Affirmed and Memorandum Opinion filed February 1, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00215-CR

PATRICK LYNN HOBBS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 122nd District Court
Galveston County, Texas
Trial Court Cause No. 09CR0986

MEMORANDUM OPINION

Appellant Patrick Lynn Hobbs entered a plea of guilty to possession of cocaine with intent to distribute after the trial court denied his motion to suppress evidence. In a single point of error, appellant argues that the trial court erred when it denied his motion to suppress because his consent to a vehicle search was obtained as a result of an illegal detention and he did not voluntarily consent. We affirm.

BACKGROUND

On the day of appellant's arrest, Houston Police Department Lieutenant Dennis Gafford was conducting surveillance of a residence in northeast Houston. Prior

surveillance of this residence had resulted in at least two narcotics arrests. Gafford observed conduct that he described as consistent with narcotics trafficking. Namely, an unidentified man opened a gate separating the residence's driveway from the street, appellant's vehicle entered the property, and the man closed the gate; six minutes later, the man returned to the gate, opened it, and looked up and down the street before appellant's vehicle exited the property.

Gafford noticed that appellant's vehicle was missing a front license plate in violation of Texas law,[1] and he followed appellant in an unmarked police vehicle. He radioed for a marked unit to initiate a traffic stop based on the missing license plate and the suspicion of narcotics activity, but no marked unit was available. Eventually appellant pulled into an apartment complex in League City. Three League City Police Department officers responded to Gafford's request and arrived at the scene in separate marked patrol vehicles.

Sergeant Paul Odin arrived first, and he observed appellant sitting in his parked vehicle speaking with a juvenile female who was standing on the driver's side of the vehicle. Odin knew that the juvenile had been involved in a previous narcotics arrest. Odin parked his vehicle several car lengths from, and to the left of, appellant's vehicle. Officer Walter Hammond parked his vehicle to the left of Odin's car. The record does not reflect where Officer Kelly Williamson parked her vehicle, but Gafford testified that no vehicles were parked behind appellant's vehicle.

Odin approached the juvenile and appellant on foot and initially engaged the juvenile in conversation while Hammond stood further away. Odin introduced himself to the juvenile as an officer involved in the previous narcotics arrest. The juvenile immediately said she didn't have any narcotics, and she offered to allow Odin to pat her down. Odin declined. He then began speaking with appellant, and both Odin and appellant described the conversation as "cordial." Odin asked if appellant had narcotics

[1] *See* TEX. TRANSP. CODE ANN. § 502.404(a) (West Supp. 2009).

in the vehicle and "if he would mind if [Odin] searched his vehicle." Appellant said Odin could "go ahead." By this time, three to four minutes had elapsed since Odin approached the pair, and Williamson had arrived. Both Hammond and Williamson testified that they heard Odin's question and appellant's response to "go ahead" with the search. Appellant then exited the vehicle, and Odin began a cursory search of the vehicle while Williamson spoke with appellant. Williamson testified that they spoke about the weather and appellant's daughter.

Less than five minutes after Odin obtained consent to search, Gafford arrived at the scene. Gafford approached appellant and engaged in some "nonchalant" and "light conversation" before he confirmed with appellant that appellant had consented to the vehicle search. Gafford took over the vehicle search and discovered a screwdriver in the console of the vehicle. His experience with investigations that involved narcotics concealed in false dashboards of vehicles, along with the screwdriver and the appearance of the dashboard on the vehicle, led him to suspect drugs might be hidden in the dash. While Gafford was removing the dashboard, appellant expressed concern about potential damage to his vehicle, but Gafford assured appellant that he would fix anything broken.

Gafford discovered a package in the dash and instructed the League City officers to "hook up" appellant. At this point, appellant ran away, and he testified during the suppression hearing that he "wanted to go for a jog" and that he just "felt like running." The package was later determined to contain cocaine. Every officer testified that appellant never withdrew consent or voiced any objection to the search. Appellant testified that he did not feel threatened by the encounter.

Appellant filed a motion to suppress, and the trial court denied the motion after a hearing. Appellant then pleaded guilty, and this appeal followed.

ANALYSIS

Appellant argues that the trial court erred in denying his motion to suppress because (1) appellant was being illegally detained when he told the officers they could

search the vehicle, and the State failed to prove by clear and convincing evidence that appellant's consent was attenuated from, and thus not tainted by, police misconduct, and (2) the State failed to prove by clear and convincing evidence that appellant voluntarily consented to the search.[2] The State responds that appellant waived the complaints he urges on appeal because he failed to identify these points with specificity in the trial court. Alternatively, the State argues that the trial court did not err in denying the motion. We hold that appellant preserved the alleged error for our review, but we reject appellant's arguments on the merits—appellant was not detained at the time he gave consent, and his consent was voluntary.

A. Preservation of Error

To preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection, or motion stating the specific grounds for the ruling desired. TEX. R. APP. P. 33.1(a). A defendant's appellate contention must comport with the specific objection made in the trial court. *Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1995). A reviewing court will not consider most errors, even of constitutional magnitude, not called to the trial court's attention. *See id.*

A motion to suppress is nothing more than a specialized objection to the admissibility of evidence. *Galitz v. State*, 617 S.W.2d 949, 951 n.10 (Tex. Crim. App. 1981). But appellant's motion to suppress is completely generic. It makes no reference to consent, whether voluntary or involuntary, or to detention without reasonable suspicion. Upon the motion alone, appellant's complaints on appeal are not preserved.

[2] Although appellant appears to collapse these issues in a single point of error, he raises both arguments in this court, and we address each separately as we are required to do. *See, e.g.*, *Arcila v. State*, 834 S.W.2d 357, 358–59 (Tex. Crim. App. 1992) (noting the "considerable overlap" between these issues, but suggesting that a court of appeals decision would be "incomplete" if it does not address each issue separately because the Court of Criminal Appeals "has for some time taken the position that an attenuation analysis is logically distinct from one involving only questions of voluntariness"), *overruled on other grounds by Guzman v. State*, 955 S.W.2d 85, 90 (Tex. Crim. App. 1997); *see also McKenna v. State*, No. 14-06-00270-CR, 2007 WL 2417419, at *2–3 (Tex. App.—Houston [14th Dist.] Aug. 28, 2007, pet. ref'd) (mem. op., not designated for publication) (addressing these issues separately).

However, error may be preserved without a specific request in a motion to suppress if the grounds for the motion are otherwise apparent from the record. *See* TEX. R. APP. P. 33.1(a)(1)(A) (noting that specificity is not required if the grounds were "apparent from the context"); *Cooper v. State*, 961 S.W.2d 222, 228 & n.6 (Tex. App.—Houston [1st Dist.] 1997, pet ref'd) (holding that error was preserved despite a lack of specificity in the motion to suppress because the items sought to be excluded were apparent from the context at the hearing); *Park v. State*, No. 13-08-00543-CR, 2010 WL 1115678, at *1 (Tex. App.—Corpus Christi Mar. 25, 2010, no pet.) (mem. op., not designated for publication) (same). In this case, the transcript of the hearing on the motion to suppress reveals detailed testimony from five witnesses—four officers and appellant himself—and significant argument on the issues presented by this appeal. Therefore, we hold that appellant's complaints are preserved for appeal.

B. Standard of Review

We review a motion to suppress under a bifurcated standard of review. *Vasquez v. State*, 324 S.W.3d 912, 918 (Tex. App.—Houston [14th Dist.] 2010, no pet. h.) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). The trial court is the sole finder of fact and is free to believe or disbelieve any or all of the evidence presented at a suppression hearing. *Wiede v. State*, 214 S.W.3d 17, 24–25 (Tex. Crim. App. 2007). We give almost total deference to the trial court's determination of historical facts that depend on credibility and demeanor of witnesses, but we review de novo the court's application of the law to the facts. *Id.* at 25. When, as here, there are no written findings of fact in the record, we uphold the ruling on any theory of law applicable to the case and presume the trial court made implicit findings of fact in support of its ruling so long as those findings are supported by the record. *Id.* We view the evidence presented on a motion to suppress in the light most favorable to the trial court's ruling. *Id.* at 24.

C. Detention and Tainted Consent

If police obtain evidence as the result of a consensual search during an illegal seizure, a defendant may have the evidence suppressed unless the State proves that the causal relationship between the police misconduct and the defendant's consent is attenuated—that is, the illegal seizure did not taint the otherwise voluntary consent. *Brick v. State*, 738 S.W.2d 676, 681 (Tex. Crim. App. 1987); *Munera v. State*, 965 S.W.2d 523, 532 (Tex. App.—Houston [14th Dist.] 1997, pet. ref'd). We hold that appellant was not seized at the time he gave consent, and thus, the State was not required to show attenuation.

There are three categories of citizen–police interactions: (1) encounters, (2) investigative detentions, and (3) arrests. *State v. Perez*, 85 S.W.3d 817, 819 (Tex. Crim. App. 2002). We consider the totality of the circumstances to assess whether the police interaction is an encounter, detention, or arrest. *Hunter v. State*, 955 S.W.2d 102, 104 (Tex. Crim. App. 1997). If a reasonable person would feel free "'to disregard the police and go about his business,'" the interaction is an encounter for which the Fourth Amendment is not implicated. *Id.* (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991)). The key question is "'whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.'" *State v. Garcia-Cantu*, 253 S.W.3d 236, 242 (Tex. Crim. App. 2008) (quoting *Bostick*, 501 U.S. at 439).

Here, appellant argues that the interaction with police was a detention because (1) the officers made a display of authority by their numbers and uniforms, and (2) the officers boxed in his vehicle. When an officer "blocks in" a vehicle and prevents a voluntary departure, a detention usually occurs. *See id.* at 246 n.44. However, when the vehicle is only partially blocked or departure is difficult but possible, "such action is not necessarily, by itself, sufficient to constitute a Fourth Amendment detention." *Id.* At the time appellant consented to the search, there were no police vehicles blocking his

departure. Two vehicles were parked to the left of his vehicle, but no vehicle was parked behind him. The fact that there were three officers in uniforms weighs in appellant's favor, but the record reflects that only Odin approached him. Odin declined to frisk appellant's companion when she offered, and appellant testified that the conversation was cordial. Appellant also testified that he did not feel threatened. While the search was ongoing, he engaged in casual conversation with another officer about the weather and his daughter. The fact that Odin asked about narcotics and requested consent to search appellant's vehicle did not convert this consensual encounter into a detention—the officers did not suggest that compliance was in any way mandatory. *See Hunter*, 955 S.W.2d at 106 ("A police officer's asking questions and requesting consent to search do not alone render an encounter a detention. Only if the officer conveyed a message that compliance was required has a consensual encounter become a detention." (emphasis omitted)). Finally, as the search came to an end, appellant not only felt free to leave, but he did leave. He testified that he ran from the scene because he "wanted to go for a jog" and just "felt like running." He was not seized until officers eventually subdued him. *See Brendlin v. California*, 551 U.S. 249, 254 (2007) ("[T]here is no seizure without actual submission . . . .").

Considering the totality of the circumstances in this case, we conclude that appellant's interaction with police was a consensual encounter. Therefore, appellant was not illegally seized.

D. Voluntary Consent

Consent to search is one of the well-established exceptions to the constitutional requirement that a police officer have probable cause before conducting a search of a vehicle. *See State v. Ibarra*, 953 S.W.2d 242, 243 (Tex. Crim. App. 1997); *Vasquez*, 324 S.W.3d at 921–22. The State must prove by clear and convincing evidence that the consent to search was voluntary. *Ibarra*, 953 S.W.2d at 243; *Vasquez*, 324 S.W.3d at 922. We consider the totality of the circumstances to assess whether a defendant's

consent to search was voluntary. *Reasor v. State*, 12 S.W.3d 813, 818 (Tex. Crim. App. 2000). A nonexhaustive list of factors to consider includes: (1) the accused's age, (2) the accused's education and intelligence, (3) whether the accused is informed of his right to refuse consent, (4) any constitutional advice given to the accused, (5) the length of the interaction with police, (6) the repetitive nature of questioning, and (7) the use of physical punishment. *Id.*

Appellant provided consent to two different officers at two different times during the encounter with police. Appellant was thirty-nine years old when he gave consent, and he had at least one child. Appellant not only demonstrated intellect in succinctly answering direct and cross examination questions during the suppression hearing, but he also admitted to possessing some knowledge about consent and warrants. He does not dispute the officers' testimony that, other than the initial question about whether he was carrying narcotics, conversations during the search of his vehicle were completely casual. He testified that he did not feel threatened when Odin asked to search the vehicle, and he concedes that the length of the encounter does not support his argument. Considering the totality of the circumstances in this interaction, the record supports the trial court's conclusion that consent was voluntary.

CONCLUSION

Appellant was not seized when he voluntarily consented to the search of his vehicle. Accordingly, appellant's point of error is overruled, and we affirm the trial court's judgment.

/s/ Sharon McCally
Justice

Panel consists of Justices Anderson, Seymore, and McCally.

Do Not Publish — TEX. R. APP. P. 47.2(b).