Opinion issued September 25, 2008

In The
Court of Appeals
For The
First District of Texas

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NO. 01-08-00147-CR

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VICTORIA VILLARREAL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from County Criminal Court at Law No. 15
Harris County, Texas
Trial Court Cause No. 1444785

MEMORANDUM OPINION

Appellant, Victoria Villarreal, was charged with misdemeanor Driving While Intoxicated (DWI) and convicted. *See* TEX. PENAL CODE ANN. § 49.04 (Vernon 2003). Appellant waived her right to a jury trial and pleaded guilty after the trial court denied her motion to suppress evidence obtained by the arresting officer. She was sentenced to ten days' confinement in Harris County jail, with

two days credited, and her driver's license was suspended for one year. The trial court granted appellant permission to appeal. In two points of error, appellant contends that the trial court erred by denying her motion to suppress the evidence obtained by the arresting officer because he lacked both reasonable suspicion to detain appellant and probable cause to arrest her. We affirm.

Background

Officer J. Coppedge was on duty on April 1, 2007 as part of the DWI task force of the Pasadena Police Department. At about 1:40 a.m., he received a dispatch call notifying him of a possible DWI suspect who was driving east on Spencer and being followed by a citizen informant. Dispatch provided Coppedge with the registration of the car and the informant's report that the driver of the suspect vehicle had pulled into the parking lot of a location known as Emiliano's. On arriving at that parking lot, Officer Coppedge identified and approached the reported vehicle. Appellant was at the wheel. Officer Coppedge detained appellant temporarily while investigating her possible level of impairment and asked her to step out of the car so that he could question her. When she complied, he noticed that she smelled of alcohol, slurred her speech, and had red, watery eyes. After speaking with appellant, Officer Coppedge contacted the dispatch officer to ask that the informant meet him at the parking lot. The informant, Randy

Garcia, arrived at the scene and informed Officer Coppedge that he had observed appellant swerving between lanes and braking randomly.

The informant, Randy Garcia, also testified at the hearing on appellant's motion to suppress. Garcia confirmed that he had observed that appellant was drifting within and beyond her lane of traffic into the adjoining lane, without signaling, and would then self-correct and return to her lane. She did this two or three times. Garcia was also able to observe from the flashing of the brake lights of appellant's vehicle that she would slow down every so often, though there was no need to brake, given that Garcia's and appellant's vehicles were the only ones on that particular side of the road. Garcia stated that he was concerned about the safety of other drivers who might be harmed if an accident happened and, for that reason, decided to contact Pasadena police dispatch to report a possibly intoxicated driver. After Garcia identified himself and gave his location, dispatch kept him on the line while transmitting the information that dispatch provided to Officer Coppedge. Garcia reported that appellant had pulled into the parking lot of Emiliano's club. Dispatch then directed Garcia to that location, where he spoke with Officer Coppedge.

Reasonable Suspicion

In her first point of error, appellant contends that the trial court erred by denying her motion to suppress the evidence obtained by Officer Coppedge after

he detained appellant because Coppedge did not have reasonable suspicion to detain her, which rendered inadmissible any evidence obtained after the unlawful detention.

A. Standard of Review

To suppress evidence based on claims of a Fourth Amendment violation, appellant had the initial burden to produce evidence to rebut the presumption that the conduct of a police officer is proper. *See Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). A defendant satisfies her burden by demonstrating that a search or seizure occurred without a warrant. *Id.* If the defendant satisfies her burden, the burden of proof shifts to the State to prove that the search or seizure was reasonable. *See id.*

We apply a bifurcated standard when we review a trial court's ruling on a motion to suppress. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). We accord almost total deference to the trial court's rulings on (1) questions of historical fact, especially when the trial court's fact findings are based on an evaluation of credibility and demeanor, and (2) application-of-law-to-fact questions that turn on an evaluation of the credibility and demeanor of witnesses. *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002). We review de novo application-of-law-to-fact questions that do not turn on an evaluation of credibility and demeanor. *Id.* We view the record and all reasonable inferences

from the record in the light most favorable to the trial court's ruling, and we sustain the ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996).

Well-settled law recognizes that a police officer may stop and briefly detain a person suspected of criminal activity on less information than is constitutionally required for probable cause to arrest. *See Terry v. Ohio*, 392 U.S.1, 22, 88 S. Ct. 1868, 1880 (1968). An officer lawfully detains an individual temporarily when the officer has a reasonable suspicion to believe that the individual is violating the law. *Ford*, 158 S.W.3d at 492. Reasonable suspicion exists where the officer can "point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant [the] intrustion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. We disregard any subjective intent of the officer making the stop and look solely to whether an objective basis for the stop exists. *Ford*, 158 S.W.3d at 492. A reasonable-suspicion determination is made by considering the totality of the circumstances. *Id*. at 492–93.

Reasonable suspicion may derive from an informant's tip that bears sufficient "indicia of reliability." *Carmouche*, 10 S.W.3d at 328 (quoting *Adams v. Williams*, 407 U.S. 143, 146–47, 92 S. Ct. 1921, 1923–24 (1972)). The content of the tip and its degree of reliability together constitute the totality of circumstances

that determine reasonable suspicion. *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990). We consider both factors together, such that the strength of one of these can sufficiently balance weakness of the other factor to render suspicion reasonable. *See id*.

Information from a private citizen is inherently reliable when the citizen's only contact with the police results from having witnessed a criminal act committed by another. *Hime v. State*, 998 S.W.2d 893, 895 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). An informant's detailed description and statement that the informant actually witnessed the reported event entitles the informer's tip to greater weight. *Id*. at 896. An informant's willingness to be held accountable for his intervention further enhances his reliability. *See Reesing v. State*, 140 S.W.3d 732, 736 (Tex. App.—Austin 2004, pet. ref'd).

B. Analysis

Because Officer Coppedge detained appellant without a warrant, the State had the burden of proof to establish that the detention was reasonable. *See Ford*, 158 S.W.3d at 492. The totality of the circumstances presented in this case demonstrate that Officer Coppedge reasonably detained appellant.

There is no evidence of the content of the information that Garcia reported to dispatch. The record does disclose, however, the information that dispatch conveyed to Officer Coppedge. From the dispatch, Coppedge knew that Garcia

was following appellant, who had witnessed the suspicious activity, and Coppedge was independently able to corroborate the identification details provided by Garcia. Appellant nonetheless contends that this case is similar to *State v. Griffey*, 241 S.W.3d 700 (Tex. App.—Austin 2007, pet. ref'd). The State disagrees and compares this case to *Hawes v. State*, 125 S.W.3d 535 (Tex. App.—Houston [1st Dist.] 2002, no pet.). We agree with the State.

Griffey was a suspected DWI case in which the arresting officer received dispatch information that the manager of a Whataburger had observed a person "passed out behind the wheel in the drive-through," but did not receive any other information." *Griffey*, 241 S.W.3d at 702. Although the informant was not completely anonymous, the information he conveyed did not allege any criminal activity. *Id.* at 705 ("Significantly, the manager did not report that the driver was intoxicated or that she exhibited any signs of intoxication."). The Austin Court of Appeals held that the arresting officer did not have reasonable suspicion to detain the defendant. *Id.* at 707.

Hawes was also a DWI case in which the arresting officer received dispatch information consisting of a license plate number, description of the vehicle, its location, and its direction of travel. *Hawes*, 125 S.W.3d at 537. As in this case, the arresting officer was told that the informant was still following the vehicle. *Id.* The informant in *Hawes* was a tow-truck driver who radioed his dispatcher when a

vehicle driven by the defendant approached him from the rear, almost hit his tow truck, passed his tow truck, and then veered onto a grassy area. *Id.* The tow-truck dispatcher maintained contact with its driver and the local police, who contacted the arresting officer. *Id.* As in this case, the officer did not observe the defendant driving erratically, but signaled him to pull over based upon the information he received from dispatch. *Id*. This Court held that because the informant followed the defendant, the informant "was not . . . truly anonymous" and his information was reliable. *Id*. at 540 ("This indicia of reliability, when combined with the officer's corroboration of the identification details, and viewed in the totality of the circumstances, provided sufficient reasonable suspicion to justify the investigative stop.").

In this case, Garcia informed dispatch that he was observing a possibly intoxicated driver and gave a description of the vehicle, its registration, and its location. Officer Coppedge received this information and also learned that Garcia was still following the vehicle. Upon arriving at the location described by Garcia as the location of the intoxicated driver, Officer Coppedge located the vehicle described by Garcia, and this was appellant's vehicle. In contrast to *Griffey*, the activity by appellant that Garcia described was criminal activity, specifically, DWI. *See* 241 S.W.3d at 705. Having chosen to follow appellant's vehicle after reporting the conduct, Garcia was not a "truly anonymous informer." *See Hawes*,

125 S.W.3d at 540. In addition, Officer Coppedge corroborated Garcia's identification details when he located appellant's car in the Emilio's parking lot. Like the informant in *Hawes*, Garcia was reliable. *See id.*

Under the totality of the circumstances demonstrated by the record of this case, we hold that Garcia's reliability as an identifiable informant, combined with Officer Coppedge's corroboration of Garcia's identification details, provided sufficient reasonable suspicion to justify Coppedge's detaining appellant and thus rendered admissible the evidence that Coppedge would provide regarding appellant's conduct. *See id*.

We overrule appellant's first point of error.

Probable Cause

In her second point of error, appellant contends that the trial court erred by refusing to suppress Officer Coppedge's post-detention evidence on the ground that he lacked probable cause to arrest appellant. Appellant's second point of error fails because she did not raise this issue at the pretrial hearing on her motion to suppress.

A motion to suppress evidence is nothing more than a specialized objection to the admissibility of evidence. *Galitz v. State*, 617 S.W.2d 949, 952 n.10 (Tex. Crim. App. 1981). To preserve an issue for appeal, a party must timely object and state the specific legal basis of the objection. TEX. R. APP. P. 33.1(a)(1); *Rhoades*

v. State, 934 S.W.2d 113, 121, 127 (Tex. Crim. App. 1996). An objection that stated one legal theory however, cannot support a different legal theory on appeal. *Medina v. State*, 7 S.W.3d 633, 643 (Tex. Crim. App. 1999); *Camacho v. State*, 864 S.W.2d 524, 533 (Tex. Crim. App. 1993). Unless the issue raised on appeal comports with the objection made at trial, so that the trial judge had an opportunity to rule on that issue, nothing is preserved for appellate review. *Johnson v. State*, 803 S.W.2d 272, 292 (Tex. Crim. App. 1990), *overruled on other grounds by Heitman v. State*, 815 S.W.2d 681, 690 (Tex. Crim. App. 1991).

The only issue adjudicated at the pretrial hearing was whether Officer Coppedge had reasonable suspicion to detain appellant. Appellant's trial counsel stated that the sole question at the pretrial hearing was whether Officer Coppedge had reason to make contact with appellant. At no time during the pretrial hearing did appellant argue that Officer Coppedge lacked probable cause to arrest her. Having not raised the issue of probable cause at the pretrial hearing, appellant waived her right to argue the issue on appeal. *See* TEX. R. APP. P. 33.1(a)(1).

We overrule appellant's second point of error.

Conclusion

We affirm the judgment of the trial court.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Nuchia and Higley.

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