U.S. at 37; *Simpson*, 29 S.W. 3d at 328. Because it is undisputed that Hammons voluntarily consented to the search of both his person and the container, we conclude that both of those searches were lawful. See *Robinette*, 519 U.S. at 37. Therefore, the trial court did not abuse its discretion in denying Hammons's motion to suppress. We overrule Hammons's sole issue.

III. CONCLUSION

We affirm the trial court's judgment.

NORA L. LONGORIA
Justice

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TEX. R. APP. P. 47.2(b).

Delivered and filed the
19th day of January, 2017.