Opinion issued December 31, 2009

In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00859-CR

MARCUS ALLEN BOLDEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 1140022

MEMORANDUM OPINION

Enhanced as a habitual-felony-offender, Marcus Bolden pled guilty to cocaine possession with intent to deliver without an agreed punishment

recommendation.[1] The trial court sentenced him to thirty years. In his sole point of error, appellant complains that the trial court erred in denying his motion to suppress because the officer who stopped his vehicle was without reasonable suspicion to do so.[2] We affirm.

BACKGROUND

After the traffic stop, appellant was arrested and charged with possession with intent to deliver cocaine.[3] Appellant filed a pretrial motion to suppress the drugs and incriminating statements of appellant obtained as a result of the stop, challenging the legality of the search and seizure. At the suppression hearing, appellant attacked the underlying basis for the stop and argued, specifically and exclusively, that the officers did not have reasonable suspicion to detain him.

Testifying for the State, Sergeant Christopher Eads, Houston Police

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1 *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(a),(d) (Vernon 2003); TEX. PENAL CODE ANN. § 12.42(d) (Vernon Supp. 2008).

2 Although appellant pled guilty without an agreed recommendation, his plea did not forfeit his complaint on appeal because the judgment of guilt would not have been rendered independent of the claimed error. *See Young v. State*, 8 S.W.3d 656, 667 (Tex. Crim. App. 2000) (holding that because judgment of Young's guilt was not rendered independently of trial court's ruling on motion to suppress evidence of offense, and judgment would not be supported without that evidence, error not waived by plea of guilty); *Hargrove v. State*, 40 S.W.3d 556, 558–59 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (concluding that plea was not independent of ruling on motion to suppress because there would have been no case had trial court agreed to suppress evidence of drug possession).

3 *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(a),(d) (possession with intent to deliver more than four but less than two-hundred grams of controlled substance a first degree felony).

Department, stated that he and Officer Raymond Berger, along with several other plain-clothed officers in unmarked vehicles, had been conducting a burglary of motor vehicles sting operation in a shopping center parking lot on November 2, 2007. Eads testified that Officer J. J. Mounsey had been stationed nearby in a marked unit in the event that backup was needed.

Eads described how, while conducting surveillance in the parking lot, he observed a group of known crack addicts making calls on the gas station pay phone. A Chevrolet Impala then pulled into the lot and parked near an unmarked vehicle driven by Berger. According to both Eads and Berger, two men from the group approached and sat in the Impala, one in the front passenger seat, the other in the backseat. Eads and Berger both testified that they then observed a thirty-second drug transaction between the driver and the two men.

Both Eads and Berger testified that after the two men exited the vehicle, the Impala drove towards the nearest exit. Eads observed the driver fail to signal a lane change when exiting the lot and radioed Mounsey to advise that there was "probable cause" for a stop. Eads and Berger then followed the Impala out of the lot with Berger behind Eads. Although Berger did not see the violation, he heard Eads's radio transmission to Mounsey about probable cause. Eads and Berger were soon joined by Mounsey, who had pulled behind appellant at the intersection

to make the stop. Berger later identified appellant as the driver of the Impala.

Mounsey testified that as he was parked behind a nearby Target as a back-up unit, the sting officers radioed him that they had observed suspicious activity and "were getting ready to take somebody down." While moving into position, he received Eads's radio call that they had "probable cause" to stop appellant for changing lanes without signaling. Mounsey—who observed appellant leaving the parking lot, but witnessed no moving violation prior to detaining him—made the stop solely upon the word of Eads, who had told him that the "probable cause" to stop was based on a lane change without signaling. Mounsey, however, never issued a citation for this offense; he instead issued a citation for making an "improper left turn, exiting a drive way," an "offense" that Mounsey later determined was not an actual traffic violation. According to Mounsey, he cited appellant because he had believed, based upon Eads' radio communication, that was the reason for the stop. Mounsey also testified—in contradiction to his own testimony earlier during the hearing—"All I was told was that they had probable cause but *there was no explanation as to what it was for*."

The defense introduced photographs of appellant's car and called appellant's girlfriend, Alexia Wilburn, the defense's sole witness, to testify as to the dark tint of appellant's car windows. The defense argued that the darkness of the tinted

windows cast doubt upon Eads's testimony that he witnessed a drug deal inside appellant's car. The defense also argued that Eads could not observe the alleged traffic violations from his location. Furthermore, relying upon Mounsey's testimony, the defense argued that Eads did not convey sufficient "probable cause" information to allow Mounsey to make the stop.

The trial court denied appellant's motion to suppress without stating the basis for its order. Appellant did not ask the court to provide any written findings of fact. *See State v. Cullen*, 195 S.W.3d 696, 699 (Tex. Crim. App. 2006) (holding that "upon the request of the losing party on a motion to suppress evidence, the trial court shall state its essential findings").

REASONABLE SUSPICION

In his sole point of error, appellant asserts that the trial court erred in denying his motion to suppress because the arresting officer, Mounsey, "had no objective basis to believe that his action of stopping [appellant] was appropriate because it was unknown whether the individual issuing the radio communication to [Mounsey] possessed specific articulable facts that indicated [appellant] is, has been, or soon will be engaged in criminal activity."

A. Standard of Review

In reviewing a trial court's ruling on a motion to suppress evidence, we

apply a bifurcated standard of review, giving "almost total deference to a trial court's determination of historic facts" and reviewing de novo the court's application of the law of search and seizure to those facts. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000) (citing *Guzman v. State*, 955 S.W.2d 85, 88–89 (Tex. Crim. App. 1997)). If the issue involves the credibility of a witness such that the demeanor of the witness is important, then greater deference will be given to the trial court's ruling on that issue. *Guzman*, 955 S.W.2d at 87. The trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony in a motion to suppress hearing. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). Accordingly, the trial court may believe or disbelieve all or any part of a witness's testimony, even if that testimony is not controverted. *Id.*

Here, the trial court denied appellant's motion to suppress without stating the basis for its order. Absent findings of fact by the trial court, we view the evidence in the light most favorable to the trial court's ruling and assume that the court below made implicit findings of fact in support of its ruling as long as those are supported by the record. *Id.* We will uphold the trial court's ruling on a motion to suppress if supported by the record and correct under any theory of law applicable to the case. *Id.* at 856.

When an individual is stopped without a warrant, the State bears the burden to prove the reasonableness of the warrantless detention. *See Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). "An officer conducts a lawful temporary detention when he has reasonable suspicion to believe that an individual is violating the law." *Id.* The burden is on the State to elicit testimony showing sufficient facts to create a reasonable suspicion. *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001).

"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." *Ford*, 158 S.W.3d at 492. This objective standard 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*.

When there has been cooperation among officers, the cumulative knowledge of the cooperating officers at the time of the stop is to be considered in determining reasonable suspicion. *Hoag v. State*, 728 S.W.2d 375, 380 (Tex. Crim. App. 1987). Under the collective knowledge doctrine, it is not necessary for the detaining officer to know *all* of the facts amounting to reasonable suspicion, as

long as there is some degree of communication between the arresting officer and the *officer with knowledge of all the necessary facts*. *See United States v. Ibarra*, 493 F.3d 526, 530 (5th Cir. 2007); *see also Willhite v. State*, 937 S.W.2d 604, 607 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd) (citing *Pyles v. State*, 755 S.W.2d 98, 109 (Tex. Crim. App.), *cert. denied*, 488 U.S. 986, 102 L. Ed. 2d 573, 109 S. Ct. 543 (1988)). The requisite "reasonable suspicion may be transferred from one officer to another so that a valid detention may be effected." *Willhite*, 937 S.W.2d at 607.

B. Discussion

Appellant argues that Mounsey was without any objective basis to believe that his stop of appellant was appropriate because he did not know if Eads possessed specific articulable facts indicating that appellant was or would soon be engaged in criminal activity.

As the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony, the trial court could believe or disbelieve all or any part of a witness's testimony. *Ross*, 32 S.W.3d at 855. Because the court issued no findings of fact, we are bound to assume that it made implicit findings in support of its ruling. *Id.* We must further assume that the court believed Mounsey when he testified that Eads told him that there was "probable cause" to stop

appellant for a "failure to signal," even though the actual citation was issued for an entirely different—and non-existent—"violation."

By that same token, we must further assume that the court *disbelieved* Mounsey's later testimony that he was never told the factual basis for the stop ("All I was told was that they had probable cause but *there was no explanation as to what it was for*.").

Although Mounsey issued a citation for a non-existent violation, and gave self-contradictory testimony that also conflicted with the testimony of Eads, the trial court is the finder of fact. Because it is supported by the record, we must defer to the trial court's implied finding. *See Ross*, 32 S.W.3d at 855.

Appellant refers us to *Hayes v. State*, 132 S.W.3d 147, 154 (Tex. App.—Austin 2004, no pet.) as support for his argument. Appellant's reliance upon *Hayes* is misplaced, however, as *Hayes* is distinguishable from the present case. In *Hayes*, an officer detained a suspect walking down the street based purely upon an earlier account of another officer who suggested that this individual was associated with two girls who had recently been arrested. The court of appeals held that the detaining officer's reliance on an account of suspicious association, without more, did not constitute an objectively reasonable basis to detain appellant. *Hayes*, 132 S.W.3d at 154. In reaching its holding, the court distinguished *Hayes* from other

cases involving the collective knowledge doctrine by noting that the officer "did not stop appellant pursuant to any wanted flyer, bulletin, or even at the request of another officer." *Id.* Unlike in *Hayes*, the detaining officer in this case, Mounsey, stopped appellant at the request of Eads. Moreover, Mounsey did not detain appellant based upon a vague account of past suspicious association; Mounsey testified that appellant's detention was for a contemporaneous traffic violation.

Under the collective knowledge doctrine, reasonable suspicion may be transferred from one officer to another. *Willhite*, 937 S.W.2d at 607. It is not necessary for the detaining officer to know all of the facts amounting to reasonable suspicion, as long as there is some degree of communication between the arresting officer and the officer with knowledge of all the necessary facts. *Ibarra*, 493 F.3d at 530; *Willhite*, 937 S.W.2d at 607. Here, Eads, the officer with knowledge of the necessary facts, testified that he informed Mounsey that he had observed appellant change lanes without signaling. It was within the trial court's discretion to believe the officer's testimony.

We overrule appellant's sole point of error.

CONCLUSION

We affirm the judgment of the trial court.

Jim Sharp
Justice

Panel consists of Justices Jennings, Higley, and Sharp.

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