Opinion issued May 10, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00512-CR

TAYLOR MARTIN KORB, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from County Criminal Court at Law No. 3
Harris County, Texas
Trial Court Case No. 1980492

MEMORANDUM OPINION

A jury convicted appellant, Taylor Martin Korb, of driving while intoxicated, and the court assessed his punishment at 180 days in jail, probated for twelve

months, and a $500 fine.[1] In his only point of error, appellant contends the trial court erred in denying his motion to suppress, because there were no articulable facts to establish reasonable suspicion for the stop to take place. We affirm the trial court's judgment.

Background

On August 28, 2014, at 12:04 AM, Officer A. Galvan of the Pasadena Police Department received a dispatched call from a resident reporting that he had seen a light-colored small truck circling an area between Orchard Mountain Drive and Roaring Rapids streets that the resident thought was suspicious. The caller provided his contact information, name, and location, and said the truck had circled three times in the last ten minutes.

Galvan arrived in the area at 12:05 AM, less than a minute after the call, and the only vehicle he saw on the street was a tan-colored Chevrolet pickup making a turn at the intersection of Orchard Mountain and Roaring Rapids. Galvan initiated an investigative stop of the vehicle, which was the only vehicle on the street at the time and within 100 yards of the caller's location. During the stop, the officer observed that appellant had red, watery eyes and smelled of alcohol. Appellant

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[1] *See* TEX. PENAL CODE ANN. § 49.04 (West Supp. 2015).

admitted to Galvan he had recently consumed alcohol. Appellant was later charged with driving while intoxicated.

At trial, appellant filed a motion to suppress any information arising from the traffic stop, alleging that the evidence did not justify the stop. At the hearing on the motion to suppress, Officer Galvan testified that he was a nineteen-year veteran of the Pasadena Police Department and was familiar with the area, having been assigned to it since January of that year. He testified he initiated the stop because, given his knowledge of the crime in the area, he suspected appellant's conduct indicated he was possibly "casing" homes to burglarize later. No other witnesses, including the caller, were presented at the hearing. At its conclusion, the trial court denied the motion to suppress, and appellant was later convicted of DWI after a jury trial.

Standard of Review and Applicable Law

When reviewing a trial court's ruling on a motion to suppress, we apply an abuse of discretion standard, overturning that ruling only if it is outside the zone of reasonable disagreement. *Martinez v. State*, 348 S.W.3d 919, 922 (Tex. Crim. App. 2011). A bifurcated standard of review is used, wherein we give almost total deference to a trial court's determination of historical facts, and review *de novo* only pure questions of law and factual questions that do not depend on credibility and demeanor. *Ford v. State*, 158 S.W.3d 488, 493 (Tex. Crim. App. 2005). The

reviewing court views the evidence in the light most favorable to the trial court's ruling. *Gutierrez v. State*, 221 S.W.3d 680, 687 (Tex. Crim. App. 2007). When no findings of facts are made by the trial court, the appellate court infers factual findings necessary to support the ruling as long as the inferred findings are supported by the record. *Hereford v. State*, 339 S.W.3d 111, 119 (Tex. Crim. App. 2011).

Law enforcement personnel may briefly detain and investigate a person when they have a reasonable suspicion the person is involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880 (1968); *State v. Sheppard*, 271 S.W.3d 281, 287 (Tex. Crim. App. 2008). The reasonableness of a temporary detention is determined by the totality of the circumstances. *Woods v. State*, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997). An officer must have reasonable suspicion based on specific, articulable facts which, when combined with rational inferences from those facts, lead to the conclusion that the particular person actually is, has been, or soon will be engaged in criminal activity. *Crain v. State*, 315 S.W.3d 43, 52 (Tex. Crim. App. 2010). Reasonable suspicion may come from information given to officers by citizens, provided those facts are adequately verified by the officer. *Brother v. State*, 166 S.W.3d 255, 259 (Tex. Crim. App. 2005). "An inverse relationship exists between the reliability of the informant and the amount of corroborated information required to justify the police intrusion; the less reliable the tip, the more information is needed." *Martinez*, 348 S.W.3d at 923 (citing *Alabama v. White*, 496 U.S. 325,

330, 110 S. Ct. 2412, 2416 (1990)). When informants identify themselves, they make themselves potentially accountable for the intervention, and the degree of reliability and weight to be given to the information provided significantly increases. *Martinez*, 348 S.W.3d at 923.

Analysis

Appellant contends that Officer Galvan failed to identify specific articulable facts which would sufficiently establish reasonable suspicion to justify a stop of appellant in the first place. Appellant argues that there was no testimony indicating traffic violations or erratic driving, or other indicators that appellant was intoxicated at the time. The 911 caller did not provide a description of the driver, and the caller's description of the vehicle was vague, i.e., a light-colored small truck. Appellant asserts that the only reason he was stopped was because his truck was the only vehicle on the street when the officer responded.

Here, the caller provided his name, address, and telephone number, which made him potentially accountable for any possible intervention, and which gave additional reliability to the information. *See Pipkin v. State*, 114 S.W.3d 649, 655 (Tex. App.—Fort Worth 2003, no pet.). Officer Galvan arrived at the intersection described within a minute of the call, and saw appellant driving a tan-colored vehicle, within 100 yards of where the informant said he was located, that was close to the description given by the 911 caller. Galvan was familiar with the area and

knew that there had been occurrences of burglary and criminal mischief in the neighborhood. He testified that he made an investigatory stop of appellant because he was suspicious of his activity. Officer Galvan's testimony presented sufficient articulable facts that, combined with the totality of the circumstances, within his knowledge, gave rise to a reasonable suspicion that appellant could be engaging or about to engage in criminal activity. Galvan had the right at that point to make an investigative detention of appellant and confirm or dispel his suspicions about the situation.

The trial court did not make any findings of fact in denying the motion, so we infer those findings were made as long as they are supported by the record. *Hereford*, 339 S.W.3d at 119. The record demonstrates that the officer had knowledge of facts which, given the totality of the circumstances, raised a reasonable suspicion that appellant was engaging or about to engage in criminal acts, such that the officer was justified in making the investigatory stop. The trial court did not err in denying the motion to suppress.

After coming into contact with appellant, Officer Galvan observed that appellant showed some indicia of intoxication, including slurred speech, red watery eyes, and the odor of alcohol coming from his body. Appellant also told Galvan he had consumed alcohol recently. Officer Galvan suspected appellant of driving while intoxicated and arrested him for that crime.

Viewing the evidence in the light most favorable to the trial court's ruling, we conclude the trial court did not abuse its discretion in denying appellant's motion to suppress. *Martinez*, 348 S.W.3d at 922. We overrule appellant's sole point of error.

Conclusion

We affirm the trial court's judgment.

Russell Lloyd
Justice

Panel consists of Justices Bland, Brown, and Lloyd.

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