COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

ALFRED CHILA,		§	No. 08-20-00148-CR
	Appellant,	§	Appeal from the
v.		§	391st Judicial District Court
THE STATE OF TEXAS,		§	of Tom Green County, Texas
	Appellee.	§	(TC# D-17-0963-SB)

O P I N I O N

The State charged Appellant, Alfred Chila, with a third-degree felony for possession of methamphetamine. TEX.HEALTH & SAFETY CODE ANN. § 481.115 (c). Appellant entered into a plea agreement under which he pled guilty while reserving the right to appeal the trial court's ruling on his motion to suppress. On appeal, Appellant raises two issues, both of which hinge on the propriety of the trial court's ruling on that motion.

I. BACKGROUND

A. Factual Background

Around 1:30 on the morning of July 30, 2017, Trooper Dustin Henderson of the Texas Department of Public Safety saw Appellant's vehicle traveling southbound on U.S. 67. When he noticed that Appellant's license plate lamp was out, Trooper Henderson stopped Appellant's pickup. Trooper Henderson discovered that Appellant's driver's license had been suspended and

that Appellant had an occupational license pursuant to an occupational driver's license order ("the Order"). The Order prohibited Appellant from driving "more than twelve (12) hours in that day." It further required Appellant to "maintain a log book in order to determine his travel and operation of the vehicle."

Appellant also presented Trooper Henderson with his logbooks reflecting operation of the vehicle. The logbook indicated that Appellant began driving at 1:30 a.m. on the morning of July 28 (two days before the arrest), but contained no indication of when he stopped driving. The logbook also indicated that Appellant began driving at 10:00 a.m. on the morning of July 29 but contained no notation indicating when he stopped driving. The logbook contained no notation as to when Appellant began driving on the morning of the 30th. In fact, it contained no entry for July 30, 2017 at all.

Upon reviewing the logbooks, Trooper Henderson arrested Appellant for driving in violation of the Order. Once arrested, Appellant was subjected to a routine search at the jail and methamphetamine was discovered in his underwear. Appellant pled guilty to the offense of possession of more than one and less than four grams of methamphetamine and was sentenced to five years imprisonment in the Texas Department of Criminal Justice Institutional Division. The trial court certified Appellant's right to appeal his pre-trial motions.

B. Trial Court Findings of Fact and Conclusions of Law

Prior to the plea, Appellant had filed a motion to suppress the methamphetamine found on his person. The motion challenged the propriety of the stop and detention of Appellant. The trial court denied the motion and made the following findings of fact germane to the issues raised here:

1. Trooper Henderson initiated a traffic stop because he observed Appellant driving with an inoperable license plate lamp.

2. During the traffic stop, Trooper Henderson learned that Appellant had an occupational license and pursuant to the Order, Appellant could not drive for more than 12 hours per day and was required to keep a logbook reflecting his operation of his vehicle.

3. The last entry in Appellant's logbook reflected that he began driving at 10:00 a.m. on July 29, the morning before the stop. No entry reflected when he ended his travels on that day, if he did, nor was there any entry indicating when he began driving on the morning of the 30th. Thus, the logbook indicated that Appellant had driven continuously since the morning of the 29th, in violation of the Order.

4. The logbook further reflected multiple violations of the Order: (a) driving for a period of time greater than that allowed; and (b) failure to properly maintain a record of the times during which Appellant was driving.

5. Trooper Henderson arrested Appellant for violations of the Order, and transported Appellant to the Tom Green County jail, whereupon Appellant was subjected to a routine custodial search.

6. In the custodial search, the jailer discovered methamphetamine in Appellant's underwear.

In this appeal from that ruling, Appellant raises two issues on appeal: (1) whether the trial court erred in denying the motion to suppress because of the lack of probable cause to arrest Appellant and search him pursuant to that arrest; (2) whether the trial court erred in denying Appellant's motion for new trial based upon the claimed error in the ruling on the motion to suppress.

II. STANDARD OF REVIEW

Appellate courts review a trial court's ruling on a motion to suppress under a bifurcated standard. *See State v. Arellano*, 600 S.W.3d 53, 57 (Tex.Crim.App. 2020). Under that standard, we must give "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." *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App. 1997) (en banc). This same level of deference is accorded to a trial court's ruling on "application of law to fact questions," or "mixed questions of law and fact," if the resolution of those questions turns on an

evaluation of credibility and demeanor. *Amador v. State*, 221 S.W.3d 666, 673 (Tex.Crim.App. 2007), *quoting Montanez v. State*, 195 S.W.3d 101, 109 (Tex.Crim.App. 2006). But we review de novo the trial court's determination of legal questions and the application of the law to facts that do not turn upon a determination of witness credibility and demeanor. *Arellano*, 600 S.W.3d at 57-58. "The trial court's ruling will be sustained if it is correct on any applicable theory of law and the record reasonably supports it." *Id.* These standards apply to the question of the reasonableness of either a temporary investigative detention or an arrest. *Amador*, 221 S.W.3d at 673.

III. DISCUSSION

The Fourth Amendment countenances brief investigative stops, such as traffic stops, if justified by a reasonable suspicion. *See Kansas v. Glover*, 140 S.Ct. 1183, 1187 (2020); *Navarette v. California*, 572 U.S. 393, 396 (2014); *Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex.Crim.App. 2015). As the court pointed out in *Jaganathan*, the pertinent question is not whether the driver actually committed a traffic offense, but whether the officer had a reasonable suspicion that such an offense was committed. 479 S.W.3d at 247. Here, the trial court found that Trooper Henderson had such a reasonable suspicion to stop Appellant because of the defective license plate lamp. Appellant does not challenge this finding, and we believe it is supported by the evidence.

Appellant does challenge, however, the probable cause for his arrest. As applied to the states through the Fourteenth Amendment, the Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S.CONST. AMEND. IV; *Mapp v. Ohio*, 367 U.S. 643, 647 (1961). Texas law permits an officer to execute a warrantless arrest when an offense is committed within the officer's presence or view. TEX.CODE CRIM.PROC.ANN. ART. 14.01(b); *State v. Woodard*, 341 S.W.3d 404,

412 (Tex.Crim.App. 2011). The Fourth Amendment permits the warrantless arrest of an individual in a public place for an offense committed within the officer's presence so long as probable cause supports the arrest. *Maryland v. Pringle*, 540 U.S. 366, 370 (2003).

The concept of probable cause evades a precise definition; rather, the determination of probable cause depends upon the "totality of the circumstances." *Id*. at 371, *citing Illinois v. Gates*, 462 U.S. 213, 231-32 (1983). Under this objective test, we ask whether the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a prudent person in believing that the person arrested had committed or was committing an offense. *Amador v. State*, 275 S.W.3d 872, 878 (Tex.Crim.App. 2009). Probable cause requires more than a mere suspicion, but less than that required to support a conviction. *Guzman v. State*, 955 S.W.2d 85, 87 (Tex.Crim.App. 1997) (en banc); *Al-Hanna v. State*, No. 08-17-00037-CR, 2019 WL 156779, at *7 (Tex.App.--El Paso Jan. 10, 2019, no pet.).

Appellant argues that the vagaries in the Order and the logbook undercut the notion of his arrest. He argues that the Order only prohibits him from driving more than 12 hours in a "day." Because he was arrested at 1:30 in the morning, he could not have driven more than an hour and a half that day. Further, he argues that the Order did not require Appellant to record the times he was not driving and only required him to record the time he *was* driving. Similarly, he argues that the Order did not specify when the logbook had to be updated. All these would be interesting defensive issues if Appellant had ultimately been charged with a violation of the Order, but he was not.

The real question before the Court is whether Trooper Henderson had enough evidence before him at the time of Appellant's arrest to form a reasonable suspicion that Appellant had committed an offense. The operation of a vehicle in violation of the restrictions imposed upon the

occupational license constitutes an offense under TEX.TRANSP CODE ANN. § 521.253. As noted above, probable cause requires more than a mere suspicion, but less than that required to support a conviction. *Al-Hanna*, 2019 WL 156779, at *7. Based upon the trial court's findings of fact, we hold that under the circumstances presented here, Trooper Henderson had probable cause to believe that Appellant had committed an offense under the Transportation Code. The trial court specifically found that Appellant's logbook reflected that he began driving at 10:00 a.m. on July 29, the morning before the stop, but no entry reflected he ever stopped. Given he was still driving at 1:30 a.m. on the 30th, he would have exceeded the twelve-hour driving limitation for July 29, or failed to maintain the log book as required.

Once Appellant was placed in custody and taken to jail, the State conducted a custodial search of his person. Such custodial searches, routinely made upon booking a suspect into jail, do not generally offend the Fourth Amendment, even though executed without a warrant. *See Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 328 (2012); *United States v. Robinson*, 414 U.S. 218, 226 (1973). In *Oles v. State*, for instance, the court upheld the warrantless search of an arrested suspect's clothing while in custody or custodial detention. 993 S.W.2d 103, 107 (Tex.Crim.App. 1999). Following the reasoning expressed in *Oles*, this Court has previously held that "as an arrestee is processed through a detention facility, he must expect a diminished expectation of privacy, and officers may search incident to arrest without a warrant." *Gonzalez v. State*, 990 S.W.2d 833, 836 (Tex.App.--El Paso 1999, pet. ref'd). The fact that the offense for which Appellant was arrested is a different offense than that for which he was ultimately charged is of no constitutional importance. *Oles*, 993 S.W.2d at 106. Therefore, because the custodial search of Appellant in a detention facility met the constitutional standard, we overrule his first issue.

Appellant's second issue complains of the trial court's denial of his motion for new trial, which again rests upon the denial of his motion to suppress. Because we find no error in the trial court's ruling on the motion to suppress, we similarly find no error in the denial of the motion for new trial based upon the suppression ruling.

IV. CONCLUSION

For the reasons set forth above, we affirm the judgment of the trial court and Appellant's conviction.

JEFF ALLEY, Justice

September 16, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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