Opinion issued December 15, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-01039-CR

NO. 01-10-01040-CR

JERAMIE GARRETT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Case Nos. 10CR1020 & 10CR1021

MEMORANDUM OPINION

Appellant, Jeramie Garrett, was charged in two separate indictments with possession with intent to deliver Phencyclidine in an amount of four grams or more

but less than 200 grams[1] and possession of less than one gram of cocaine.[2] Following the trial court's denial of appellant's motion to suppress, appellant pleaded guilty to each offense in accordance with a plea agreement. The trial court assessed punishment at 8 years' confinement on each charge, with the sentences to run concurrently. The trial court then suspended the sentences and placed appellant on community supervision. In one issue, appellant argues in each appeal that the trial court erred by denying his motion to suppress.

We affirm the judgment in each appeal.

Background

On April 1, 2010, the Texas City Police Department was engaged in an operation to police high-crime areas where the city had received complaints about crimes, such as narcotics trafficking. During the operation, Officer J. Thorn was at an apartment complex called the Mainland Crossing Apartments. He was engaged in a narcotic investigation with a number of other officers when he saw appellant, driving a Cadillac, turn from a public street into the apartment complex. Officer Thorn testified that he saw appellant fail to signal his turn before turning into the apartment complex. Specifically, he first testified as follows:

Q. Did you make any observations about the Cadillac?

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[1] TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(8), .112(a), (d) (Vernon 2010).

[2] *Id.* §§ 481.102(3)(D), .115(a), (b) (Vernon 2010).

A. I did. As the Cadillac was turning into the complex from Highway 3, I could see that the vehicle did not use its blinker.

Later, Officer Thorn also testified as follows:

Q. Officer Thorn, were you able to see the car that we've been talking about fail to signal as it turned into the parking lot?

A. Yes, ma'am.

Q. With the light and the time of day, is there any doubt in your mind that the car failed to signal its turn?

A. No, ma'am.

Once appellant made the turn, Officer Thorn observed appellant notice the number of police officers and patrol cars in the apartment complex. Officer Thorn then observed appellant making unusual movements inside the car. It appeared to Officer Thorn that appellant, upon seeing the officers in the apartment complex, was trying to hide something in the car.

Officer Thorn was on foot and not in a position to pull appellant over, so he radioed for another officer at the complex to pull the car over, indicating that he had observed appellant trying to hide something. Corporal D. Grandstaff heard the request and pulled appellant over.

After appellant was unable to produce a driver's license, Corporal Grandstaff determined that appellant's license had been revoked. Corporal Grandstaff then arrested appellant. The drugs were subsequently discovered.

Appellant filed a motion to suppress, arguing that the officers lacked probable cause for the stop. The trial court denied appellant's motion to suppress. In its findings of facts and conclusions of law, the trial court found, in pertinent part:

> 11. During [the operation at the apartment complex], Defendant turned into the Apartments driving a Cadillac and failed to use his turn signal, in violation of the traffic laws of the State of Texas. This violation was witnessed by Officer Thorn.
>
> . . .
>
> 13. Defendant made furtive movements upon seeing the flashing police lights, as observed by Officer Thorn.
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> 14. . . . Officer Thorn in his training and experience believed the defendant might be grabbing a weapon or hiding contraband with his movements.

The trial court also made the following conclusions of law, in pertinent part:

> 8. . . . Officer Thorn had reasonable suspicion (and in fact probable cause) to stop Defendant in his vehicle based on Defendant's failure to signal his turn to the Apartments.
>
> 9. Officer Thorn also had reasonable suspicion to stop Defendant based on the Defendant's furtive movements inside the Cadillac upon seeing police lights and in light of the high crime area where these events took place.

Motion to Suppress

In one issue, appellant argues the trial court erred by denying his motion to suppress. Appellant argues Officer Thorn lacked probable cause for the stop.

A. Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007). In reviewing the trial court's decision, we do not engage in our own factual review. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Wiede v. State*, 214 S.W.3d 17, 24–25 (Tex. Crim. App. 2007). Therefore, we give almost total deference to the trial court's rulings on (1) questions of historical fact, even if the trial court's determination of those facts was not based on an evaluation of credibility and demeanor, and (2) application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor. *See Amador*, 221 S.W.3d at 673. But when application-of-law-to-fact questions do not turn on the credibility and demeanor of the witnesses, we review the trial court's rulings on those questions de novo. *Id.*

Stated another way, when reviewing the trial court's ruling on a motion to suppress, we must view the evidence in the light most favorable to the trial court's ruling. *Wiede*, 214 S.W.3d at 24. When, as here, the trial court enters findings of fact after denying a motion to suppress, we must determine whether the evidence—viewed in the light most favorable to the trial court's decision—supports the findings. *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). We then

review the trial court's legal ruling de novo unless its explicit fact findings that are supported by the record are also dispositive of the legal ruling. *Id.* We must uphold the trial court's ruling if it is supported by the record and correct under any theory of law applicable to the case, even if the trial court gave the wrong reason for its ruling. *State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007).

B. Analysis

Appellant argues that the motion to suppress should have been granted because there was no probable cause for the stop. "An officer may conduct a brief investigative detention, or '*Terry* stop,' when he has a reasonable suspicion to believe that an individual is involved in criminal activity." *Balentine v. State*, 71 S.W.3d 763, 768 (Tex. Crim. App. 2002) (quoting *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 1880 (1968)). The reasonableness of a temporary detention must be examined in terms of the totality of the circumstances and will be justified when the detaining officer has specific, articulable facts, which, taken together with rational inferences from those facts, lead him to conclude that the person detained actually is, has been, or soon will be engaged in criminal activity. *Id.*

One basis for the *Terry* stop asserted by the State is that appellant failed to signal his turn from the public roadway into the apartment complex. When a driver is required to signal a turn or stop, he can do so either by using his hand and arm or by using the signal lamps on his vehicle. TEX. TRANSP. CODE ANN.

§ 545.106(a) (Vernon 2011). It is undisputed by the parties that appellant made a turn that required signaling. *See Mahaffey v. State*, 316 S.W.3d 633, 639 (Tex. Crim. App. 2010) (defining turn that requires use of signal as "to turn the vehicle from a direct course of the roadway"). Instead, appellant argues that the evidence is insufficient to establish that he failed to signal his turn.

Appellant's argument relies on the portion of the testimony where Officer Thorn testified that he could see that appellant did not use his blinker. As appellant points out, using the signal lamp on his vehicle is only one of two ways to signal a turn. *See* TEX. TRANSP. CODE ANN. § 545.106(a). Because this testimony did not exclude the other way to signal a turn, appellant argues, this testimony was insufficient as a basis for a *Terry* stop. Appellant's argument, however, overlooks Officer Thorne's subsequent testimony that appellant had failed to *signal* his turn. This testimony was not limited to appellant's failure to use his blinker.

Appellant also argues that simply testifying that a person failed to signal is too conclusory, relying on *Castro v. State*, 202 S.W.3d 348 (Tex. App.—Fort Worth 2006), *rev'd*, 227 S.W.3d 737 (Tex. Crim. App. 2007). The court in *Castro* held that a statement by a non-testifying officer that the defendant had failed to use his signal was insufficient to establish specific, articulable facts that the defendant had engaged in a traffic violation. *Id.* at 359.

As the State points out, however, appellant fails to acknowledge that this holding was overruled by the Court of Criminal Appeals. *Castro v. State*, 227 S.W.3d at 742–43. Specifically, the court held, "[I]n cases involving offenses such as failure to signal a lane change, a court can determine whether an officer's determination that a driver committed a traffic violation was objectively reasonable without being presented with a detailed account of the officer's observations." *Id.* at 742.

In its findings of fact and conclusions of law, the trial court found that appellant "failed to use his turn signal." It does not address whether appellant failed to signal his turn with his hands. In its conclusions of law, however, it concludes that Officer Thorn had reasonable suspicion to stop appellant based on his "failure to signal his turn into the Apartments." "Despite the lack of an explicit factual finding, we still must view the totality of the facts in the light most favorable to the trial court's ultimate ruling." *Valtierra v. State*, 310 S.W.3d 442, 449–50 (Tex. Crim. App. 2010). Accordingly, because the trial court concluded that appellant failed to signal his turn and because the record supports this conclusion, there is an implied finding that appellant failed to signal with his hand and arm in addition to failing to use the signal lamp on his car.

We hold there is sufficient evidence in the record to support the trial court's determination that appellant failed to signal his turn and that this was a sufficient

basis to support the *Terry* stop. Because this was a sufficient basis, we do not need to consider appellant's other argument that Officer Thorn's testimony about his observations of appellant's behavior after seeing the police was insufficient to support a basis for the *Terry* stop. *See* TEX. R. APP. P. 47.1 (requiring appellate courts to address every issue raised and necessary to final disposition of the appeal).

We overrule appellant's sole issue in each appeal.

Conclusion

We affirm the judgments of the trial court.

Laura Carter Higley
Justice

Panel consists of Justices Keyes, Higley, and Massengale.

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