

Affirmed and Memorandum Opinion filed February 23, 2010



In The

Fourteenth Court of Appeals

NO. 14-08-00335-CR

DERRICK NERNELL HOBBS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 359th District Court
Montgomery County, Texas
Trial Court Cause No. 07-02-01266 CR**

MEMORANDUM OPINION

Derrick Nernell Hobbs was convicted of possession of a controlled substance and sentenced to two years' confinement in the Institutional Division of the Texas Department of Criminal Justice. Hobbs first contends that a police officer illegally detained him and then unlawfully seized evidence from his vehicle. Second, Hobbs argues that any evidence seized during the detention is fruit of the poisonous tree and not admissible. We affirm.

On December 29, 2006, the Conroe Police Department received an anonymous tip that a specific vehicle, which was parked on South 13th Street, contained cocaine. Officer Michael Stowe responded to the call and verified the information. In addition to the anonymous tipster's information, Officer Stowe stated he noticed a grey Tahoe parked in front of the same house as the reported vehicle that allegedly contained drugs. Officer Stowe testified that the Tahoe was in violation of a traffic ordinance because it was parked on the street facing the wrong way. Officer Stowe also saw a man standing in the doorway of the residence, and he testified, "It looked to me like he was kind of being a lookout." Based on his observations, he stated he thought there was drug activity occurring in the house.

Officer Stowe set up surveillance. Eventually a man exited the house, drove away in the Tahoe, and committed another traffic violation. Officer Stowe stated that after the Tahoe ran a stop sign, he pulled the vehicle over to make an investigative traffic stop. When he approached the vehicle, he testified that the driver was mumbling and had a white, rock-like substance on his mouth and shirt. Officer Stowe identified the man as Derrick Nernell Hobbs. He testified that based on his training and experience as a narcotics officer, he believed the white substance was crack cocaine. Officer Stowe stated that he detained Hobbs so he could test the substance. He explained the test positively revealed the substance was cocaine. Officer Stowe placed Hobbs in the back of his vehicle and searched the Tahoe for more contraband. He stated that he found "bits and pieces of crack cocaine" on the carpet and seats of the vehicle. Officer Stowe then arrested Hobbs for possession of a controlled substance.

Before Hobbs's trial, the court held a hearing on Hobbs's motion to suppress the evidence found in his vehicle. The court denied the motion and allowed the evidence to be introduced at trial. After hearing all the evidence, the jury found Hobbs guilty of

possession of a controlled substance and sentenced him to two years' confinement. This appeal followed.

II

Hobbs complains that based on the anonymous tip, which was insufficient to justify detention, Officer Stowe had already decided to detain him prior to any traffic violation. He also asserts that the illegally seized evidence was inadmissible based on the fruit-of-the-poisonous-tree doctrine. The State contends that Officer Stowe had probable cause to detain Hobbs because Officer Stowe observed Hobbs commit traffic violations. Furthermore, the State argues that Officer Stowe then noticed Hobbs was mumbling and had a white, rock-like substance on his lips and shirt, which justified seizure of the evidence of contraband.

We generally review a trial court's decision to grant or deny a motion to suppress using an abuse-of-discretion standard. *Swain v. State*, 181 S.W.3d 359, 365 (Tex. Crim. App. 2005). During the suppression hearing, the trial court is the exclusive trier of fact and judge of the witnesses' credibility. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000); *Mason v. State*, 116 S.W.3d 248, 256 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd). An appellate court affords almost total deference to the trial court's determination of historical facts supported by the record, especially when the trial court's findings are based on an evaluation of credibility and demeanor. *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). We afford the same amount of deference to a trial court's ruling on mixed questions of law and fact if the resolution turns on evaluating credibility and demeanor. *Johnson*, 68 S.W.3d at 652; *Guzman*, 955 S.W.2d at 89. We review de novo, however, those mixed questions of law and fact not turning on credibility or demeanor. *Johnson*, 68 S.W.3d at 653 (citing *Guzman*, 955 S.W.2d at 89). If the trial court's ruling is reasonably supported by the record and is correct on any theory of law applicable to the case, the reviewing court must sustain it on review. *Villarreal v. State*,

935 S.W.2d 134, 138 (Tex. Crim. App. 1996); *Flores v. State*, 172 S.W.3d 742, 748 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

When we review a trial court’s ruling on a motion to suppress, we typically only consider the evidence introduced at the suppression hearing because the court made its determination based on that particular evidence. *Gutierrez v. State*, 221 S.W.3d 680, 687 (Tex. Crim. App. 2007). But we consider all the evidence, from both the suppression hearing and trial, if the parties later relitigate the suppression issue at the trial on the merits. *Id.* In this case, Hobbs requested a hearing on his motion to suppress the drugs found in his vehicle. After considering all the evidence at the hearing, the trial court denied his motion. At trial, the parties relitigated the seizure issue by questioning Officer Stowe, as they had during the hearing. Because the parties relitigated the issue, we will consider the evidence from both the hearing and trial.

Hobbs argues that a police officer needs more than an anonymous tip to perform an investigative stop. He is correct in asserting that an anonymous tip may justify the initiation of an investigation, but it alone rarely establishes the level of suspicion required to justify a person’s detention. *Garcia v. State*, 3 S.W.3d 227, 234 (Tex. App.—Houston [14th Dist.] 1999), *aff’d*, 43 S.W.3d 527 (Tex. Crim. App. 2001); *see Alabama v. White*, 496 U.S. 325, 329–30 (1990). A court must be able to evaluate an anonymous source’s reliability; therefore, the tip must be sufficiently corroborated to meet the level needed to support an investigative detention. *Garcia*, 3 S.W.3d at 235; *see Davis v. State*, 794 S.W.2d 123, 125 (Tex. App.—Austin 1990, pet. ref’d).

Hobbs, however, fails to recognize courts have consistently held that a traffic violation can constitute a reasonable basis for detention. *Whren v. United States*, 517 U.S. 806, 810 (1996); *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001).¹

¹ In his brief, Hobbs argues that “Officer Stowe clearly intended to pull Appellant over based on a hunch that Appellant possessed contraband” The record does indicate that Officer Stowe was in the area because of an anonymous tip about a different vehicle that contained drugs. Additionally, Officer Stowe testified that he was more concerned about potential drug violations when he pulled Hobbs over

Once a police officer makes a valid traffic stop and detains the suspect, the officer may further detain the suspect if he develops reasonable suspicion that another offense is being committed. *Goudeau v. State*, 209 S.W.3d 713, 719 (Tex. App.—Houston [14th Dist.] 2006, no pet.); see *Davis v. State*, 947 S.W.2d 240, 244 (Tex. Crim. App. 1997). “‘Reasonable suspicion’ exists if the officer has specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person had engaged or (soon will be) engaging in criminal activity.” *Garcia*, 43 S.W.3d at 530 (citing *Woods v. State*, 956 S.W.2d 33, 38 (Tex. Crim. App. 1997)).

The State contends that once Officer Stowe approached Hobbs’s vehicle, he could see narcotics in plain view. The Court of Criminal Appeals has stated that the plain-view doctrine requires that: (1) law-enforcement officials have a right to be where they are; and (2) it be immediately apparent that the item seized constitutes evidence. *Walter v. State*, 28 S.W.3d 538, 541 (Tex. Crim. App. 2000) (citing *Ramos v. State*, 934 S.W.2d 358, 365 (Tex. Crim. App. 1996)). The United States Supreme Court has decided that the “immediately apparent” prong of the plain-view doctrine does not mandate that an officer have actual knowledge of the incriminating evidence; for instance, the officer need not “know” a white-powder substance is actually cocaine. *Texas v. Brown*, 460 U.S. 730, 741–42 (1983); *Lopez v. State*, 223 S.W.3d 408, 417 (Tex. App.—Amarillo 2006, no pet.). Additionally, the Court of Criminal Appeals has noted “that certain objects not inherently suspicious can become so under certain circumstances.” *Lopez*, 223 S.W.3d at 417 (discussing Court of Criminal Appeals’s cases demonstrating that seemingly harmless items or behaviors indicate evidence of drug activity when coupled with certain circumstances). These items or behaviors, under suspicious circumstances, provide probable cause to invoke the plain-view doctrine. *Id.*

than he was about writing him a ticket. The United States Supreme Court, however, has clearly stated that a traffic violation alone constitutes an objectively reasonable basis for the stop, and any of the police officer’s ulterior motives are irrelevant. *Whren*, 517 U.S. at 811–13.

Officer Stowe testified that when he first encountered Hobbs's vehicle, "[i]t was parked on the west side of the roadway facing with traffic," which he stated was a Transportation Code violation.² He then observed Hobbs get into his Tahoe and run a stop sign.³ Officer Stowe testified that Hobbs rolled through the stop sign instead of coming to a complete stop before entering the intersection. Based on these traffic violations, he had a lawful, reasonable basis to detain Hobbs.

Once he approached the vehicle, Officer Stowe noticed Hobbs was mumbling and had a white, rock-like substance on his lips and shirt. Furthermore, he testified that Hobbs appeared to be concealing something in his mouth. Officer Stowe stated, "For most of my time I've worked in narcotics and when people have narcotics, the best place to hide it is in their mouth because you can immediately swallow it to get rid of it." He testified that based on the circumstances and his training and experience, "I was pretty sure it was crack cocaine he had around his mouth." When Officer Stowe asked Hobbs to open his mouth, he testified that Hobbs turned away from him and swallowed. Hobbs then opened his mouth, and Officer Stowe stated, "[A]t that time, I did see a small amount of what appeared to be cocaine." Officer Stowe pulled Hobbs out of the vehicle⁴ and analyzed the white substance, which tested positive for cocaine. He also testified that he found more cocaine in Hobbs's vehicle.

² Tex. Transp. Code Ann. § 545.303(a) (Vernon 1999 & Supp. 2009) ("An operator who stops or parks on a two-way roadway shall do so with the right-hand wheel of the vehicle parallel to and within 18 inches of the right-hand curb or edge of the roadway.").

³ Tex. Transp. Code Ann. § 544.010 (Vernon 1999) ("Unless directed to proceed by a police officer or traffic-control signal, the operator of a vehicle or streetcar approaching an intersection with a stop sign . . . shall stop before entering the crosswalk on the near side of the intersection.").

⁴ Although the State does not argue exigent circumstances existed for Officer Stowe to pull Hobbs out of the vehicle, the testimony reveals that such circumstances existed. An exigent circumstance is present when someone is destroying evidence or contraband. *McNairy v. State*, 835 S.W.2d 101, 107 (Tex. Crim. App. 1991); *Holmes v. State*, 962 S.W.2d 663, 671 (Tex. App.—Waco 1998, pet. ref'd). It is well-settled law that if an exigent circumstance is present, an officer may take immediate action without first obtaining a warrant. *See Hernandez v. State*, 548 S.W.2d 904, 905 (Tex. Crim. App. 1977). At trial, Officer Stowe testified that he believed Hobbs was destroying evidence by swallowing the drugs. He also stated that he wanted to preserve the evidence on Hobbs's shirt and lips so that he could test the substance. This legal theory also supports the trial court's ruling on the motion to suppress.

We conclude that the evidence in the record demonstrates that Officer Stowe's initial detention of Hobbs was lawful because Hobbs committed traffic violations in the officer's presence. Once Officer Stowe observed drugs on Hobbs's mouth and clothing, probable cause arose; Officer Stowe then lawfully seized evidence from the Tahoe. Accordingly, we overrule Hobbs's first issue. In Hobbs's second contention, he relies on the fruit-of-the-poisonous-tree doctrine to claim that because the seizure was illegal, the evidence from the seizure was inadmissible. Because we affirm the trial court's denial of Hobbs's motion to suppress, the second issue is now moot.

* * *

For the foregoing reasons, we affirm the trial court's judgment.

/s/ Jeffrey V. Brown
Justice

Panel consists of Justices Yates, Frost, and Brown.

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