AFFIRM; Opinion Filed August 20, 2012.

Comment [COMMENT1]: Page Number Footer A Included
Use Hotkey ` and then EFA to (E)dit (F)ooter (A)

Comment [COMMENT2]: Date Printed: Header A included,
Use Hotkey ` and then EHA to (E)dit (H)eader (A)
Use Hotkey ` and then DHAT to (D)elete (H)eader (A)(T)ext

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-11-00048-CR

STEPHEN ANDREW SALINAS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 382nd Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 2-10-420

OPINION

Before Justices Moseley, Lang-Miers, and Murphy
Opinion By Justice Murphy

After the trial court denied Stephen Andrew Salinas's motion to suppress evidence, he pleaded guilty to possession of a controlled substance, greater than 400 grams, with the intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(f) (West 2010). The trial court assessed punishment at fifteen years' confinement and a $1500 fine. Appellant claims the trial court erred by denying his suppression motion because the evidence was seized as the result of an illegal detention not based on reasonable suspicion of criminal activity. We affirm.

Background

The only evidence presented at appellant's suppression hearing was the testimony of

Rockwall Police Officer Josh Ellis and his in-car video of the traffic stop and search. At the time of the search, Ellis had been doing highway interdictions for about ten of his fifteen years as a police officer. He was parked on the side of Interstate 30 when he saw a vehicle change lanes without using its turn signal. Ellis stopped the vehicle. The video shows Ellis approaching the vehicle on the passenger side and asking the driver to step out of the vehicle and stand near his patrol car. The driver said the vehicle belonged to appellant, who was the passenger in the car. He said they were on their way to visit appellant's sister in Memphis, but he did not know appellant's last name. In response to Ellis's question of how long they would be in Memphis, the driver said, "not long, probably a couple of days." He volunteered that he was probably going to visit Graceland. When Ellis asked the driver what kind of work appellant did, he responded that he was not sure but thought appellant delivered auto parts. Ellis then approached the passenger side of the vehicle and asked appellant for his driver's license. When Ellis asked about his line of work, appellant said he installed hardwood floors.

Ellis described both the driver and appellant as "overly nervous." He testified that "they had given me different stories and . . . the driver did not know the passenger's last name and he was driving his vehicle and going out of town with him. You know, that just raised my suspicions that there might be something else other than just them not using their turn signal." Based on his training and experience, Ellis believed they were possibly transporting illegal narcotics.

After determining there was no warrant information for either appellant or the driver and confirming the car insurance was valid, Ellis asked the driver if there were any weapons or narcotics in the vehicle. Ellis originally testified that the driver hesitated when he asked him about cocaine. On cross-examination and after reviewing the video, however, Ellis agreed that the driver immediately answered "no" to the question. After the driver gave permission to search the vehicle,

Ellis went to the passenger side of the vehicle to ask for appellant's consent.

Ellis approached the passenger side and asked appellant to step out of the car. As appellant got out of the car, Ellis told him he was going to "pat him down for his safety." After the pat-down, Ellis asked appellant whether there was any marijuana or cocaine in the vehicle. Appellant said "no" immediately when asked about marijuana. Ellis testified that in response to his question about cocaine, appellant "looked away from me, looked down toward the ground and hesitated and said no." Ellis said his response was so quiet, he had to ask him again. After answering, appellant consented to the vehicle search. Approximately ten minutes elapsed from the time of the stop to the point of appellant's consent.

During his search, Ellis noticed that the spare tire under the vehicle was not sealed to the wheel. Upon further inspection, he noticed a stuffed animal hidden in the tire. Cocaine was discovered in the tire and inside the stuffed animal.

Appellant moved to suppress the cocaine evidence, claiming his consent to search the vehicle was the "direct, unattenuated result" of an illegal pat-down for weapons and a prolonged detention. The trial court denied the motion and subsequently filed findings of fact and conclusions of law. Appellant pleaded guilty following the denial of his motion and was sentenced by the trial court. This appeal followed.

Discussion

Appellant challenges the trial court's denial of his motion to suppress, raising one issue. Specifically, appellant contends that the evidence was seized as a result of an illegal detention not based on reasonable suspicion of criminal activity beyond the initial traffic violation.

Standard of Review

We review a trial court's ruling on a motion to suppress under a bifurcated standard of

review. *St. George v. State*, 237 S.W.3d 720, 725 (Tex. Crim. App. 2007); *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. *St. George*, 237 S.W.3d at 725. We give almost total deference to a trial court's determination of historical facts, particularly when the trial court's findings are based on an evaluation of credibility and demeanor. *Id.*; *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We also afford the same deference to mixed questions of law and fact if resolving those questions turns on an evaluation of credibility and demeanor. *Guzman*, 955 S.W.2d at 89. We apply a de novo review to all other mixed questions of law and fact as well as to the trial court's application of search and seizure law. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); *Guzman*, 955 S.W.2d at 89. When, as here, the trial court makes explicit findings, we determine whether the evidence, viewed in the light most favorable to the ruling, supports those fact findings. *State v. King*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006).

Applicable Law

A police officer may lawfully stop a vehicle based upon probable cause to believe a traffic violation has occurred. *Walter v. State*, 28 S.W.3d 538, 542 (Tex. Crim. App. 2000). A traffic stop constitutes a "seizure" within the meaning of the Fourth Amendment to the United States Constitution and consequently must be reasonable. *Delaware v. Prouse*, 440 U.S. 648, 653–54 (1979).

Traffic stops are analogous to investigative detentions, and we analyze them as such when determining whether they pass constitutional muster. *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). We use the two-prong analysis from *Terry v. Ohio* to decide the reasonableness of an investigative detention. *See Terry v. Ohio*, 392 U.S. 1, 22 (1968); *Kothe v. State*, 152 S.W.3d 54, 63

(Tex. Crim. App. 2004). Under *Terry*, we first must decide whether an officer's action was justified at its inception. *Terry*, 392 U.S. at 19–20. If so, we determine whether the search was reasonably related in scope to the circumstances that justified the stop in the first place. *Id.*

The general rule we use to decide whether the scope of a traffic stop is reasonable is that the detention can last no longer than necessary to effect the purpose of the stop. *Kothe*, 152 S.W.3d at 63. During even routine traffic stops, a police officer may request certain information from a driver, such as a driver's license and car registration, and may conduct a computer check on that information. *Id.* The detaining officer also may question the vehicle's occupants regarding their identities, travel plans, and ownership of the vehicle. *Id.* at 67 n.36. Once the original purpose for the stop is exhausted, police may not unnecessarily detain drivers solely in hopes of finding evidence of some other crime. *Kothe*, 152 S.W.3d at 64. A traffic stop may not be used as a fishing expedition for unrelated criminal activity. *Davis v. State*, 947 S.W.2d 240, 243 (Tex. Crim. App. 1997) (en banc). Even after the purpose of a stop has ended, however, an officer may request consent to search a vehicle. *Simpson v. State*, 29 S.W.3d 324, 328 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd); *see also Williams v. State*, No. 05-02-00320-CR, 2003 WL 22020783 (Tex. App.—Dallas Aug. 28, 2003, no pet.) (mem. op., not designated for publication); *James v. State*, 102 S.W.3d 162, 173 (Tex. App.—Fort Worth 2003, pet. ref'd); *Spight v. State*, 76 S.W.3d 761, 768 (Tex. App.—Houston [1st Dist.] 2002, no pet.); *Leach v. State*, 35 S.W.3d 232, 236 (Tex. App.—Austin 2000, no pet.). If further consent is refused, the officer may not detain the occupants or the vehicle further without reasonable suspicion of some criminal activity. *Simpson*, 29 S.W.3d at 328.

Analysis

Appellant does not dispute the lawfulness of the original stop, which was justified because the driver of the vehicle failed to signal when he changed lanes. As a result, we focus on the second

prong of the *Terry* analysis—whether the search and seizure were reasonably related in scope to the circumstances that justified the stop in the first place. *Kothe*, 152 S.W.3d at 63.

Appellant agrees that Ellis had the right to check both him and the driver for valid identification, insurance, and warrants, but argues Ellis was required to issue a traffic ticket and release them once the information came back showing valid paperwork and no warrants. He asserts the original purpose of the stop ended there and the extended detention became an unreasonable seizure. Similarly, appellant claims the *Terry* frisk prolonged their detention unnecessarily and unreasonably and was illegal. Thus, according to appellant, the illegal detention "tainted" his consent to search the vehicle, was a direct result of the illegal detention and search, and any evidence seized from the search was therefore inadmissible. We disagree with appellant's reasoning.

The evidence, viewed in the light most favorable to the trial court's ruling, indicates the original stop had not yet been completed when Ellis requested consent to search the vehicle. At that point, Ellis had not issued a warning or a citation, nor is there any indication he had returned the driver's licenses. Although Ellis testified that he had run both licenses, the record does not demonstrate that a citation was ever issued or the licenses were ever returned to the driver and appellant.

Our analysis is informed in part by our previous decision in *Williams v. State*. In that case, a police officer stopped Williams for speeding. 2003 WL 22020783, at *2. Williams had a valid driver's license but could not produce valid proof of insurance. *Id.* The officer wrote a citation for lack of insurance proof and a warning for speeding and handed the citation to Williams to sign. *Id.* As Williams was signing the citation, the officer asked if there were any guns, knives, hand grenades, or dead bodies in his vehicle. Williams said "no" and laughed, which the officer found to be suspicious. *Id.* The officer then asked for permission to search the vehicle and found bags of

marijuana in the trunk of the vehicle. This Court concluded the video of the stop and the officer's testimony supported the trial court's finding that the stop had not yet ended when the officer first asked Williams for consent to search the vehicle. *Id.* at *4. When the officer first asked about illegal contraband, Williams was busy signing his name on the citation and the officer had yet to return his driver's license. *Id.*

We conclude, comparing the findings in *Williams* to the record here, the cases are analogous. At the time Ellis asked appellant for permission to search the vehicle, he had not returned his driver's license. Nor is there any indication that a citation had been written or oral warning given. To the contrary, the trial court specifically found from the evidence that "Officer Ellis asked appellant for consent to search the vehicle during the pendency of the stop, which appellant granted"; "[a]t no time prior to Officer Ellis requesting consent to search the vehicle had Officer Ellis given the driver of the vehicle a warning or traffic citation for the traffic violation." Both the in-car video and Ellis's testimony support the trial court's finding that the stop had not yet ended when Ellis first asked appellant for his consent to search the vehicle.

Even if the original purpose of the stop had ended, we do not conclude this "tainted" appellant's consent to search the vehicle. An officer may request consent to search a vehicle even after the purpose of a stop is complete. *See Simpson*, 29 S.W.3d at 328. Two Texas cases involving similar facts are instructive. *See James*, 102 S.W.3d at 167; *Edmond v. State*, 116 S.W.3d 110 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd).

In the Houston case, Edmond was stopped for failure to maintain a single marked lane. *Edmond*, 116 S.W.3d at 111. After returning his license, the officer requested consent to search the vehicle. *Id.* at 112. Edmond consented to the search. In order to ensure his own safety, the officer asked to search Edmond's person before searching the car. Edmond consented again. *Id.* The search

of the vehicle revealed cocaine hidden behind an interior body panel. The court noted that the return of Edmond's license ended the initial purpose of the stop. *Id.* at 113. Nonetheless, the court concluded that Edmond's detention "for a period of time no longer than required to ask two questions is consistent with *Terry's* emphasis on reasonableness." *Id.* at 113–14.

The Fort Worth Court of Appeals considered a similar situation in *James v. State*. There, an officer saw a vehicle fail to signal while entering the highway. *James*, 102 S.W.3d at 167. He stopped the vehicle and issued a warning citation for failure to indicate a lane change and failure to maintain a single lane of traffic. After giving the warning citation, the officer asked James for consent to search the vehicle. *Id.* at 168. James consented, and the search yielded over 400 pounds of 91% pure cocaine. *Id.* James argued on appeal that there was no reasonable basis for continued detention after the officer issued the warning citation and the subsequent search therefore was not justified. *Id.* at 172. The appellate court concluded the search and seizure were legal, citing prior case law for the reasoning that "reasonable suspicion is not required for a police officer to request consent to search an automobile after the reason for an initial stop is concluded as long as a message is not conveyed that compliance is required." *Id.* at 173; *see also Leach*, 35 S.W.3d at 235–36 (finding reasonable suspicion not required for police officer to request consent to search automobile after reason for initial stop concluded, provided message of mandatory compliance not conveyed); *Simpson*, 29 S.W.3d at 328 (concluding officer may request consent to search after traffic stop); *Spight*, 76 S.W.3d at 768 (explicitly adopting *Simpson* holding that officer may request consent to search vehicle after traffic stop).

Appellant does not argue that Ellis conveyed a message of mandatory compliance with his request to search the vehicle. He maintains Ellis did not have reasonable suspicion of criminal activity and that the *Terry* frisk performed before the search of the vehicle invalidated appellant's

consent. We do not agree.

We observe first that a *Terry* frisk does not terminate an officer's ability to request consent to search after a traffic stop. The officer in *Edmonds* also performed a security pat-down before searching the car, and the Fourteenth Court of Appeals concluded the subsequent search of the car was reasonable. *Edmond*, 116 S.W.3d at 112. Regarding the *Terry* frisk here, Ellis articulated specific facts that could have reasonably led him to conclude appellant or the driver might possess a weapon. *See Carmouche v. State*, 10 S.W.3d 323, 329 (Tex. Crim. App. 2000) (noting that additional intrusion accompanying *Terry* frisk is justified where officer can point to specific and articulable facts reasonably leading him to conclude suspect might possess weapon). He described the driver and appellant as "overly nervous" and was concerned that they had given different stories. The driver did not know appellant's last name, yet he was driving his vehicle and traveling out of town for a couple of days to visit appellant's sister in Memphis. Based on his training and experience, Ellis believed there could be illegal narcotics in the vehicle and "in a circumstance where you suspect drugs, there may be weapons." These facts and inferences support a finding that Ellis's *Terry* frisk was reasonable. We therefore conclude the *Terry* frisk did not "invalidate" or "taint" appellant's consent to search the vehicle.

We also reject appellant's argument that Ellis did not have reasonable suspicion of criminal activity after the point he claims the stop had properly ended. If an officer develops reasonable suspicion that the detainee is engaged in criminal activity during a valid traffic stop and detention, prolonged or continued detention is justified. *See Davis*, 947 S.W.2d at 244; *Haas v. State*, 172 S.W.3d 42, 52 (Tex. App.—Waco 2005, pet. ref'd). Additional facts and information discovered by an officer during a lawful detention may form the basis for a reasonable suspicion that another offense has been or is being committed. *Haas*, 172 S.W.3d at 52. As described above, Ellis

suspected criminal activity based on the demeanor of both appellant and the driver, conflicting answers to questions, lack of knowledge despite what appeared to be a personal trip, volunteered information by the driver, hesitation by appellant as to whether there was cocaine in the vehicle, and the presence of the vehicle traveling in an area known for narcotics trafficking. And, while length of time is not determinative, the entire lapse of time between the stop and the seizure of cocaine was less than fifteen minutes.

In its conclusions of law, the trial court found that the detention of both the driver and appellant did not exceed the reasonable scope of the stop's original purpose, and the driver and appellant both knowingly, intelligently, and voluntarily gave Ellis consent to search the vehicle at a time when the original purpose of the stop had not yet concluded. We agree. Even if the search exceeded the reasonable scope of the stop's original purpose, we conclude the trial court reasonably could have concluded Ellis had a basis for prolonging the detention. We overrule appellant's sole issue and affirm the trial court's judgment.

MARY MURPHY
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
100048F.U05

Comment [COMMENT3]: Judgment - Sent out with Opinion to Internet

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

STEPHEN ANDREW SALINAS, Appellant	Appeal from the 382nd Judicial District Court of Rockwall County, Texas. (Tr.Ct.No. 2-10-420).
No. 05-11-00048-CR V.	Opinion delivered by Justice Murphy, Justices Moseley and Lang-Miers participating.
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered August 20, 2012.

/Mary Murphy/
MARY MURPHY
JUSTICE