Affirmed and Memorandum Opinion filed February 2, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-00938-CR

MARCUS CLAY ANDERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 1172492

MEMORANDUM OPINION

Appellant Marcus Clay Anderson was sentenced to forty years' confinement after being convicted of felony possession of a controlled substance. Appellant complains that the trial court erred in denying his motion to suppress both a statement made to the police and the drugs recovered on the grounds that he was not first given warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). We affirm.

BACKGROUND

In July 2008, a team of eight Harris County Sheriff's Office deputies was serving felony warrants at various locations. As the team arrived at one of the locations to serve

a warrant on a woman, the deputies observed appellant leaving a car and walking toward the residence. While the other deputies secured the perimeter and eventually entered the house, Deputy Brian Reilly approached appellant and asked if they could talk for a minute. Deputy Reilly asked appellant if he lived at the house, and appellant said he did. However, since appellant did not have any identification with him to prove he lived there, Deputy Reilly went to his patrol car to confirm appellant's information on his computer, and appellant came with Deputy Reilly and stood outside the car door. When Deputy Reilly entered appellant's name and date of birth, he found two open warrants for appellant—one for marijuana possession and one for a traffic violation. Deputy Reilly did not place appellant under arrest at this point because he needed to confirm that the warrants were still valid. After he had called in to request confirmation, Deputy Reilly told appellant that he smelled like marijuana and asked if appellant had recently smoked marijuana or had any on his person. Appellant told Deputy Reilly that he had a nickel bag of marijuana on the front seat of his car and, when Deputy Reilly asked for permission to retrieve it, appellant gave his consent. Deputy Reilly found cocaine in the car along with the marijuana.

According to Deputy Reilly, appellant was helpful and cooperative throughout the encounter. Once Deputy Reilly discovered the open warrants, appellant was not free to leave pending confirmation of the validity of the warrants. However, appellant was never handcuffed, and he was placed in the back of Deputy Reilly's patrol car only while Deputy Reilly had to leave him unattended to search appellant's car. Appellant, on the other hand, testified that he was handcuffed and thrown in the back of a patrol car immediately when the deputies arrived and never consented to the search of his car.

Appellant filed a motion to suppress his statement about possessing drugs as well as the drugs themselves, arguing that the officers violated his rights by not first providing *Miranda* warnings. The trial court found that appellant was in investigative detention, rather than custody, at the time of the statement and thus *Miranda* warnings were not

required. The trial court also found that appellant freely and voluntarily consented to the search of his car. Accordingly, the trial court denied appellant's motion to suppress. The jury found appellant guilty as charged, and this appeal followed.

ANALYSIS

We review a trial court's decision on a motion to suppress evidence for an abuse of discretion. *Balentine v. State*, 71 S.W.3d 763, 768 (Tex. Crim. App. 2002); *Mount v. State*, 217 S.W.3d 716, 724 (Tex. App.—Houston [14th Dist.] 2007, no pet.). At a suppression hearing, the trial court is the sole fact finder and arbiter of witness credibility. *See Mount*, 217 S.W.3d at 724. We give almost total deference to the trial court's determination of historical facts and review de novo a trial court's application of the law to those facts if resolution of those ultimate questions does not turn on the evaluation of credibility and demeanor. *See Balentine*, 71 S.W.3d at 768; *Mount*, 217 S.W.3d at 724.

Interactions between police and civilians are divided into three categories: (1) encounters, (2) investigative detentions, and (3) arrests. *State v. Larue*, 28 S.W.3d 549, 553 n.8 (Tex. Crim. App. 2000); *Mount*, 217 S.W.3d at 724. An encounter is a consensual contact, such as when an officer approaches a civilian to ask questions or request consent to search. *See Dean v. State*, 938 S.W.2d 764, 768 (Tex. App.—Houston [14th Dist.] 1997, no pet.). As long as the civilian is free to disregard the questions and go about his business, no seizure has occurred. *See id.* A seizure occurs only if a reasonable person would believe he was not free to leave and has yielded to the officer's show of authority. *Id.* Both arrests and investigative detentions are seizures. *See Mount*, 217 S.W.3d at 824; *Dean*, 938 S.W.2d at 768. An investigative detention is a temporary investigation directed at determining a person's identity or maintaining the status quo while officers obtain more information. *See Balentine*, 71 S.W.3d at 771; *Dean*, 938 S.W.2d at 768. An arrest is the most restrictive and is accompanied by circumstances that would indicate to a reasonable person that he has been actually restricted or restrained. *See Dean*, 938 S.W.2d at 768. Whether a person is under arrest or subject to

a temporary investigative detention is a matter of degree and depends on factors such as the length of the detention, the amount of force employed, whether the officer actually conducts an investigation, and the overall reasonableness of the circumstances. *See Balentine*, 71 S.W.3d at 771; *Mount*, 217 S.W.3d at 724. *Miranda* warnings are required before questioning a suspect only for arrests, not investigative detentions or mere encounters. *See Dowthitt v. State*, 931 S.W.2d 244, 263 (Tex. Crim. App. 1996).

In his first issue, appellant argues that the trial court erred in denying his motion to suppress the statement that he possessed marijuana because when Deputy Reilly asked him if he had any drugs, he was sufficiently restrained to constitute being under arrest. Thus, according to appellant, his statement should be suppressed because Deputy Reilly did not first administer *Miranda* warnings. We disagree. The trial court found that at the time appellant made the statement, he was being detained so that the deputies could maintain the status quo while determining whether the outstanding warrants were valid. Though appellant was not free to leave at this time, that does not mean appellant was under arrest. Deputy Reilly testified that the entire encounter before appellant stated he had drugs in his car lasted only about ten minutes. Though appellant claims he was handcuffed and placed in a patrol car as soon as the deputies arrived, the trial court disbelieved him, as is its province. *See Mount*, 217 S.W.3d at 724. Further, Deputy Reilly actually conducted an investigation during the detention by seeking confirmation as to whether the outstanding warrants were still valid. Ensuring that appellant did not flee while confirming the validity of the warrants was not unreasonable and is a legitimate reason for an investigative detention. *See Smith v. State*, 840 S.W.2d 689, 692 (Tex. App.—Fort Worth 1992, pet. ref'd) (holding that checking for outstanding warrants and confirming warrant were appropriate in investigative stop); *Davis v. State*, 740 S.W.2d 541, 543 (Tex. App.—Houston [1st Dist.] 1987, pet. ref'd) (detaining to check identification and determine the existence of outstanding warrants constitutes a temporary detention, not an arrest); *see also Balentine*, 71 S.W.3d at 771 (stating that officers may, in investigative detention, restrain as necessary to effectuate purpose of the stop,

including to maintain the status quo and investigate); *Mount*, 217 S.W.3d at 724 (same). We conclude the trial court did not abuse its discretion in determining that appellant made the statement at issue while in investigative detention rather than under arrest, thereby eliminating any requirement for *Miranda* warnings. We therefore overrule appellant's first issue.

In his second issue, appellant argues that the trial court erred in refusing to suppress the drugs seized from his vehicle as a result of his statement because they are "fruit of the poisonous tree." Our conclusion that appellant's rights were not violated in questioning him and obtaining his statement without *Miranda* warnings is dispositive of this issue as well. Further, while a *Miranda* violation might result in suppression of a statement, it does not require suppression of any "fruits" unless the statement was obtained through actual coercion. *See In re H.V.*, 252 S.W.3d 319, 327–29 (Tex. Crim. App. 2008). Appellant does not allege actual coercion, and the trial court found the statement was freely and voluntarily given. For these reasons, we overrule appellant's second issue.

Having overruled appellant's two issues, we affirm the trial court's judgment.

/s/ J. Harvey Hudson
Senior Justice

Panel consists of Justices Frost, Brown, and Hudson.*
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* Senior Justice J. Harvey Hudson sitting by assignment.