

Affirmed and Opinion Filed August 18, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01127-CR

**SANDRA ANN BOLLE, Appellant
v.
THE STATE OF TEXAS, Appellee**

On Appeal from the 380th Judicial District Court
Collin County, Texas
Trial Court Cause No. 380-81784-2015

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Stoddart

Sandra Ann Bolle, who was charged with possession of a controlled substance in an amount less than one gram, appeals from an order denying her motion to suppress evidence. After accepting her negotiated plea, the trial court deferred adjudication of guilt, placed Bolle on three years' community supervision and assessed a \$300.00 fine. In two issues, she contends the trial court abused its discretion by denying the motion because the police officer unreasonably prolonged the detention and investigation of a routine traffic stop by bringing a canine to conduct a "free air" sniff and the officer lacked reasonable suspicion based on her demeanor and appearance to conduct a warrantless search of her vehicle and purse. We overrule both issues and affirm the trial court's order.

BACKGROUND

At approximately 11:00 p.m. on December 1, 2014, Deputy Robert Langwell stopped Bolle on U.S. Highway 380 in Collin County after observing her vehicle had a defective license plate light. Langwell is a certified canine handler with over ten years' experience as a police officer. Langwell's canine, Elo, is a certified dual-purpose canine trained in narcotics detection, building searches, and tracking. Langwell and Elo have conducted over a thousand canine searches and Elo has never had a false-positive alert. Elo was with Langwell in his vehicle.

Langwell activated his overhead lights and Bolle pulled over. When he approached Bolle's vehicle, Langwell noticed she was wearing lipstick, but "it was almost like it was smeared on from one side to the other." He described her demeanor: "She just moved quickly, about the vehicle . . . everything was quickly grabbed, quickly reached over to get, almost frantic." Langwell believed her behavior was not normal nervousness during a traffic stop.

Comparing Bolle's appearance to her driver's license photograph, Langwell noticed she had lost some weight and "her eyes looked like they were sunk back." She did not look like a person who simply lost weight, she appeared "sick" or as if she "had not [eaten] in a long time." Based on Langwell's experience, Bolle's appearance indicated "she may be on some type of narcotics." However, Langwell did not suspect she was intoxicated because she did not have slurred speech, was oriented to space and time, and responded to his questions appropriately.

Langwell told Bolle that if everything checked out, he would only give her a verbal warning. He returned to his vehicle to run standard background checks on her driver's license. Langwell determined Bolle's driver's license was valid, there were no warrants for her arrest, and she had one prior arrest for theft. He also found an internal field intelligence report, which indicated another canine handler encountered Bolle in 2009 and reported that she may have been a methamphetamine user-seller.

Langwell returned to Bolle's vehicle and asked if she had ever been arrested. She responded that in 2008 she was arrested for theft in a game room when someone dropped a wallet in her purse. This information sparked Langwell's interest "[b]ecause game rooms are frequently used to buy or sell illegal narcotics." Based on everything he had learned, Langwell asked Bolle for consent to search the vehicle. Bolle consented to a search of her vehicle, but did not give consent to search her purse, which she was "clutching" in her hand. Langwell did not search the vehicle and directed Bolle to put her purse back in the car.

Langwell then retrieved Elo to conduct a free-air sniff of the exterior of the vehicle. Elo alerted at the front left quarter-panel and started to paw at the driver's side window, which was slightly open, trying to get to the odor he detected. At this point, Langwell believed he had probable cause to search the vehicle. He found a substance he suspected was methamphetamine and a pipe commonly used for smoking methamphetamine inside Bolle's purse. The substance was later tested and contained one-half gram of methamphetamine.

An audio-video recording from Langwell's in-car recording system was admitted in evidence as was a copy of Bolle's driver's license photograph. The recording indicates the time from when Bolle refused consent to search her purse to Elo's alert was approximately three minutes.

STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Turrubiate v. State*, 399 S.W.3d 147, 150 (Tex. Crim. App. 2013). We review the trial court's factual findings for an abuse of discretion, but review the trial court's application of the law to the facts de novo. *Id.* We give almost total deference to the trial court's determination of historical facts, particularly when the trial court's fact findings are based on an evaluation of credibility and demeanor. *Id.* We give the same deference to the trial court's conclusions with

respect to mixed questions of law and fact that turn on credibility or demeanor. *State v. Ortiz*, 382 S.W.3d 367, 372 (Tex. Crim. App. 2012). We review mixed questions of law and fact that do not turn on credibility and demeanor as well as purely legal questions de novo. *Id.* As a general rule, we view the evidence in the light most favorable to the trial court's ruling and afford the prevailing party the strongest legitimate view of the evidence, including all reasonable inferences that may be drawn from that evidence. *State v. Duran*, 396 S.W.3d 563, 571 (Tex. Crim. App. 2013). We will affirm the trial court's ruling if it is reasonably supported by the record and correct under any theory of law applicable to the case, even if the trial court did not rely on that theory. *See State v. Copeland*, 501 S.W.3d 610, 612–13 (Tex. Crim. App. 2016). When, as here, the trial court makes explicit findings of fact, we determine whether the evidence, when viewed in the light most favorable to the court's ruling, supports those findings. *See State v. Kerwick*, 393 S.W.3d 270, 274 (Tex. Crim. App. 2013).

When a defendant asserts a search and seizure violates the Fourth Amendment, the defendant bears the initial burden of producing evidence to rebut the presumption of proper conduct by law enforcement. *State v. Woodard*, 341 S.W.3d 404, 412 (Tex. Crim. App. 2011). A defendant can satisfy this burden by showing the search and seizure was without a warrant. *Id.* The burden then shifts to the State to establish that the search or seizure was nevertheless reasonable under a totality of the circumstances. *Id.*

A police officer may lawfully stop and reasonably detain a motorist if the officer has a reasonable basis for suspecting the person has committed a traffic violation. *Garcia v. State*, 827 S.W.2d 937, 944–45 (Tex. Crim. App. 1992); *State v. Gammill*, 442 S.W.3d 538, 540 (Tex. App.—Dallas 2014, pet. ref'd). Reasonable suspicion exists if the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person is, has been, or soon will be engaged in criminal

activity. *Brodnex v. State*, 485 S.W.3d 432, 437 (Tex. Crim. App. 2016). This standard is objective and disregards the officer's subjective intent. *Id.* It is based on the totality of the circumstances. *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011). The relevant inquiry is not whether particular conduct is innocent or criminal, but the degree of suspicion that attaches to particular non-criminal acts. *Id.* Whether the facts known to the officer at the time of the detention amount to reasonable suspicion is a mixed question of law that is reviewed de novo on appeal. *Kerwick*, 393 S.W.3d at 273.

A traffic stop is a detention and must be reasonable under the United States and Texas Constitutions. *See Davis v. State*, 947 S.W.2d 240, 245 (Tex. Crim. App. 1997). To be reasonable, a traffic stop 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 (1983); *Davis*, 947 S.W.2d at 245. When the reason for the stop has been satisfied, the stop may not be used as a "fishing expedition for unrelated criminal activity." *Davis*, 947 S.W.2d at 243. Once an officer concludes the investigation of the conduct that initiated the stop, continued detention of a person is permitted only if there is reasonable suspicion to believe another offense has been or is being committed. *Id.* at 245.

DISCUSSION

Bolle does not challenge the reasonableness of the traffic stop. Rather, she argues Langwell unreasonably prolonged her detention after he concluded the purpose of the traffic stop. She further contends that her appearance and demeanor did not provide reasonable suspicion of criminal activity supporting the prolonged detention after she refused consent to search her purse.

The State responds that the facts, and rational inferences from those facts, known to Langwell at the time Bolle refused consent to search her purse, justified the additional three-

minute detention to conduct the canine sniff under the totality of the circumstances.

We summarize the trial court's findings of fact in the next two paragraphs. The trial court found Langwell was a credible witness. It also found that Langwell immediately noticed Bolle's lipstick was smeared unevenly on and around her lips; Bolle's movements were unusually quick and almost frantic; and her behavior was not consistent with the nervousness typically shown by a driver during a routine traffic stop. Compared to her driver's license photograph, Bolle's eyes were sunken and she appeared thin and malnourished. In Langwell's opinion, Bolle's appearance was consistent with that of a drug user. Based on her appearance, demeanor, and conduct, Langwell suspected that Bolle may have been under the influence of narcotics. Langwell's administrative searches using Bolle's driver's license information revealed that another deputy encountered Bolle in 2009 and reported that she may have been a methamphetamine user or seller. The search also revealed that Bolle's driver's license was valid, she had one prior arrest for theft, and there were no outstanding warrants for her arrest. Langwell asked about Bolle's criminal history and she reported an arrest for theft in 2008 after an incident in a game room. Langwell's suspicion was further aroused because game rooms, in his experience, are commonly used to conduct illegal narcotics transactions.

The trial court also found that Langwell, based on the facts and circumstances and his training and experience, suspected Bolle could have narcotics in her possession and requested consent to search her vehicle. She granted consent but did not want Langwell to search her purse. Bolle denied consent to search her purse. Langwell believed under the circumstances that any narcotics in her possession would be located in her purse and decided not to perform a consent-search of the vehicle. Langwell then instructed Bolle to leave her purse inside the vehicle and performed a free-air search of vehicle's exterior using Elo. Elo alerted at the driver's side window, which was slightly open. Elo's alert provided sufficient probable cause for a

warrantless search of Bolle's vehicle and all containers inside the vehicle that could hold incriminating evidence, including Bolle's purse. The search yielded approximately one-half gram of a substance Langwell believed was methamphetamine located in Bolle's purse. A pipe commonly used to smoke methamphetamine was also found in Bolle's purse.

Viewing the evidence in the light most favorable to the trial court's ruling, we conclude the evidence supports the trial court's express fact findings. *See Kerwick*, 393 S.W.3d at 274.

We review the trial court's conclusions of law de novo. *Id.* at 273; *Ortiz*, 382 S.W.3d at 372. The trial court concluded that before completing the purpose of the traffic stop, Langwell developed specific articulable facts, which taken together with rational inferences from those facts, led him to conclude Bolle was engaged in criminal activity. Langwell was justified in prolonging detention. At that time, Langwell had reasonable suspicion to prolong the stop and conduct an investigative detention to determine if Bolle was in possession of illegal narcotics. Based on the totality of the circumstances, Langwell had sufficient reasonable suspicion to extend the duration of the traffic stop and conduct the free-air search of the vehicle's exterior using his police dog. The length of Langwell's investigative detention was reasonable, diligent, and likely to confirm or dispel his suspicions quickly.

Bolle argues the totality of the circumstances, including her nervousness, appearance, and demeanor, did not give Langwell reasonable suspicion to prolong her detention. We agree that nervousness, standing alone, is of little probative value. *See Wade v. State*, 422 S.W.3d 661, 670–71 (Tex. Crim. App. 2013) (nervousness is not particularly probative because most citizens are understandably nervous in the presence of officers); *McQuarters v. State*, 58 S.W.3d 250, 257 (Tex. App.—Fort Worth 2001, pet. ref'd) (“nervousness is a weak indicator of hidden narcotics”). However, in combination with other factors, nervousness can support reasonable suspicion for an investigative detention. *Wade*, 422 S.W.3d at 671. The State contends

additional factors, such as the report describing her as a drug user-seller and her arrest in a game room, which is associated with illegal drug transactions, coupled with her nervousness, appearance, and demeanor, gave rise to a reasonable suspicion of ongoing narcotics use and possession of narcotics.

Use of a trained drug dog is a reasonable method of confirming or dispelling a reasonable suspicion that a vehicle contains drugs. As the court of criminal appeals explained:

Reasonable suspicion is not a carte blanche for a prolonged detention and investigation. The investigatory detention must be “reasonably related in scope to the circumstances which justified the interference in the first place.” An officer must act to confirm or dispel his suspicions quickly. But the temporary detention may continue for a reasonable period of time until the officers have confirmed or dispelled their original suspicion of criminal activity. One reasonable method of confirming or dispelling the reasonable suspicion that a vehicle contains drugs is to have a trained drug dog perform an “open air” search by walking around the car. If the dog alerts, the presence of drugs is confirmed, and police may make a warrantless search. If the drug dog does not alert, the officer’s suspicions will normally be dispelled, and the citizen may go on his way.

Matthews v. State, 431 S.W.3d 596, 603–04 (Tex. Crim. App. 2014) (footnotes omitted).

Given Bolle’s present appearance, unusual nervousness, and prior reports of association with illegal drugs, it is at least rational to infer she was continuing to use illegal drugs and could have such drugs in her possession even if she was not intoxicated at the time of the stop. These articulable facts, taken with rational inferences therefrom, supported a reasonable suspicion that Bolle was in possession of narcotics. That suspicion could quickly be confirmed or dispelled by Langwell’s drug dog. *See Matthews*, 431 S.W.3d at 603–04. The brief detention following Bolle’s refusal of consent to search her purse, a little more than three minutes, was not unreasonable under the totality of the circumstances. *See Matthews*, 431 S.W.3d at 603–04; *Kimbell v. State*, No. 05-11-01211-CR, 2013 WL 4568049, at *6 (Tex. App.—Dallas Aug. 26, 2013, pet. ref’d) (mem. op., not designated for publication) (officer’s observations that appellant was nervous, her hands were shaking, she was “chatty” and failed to make eye contact, and his

knowledge she had been arrested for drug offenses, and was currently living with a known methamphetamine user, justified extending detention for six minutes to conduct canine sniff of appellant's car). Based on the totality of the circumstances as shown in the record, we conclude the trial court did not abuse its discretion by denying the motion to suppress. We overrule Bolle's issues.

CONCLUSION

We affirm the trial court's order.

/Craig Stoddart/

CRAIG STODDART
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

SANDRA ANN BOLLE, Appellant

No. 05-16-01127-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 380th Judicial District
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Trial Court Cause No. 380-81784-2015.

Opinion delivered by Justice Stoddart.

Justices Lang and Myers participating.

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

Judgment entered this 18th day of August, 2017.