Opinion issued October 8, 2009

In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00670-CR

RONALD COMBS, Appellant

v.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 1091352

MEMORANDUM OPINION

Appellant, Ronald Combs, pled guilty to possession of over 400 grams of cocaine with intent to deliver. The trial court assessed punishment at 15 years'

imprisonment and a nominal fine. Appellant contends that the trial court erred in denying his motion to suppress.[1] We affirm.

Background

On November 2, 2006, Trooper Jacobs of the Texas Department of Public Safety ("DPS") was working routine traffic control on the eastbound side of Interstate 10. At approximately 9:15 p.m., Jacobs stopped a vehicle for following another vehicle too closely.[2] At the hearing on appellant's motion to suppress, Jacobs testified that the vehicle was following the 18-wheeler tractor-trailer truck in front of it at a distance of approximately one-and-a-half car lengths, a distance that was "dangerous because at that particular point, it was medium traffic still out there; and if he [the driver of the trailing vehicle] didn't have enough time to maneuver an obstruction or anything else in the roadway, he has to go left or right, and at that particular point he would be going into other traffic." Through his police training, Jacobs further testified, he learned that "the optimal [following] distance would be

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[1] Appellant also initially contended, in his first issue, that the trial court erred in refusing his request that it file findings of fact and conclusions of law. The trial court later honored this court's request for its findings and conclusions, and we accordingly dismiss appellant's first issue as moot .

[2] TEX. TRANSP. CODE ANN. § 545.062(a) (Vernon 1999) ("An operator shall, if following another vehicle, maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the conditions of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.").

one car length per 10 miles per hour" and that the tractor-trailer was going "between 65 and 67 miles per hour," meaning that a proper following distance would have been approximately six-and-a-half car lengths. Jacobs also saw a bright light in the passenger's compartment of the vehicle that "appeared to be a TV projection screen" mounted in the compartment in violation of the Texas Transportation Code.[3]

After appellant, who was driving, pulled the car over, Jacobs noticed that the vehicle had an expired Ohio registration sticker and learned that it was a rental car. Jacobs testified that the rental agreement indicated that appellant's passenger, Esther Staton, had rented the car at just after 10 a.m. on October 31 in Columbus, Ohio. Jacobs estimated the drive from Columbus to Houston at "[a]nywhere between an 18- and 20-hour trip," meaning that, having rented the car in the late morning on October 31, appellant and his passenger had arrived in Houston on November 1 at the earliest.

Jacobs took appellant back to his cruiser to run a warrant check and license plate checks on the rental car. Jacobs also began asking appellant questions designed "to clarify about the turnaround trip and why they were leaving [Houston] so soon." Jacobs testified that he is a highly decorated and extensively trained drug interdiction

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[3] Act of May 12, 2003, 78th Leg., R.S., ch. 20, § 2(a), 2003 Tex. Gen. Laws 44, 44 (amended 2007) (current version at TEX. TRANSP. CODE ANN. § 547.611 (Vernon Supp. 2008)) ("A motor vehicle may be equipped with video receiving equipment, including a television . . . only if the equipment is located so that the video display is not visible from the operator's seat.").

officer and that his training and experience have taught him that quick turnaround trips are "something that [drug couriers] typically do. They typically come in and try to get in and get out real quick." Jacobs also testified that Houston and Columbus both play major roles in the drug trade, Houston as a "hub" and Columbus as one of many "source cities."

In response to Jacobs's questions, appellant said that he and Staton had been in Houston "for a couple of days" to see Staton's son. When Jacobs asked whether appellant and Staton had seen Staton's son, appellant responded that they had not. Jacobs testified that, although he tried to give appellant "the benefit of the doubt," he found appellant's response strange considering the distance between Columbus and Houston. Jacobs also testified that, when he asked appellant about Staton, appellant indicated that he did not know Staton's last name, saying that he "only knew her by Ms. Esther." Additionally, over the course of the conversation, Jacobs testified, appellant "was rambling on and just talking" and giving answers that "didn't match what [Jacobs] was asking."

Jacobs then left appellant in the cruiser and walked to the rental car to talk to Staton in an attempt to "clarify two answers that [appellant] gave." Jacobs testified that, when he talked to Staton, Staton "stated that they were on a trip down to see her sons . . . ." Jacobs then asked if Staton had seen her son, and Staton replied, "Yes."

When Jacobs told her that appellant had said otherwise, Staton changed her story, saying, "No, we didn't [see my son]. I called him on the phone."

Jacobs asked Staton for permission to search the rental car "because she was the renter of the car." Staton gave Jacobs permission to search the vehicle. Jacobs then informed appellant that Staton had consented to a search of the vehicle, and appellant gave Jacobs permission to search his bags. After searching the rental car for approximately two and a half minutes, Jacobs found cocaine in the trunk.

At the hearing on appellant's motion to suppress, Jacobs and appellant testified, and the State introduced the videotape of the traffic stop into evidence.

Motion to Suppress

Appellant contends that the trial court erred in denying his motion to suppress the cocaine because "Jacobs did not have specific articulable facts to either initiate a traffic stop, or to continue to detain Appellant after the traffic stop investigation was concluded . . . ." Appellant further argues that Jacobs did not receive valid consent to search the vehicle.

Standard of Review

We review a trial court's ruling on a motion to suppress evidence for an abuse of discretion. *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006). We review the record in the light most favorable to the trial court's conclusion. *Id.* We

will sustain the trial court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case, even if the trial court gave the wrong reason for its ruling. *Id.*; *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003).

The defendant in a criminal proceeding who alleges a Fourth Amendment violation bears the burden of producing some evidence that rebuts the presumption of proper police conduct. *Amador v. State*, 221 S.W.3d 666, 672 (Tex. Crim. App. 2007). "A defendant meets his initial burden of proof by establishing that a search or seizure occurred without a warrant," as was the case here. *Id.* (quoting *Russell v. State*, 717 S.W.2d 7, 9 (Tex. Crim. App. 1986)). When the defendant does so, the burden shifts to the State to prove that the search or seizure was nonetheless reasonable under the totality of the circumstances. *Amador*, 221 S.W.3d at 672–73.

We give almost total deference to the trial court's determination of historical facts. *Dixon*, 206 S.W.3d at 590. This deferential standard of review "also applies to a trial court's determination of historical facts when that determination is based on a videotape recording admitted into evidence at a suppression hearing." *Amador*, 221 S.W.3d at 673 (quoting *Montanez v. State*, 195 S.W.3d 101, 109 (Tex. Crim. App. 2006)). We also afford the same level of deference 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*, 221 S.W.3d at 673. We review *de novo* "mixed questions of law and fact" that do not depend upon credibility and demeanor. *Id.*

Legality of Stop

In its findings of fact and conclusions of law, the trial court found that "Jacobs observed [appellant] driving his vehicle at an unsafe distance of one and a half vehicle lengths behind an 18 wheeler while both vehicles were traveling approximately 65 miles per hour . . . [and] also observed a blue light shining from [appellant's] vehicle's windshield."

An officer conducts a lawful temporary detention when he has reasonable suspicion to believe that an individual is violating the law. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). 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 actually is, has been, or soon will be engaged in criminal activity. *Id.* This is an objective standard that disregards any subjective intent of the officer making the stop and looks solely to whether an objective basis for the stop exists. *Id.* A reasonable-suspicion determination is made by considering the totality of the circumstances. *Id.*

In the instant case, Jacobs testified, and the trial court found, that the vehicle

being driven by appellant was following the truck in front of it at the unsafe distance of one-and-a-half car lengths, when the optimal distance from a safety standpoint would have been approximately six-and-a-half car lengths. Additionally, Jacobs testified, and the trial court found, that he observed a blue light shining in the passenger compartment of the vehicle, which could have been a prohibited object such as a television. Because Jacobs could have reasonably concluded that appellant had committed either or both of two traffic violations, the trial court did not err in concluding that Jacobs was legally authorized to stop the vehicle driven by appellant.

Consent

The trial court found that, during the course of the traffic stop, Jacobs noticed that: (1) the rental agreement stated that the vehicle had been leased in Ohio two days earlier by the passenger; (2) appellant and the passenger gave "inconsistent and illogical" answers to Jacobs's questions about the purpose of the "quick turnaround trip;" (3) appellant knew his passenger only as "Ms. Esther;" and (4) appellant acted nervous. As a result of his "brief" investigation, Jacobs, a "highly trained" drug interdiction officer, became suspicious about "the legitimacy of [appellant's] stated trip," developed a belief that "[appellant] and his passenger fit the profile of drug couriers," and acquired permission to search the vehicle.

Appellant challenges Jacobs's testimony and the trial court's finding that

Jacobs developed his suspicion of criminal activity in part by examining the rental agreement during the stop on the grounds that this testimony and finding are "clearly disproved by the videotape" of the stop. Appellant argues that "the arresting officer justified his detention and continued investigation by false statements and the trial court relied on these erroneous statements to deny Appellant's motion to suppress."

After reviewing the videotape, we agree with Appellant that Jacobs does not appear to request, discuss, or read the rental agreement on the videotape. However, contrary to appellant's arguments, whether Jacobs reviewed the rental agreement prior to the search has no bearing on whether the initial traffic stop was illegal.[4] Likewise, because Jacobs received consent prior to proceeding with the search of the vehicle, under the facts of this case, the existence of the rental agreement also has no bearing on whether the subsequent search was illegal.

A police officer may request consent to search a vehicle during or after a legal traffic stop even without reasonable suspicion of criminal activity—though he may not, unless reasonable suspicion exists, detain the occupant or the vehicle longer than is necessary to effectuate the purpose of the stop if consent is refused. *Magana v. State*, 177 S.W.3d 670, 673 (Tex. App.—Houston [1st Dist.] 2005, no pet.). "A

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[4] We note that, while talking to appellant on the videotape, Jacobs described the reasons for the stop exactly as he did in his testimony at the motion to suppress hearing.

police officer may approach a citizen without probable cause or even reasonable suspicion to ask questions or obtain consent to search. Likewise, 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." *James v. State*, 102 S.W.3d 162, 173 (Tex. App.—Fort Worth 2003, pet. ref'd) (citations omitted). In order to be valid, consent to search must be "positive and unequivocal, and there must not be any duress or coercion." *Allridge v. State*, 850 S.W.2d 471, 493 (Tex. Crim. App. 1991); *see also Carmouche v. State*, 10 S.W.3d 323, 331 (Tex. Crim. App. 2000) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 228, 93 S.Ct. 2041, 2048 (1973)) (consent must "not be coerced, by explicit or implicit means, by implied threat or covert force").

Here, Jacobs asked Stanton, the passenger and actual renter of the car, for consent to search. Staton gave unequivocal consent to search the car. The videotape does not show that Jacobs threatened or coerced Staton in any way. Jacobs allowed Staton to remain in the rental car while he discussed the traffic violations with appellant and ran warrant and license plate checks, all of which took approximately nine minutes. Jacobs then immediately approached the passenger side of the rental car to talk to Staton. When Jacobs requested consent to search, he talked to Staton

for less than two minutes in a very cordial manner, and he gave no indication that compliance with his request was required. Rather, he told Staton that he was "just asking" if he could search the car. Staton consented to the search.

Because Staton—the actual renter of the car in question and the car's sole occupant after appellant left the vehicle—possessed joint access or control over the rental car, her consent was also valid against appellant. *See, e.g.*, *Welch v. State*, 93 S.W.3d 50, 52 (Tex. Crim. App. 2002) (where passenger consented to warrantless search of truck and driver sought to suppress evidence found, analyzing totality of the circumstances to determine whether passenger had joint access or control over truck for most purposes, so that it would be reasonable to conclude that passenger had right to permit search of truck and that driver assumed risk that passenger might do so). Appellant does not contest Staton's joint access or control, or the validity of her consent to the search of the vehicle, other than to complain that it took place during an impermissible stop.

We overrule appellant's second issue on appeal.

Conclusion

We hold that the trial court did not abuse its discretion in denying appellant's motion to suppress and affirm the judgment of the trial court.

George C. Hanks, Jr.
Justice

Panel consists of Justices Keyes, Hanks, and Bland.

Do not publish. *See* TEX. R. APP. P. 47.2(b).