



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00452-CR

Jose Guadalupe **AGUIRRE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 144th Judicial District Court, Bexar County, Texas
Trial Court No. 2015CR7206
Honorable Lorina I. Rummel, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: June 14, 2017

AFFIRMED

Jose Guadalupe Aguirre was a passenger in a pick-up truck stopped by police after officers observed the driver commit several traffic violations. Police searched the truck and found cocaine near the passenger's seat. The State charged Aguirre with possession of cocaine in an amount between one and four grams.

Aguirre moved to suppress the cocaine, but the trial court denied the motion to suppress. Aguirre subsequently waived a jury trial and pled nolo contendere to the offense of possession of

cocaine. The trial court entered an order placing Aguirre on deferred adjudication community supervision for four years.

On appeal, Aguirre argues the trial court erred in denying his motion to suppress. We affirm the trial court's order denying Aguirre's motion to suppress.

BACKGROUND

The only witness to testify at the suppression hearing was a San Antonio Police Department officer, Jessica Aelvoet. According to Aelvoet's testimony, she and another officer were patrolling an area on the city's east side just before 10:00 p.m. on January 17, 2015. The officers saw a truck stop in front of a house that the officers knew to be a place where drugs were sold. As the truck drove away, the driver failed to come to a complete stop at a stop sign. Shortly thereafter, the driver failed to signal properly before making a turn. Additionally, one of the truck's brake lights was not operating. Because of these traffic violations, the officers decided to stop the truck.

Once the truck was parked on the side of the road, Aelvoet's partner approached the driver's side of the truck and started talking to the driver. Meanwhile, Aelvoet approached the passenger's side of the truck and saw Aguirre in the passenger's seat, "shuffling" and looking around nervously. Aguirre did not notice Aelvoet at first. Aguirre had a beer in his right hand that he was trying to conceal from the other officer. Aguirre also had a cigarette case in the same hand, which he "was shoving down into his crotch area underneath his lap." In addition, Aguirre had a cigarette and some money in his left hand. Aguirre's behavior suggested to Aelvoet that he was trying to conceal contraband. According to Aelvoet, when the driver stepped out of the truck, Aguirre "became more nervous and started to reach around a little bit more." In response, Aelvoet opened the passenger-side door and asked Aguirre to put the beer down and step out of the truck so they could talk. Aelvoet said that she asked Aguirre to step out of the car for the officers' safety. Aelvoet felt there was a chance that Aguirre could reach for a weapon or something else that could

harm the officers. As Aguirre stepped out of the truck, he shoved his hand down by the left side of the passenger's seat.

After Aguirre exited the vehicle, Aelvoet handcuffed him and directed him to stand next to the patrol car. Aelvoet told her partner that Aguirre had put something down by the left side of the passenger's seat. The other officer conducted a search of the passenger's compartment of the truck and found a cigarette case on the passenger's seat and a roll of currency by the left side of the passenger's seat. The cigarette case contained a crack cocaine pipe. Inside the roll of currency was a plastic bag filled with cocaine.

The only other evidence admitted at the hearing was the video and audio recording from the patrol car's dashboard camera, which had recorded the traffic stop and the officers' subsequent interaction with Aguirre and the driver of the truck. Aelvoet's testimony was consistent with the events captured on the recording.

After considering this evidence, the trial court denied the motion to suppress. In its findings of fact and conclusions of law, the trial court concluded, among other things, that Aguirre lacked standing to challenge the search of the truck because he was a passenger in the truck and he presented no evidence showing that he had any ownership interest in the truck.

DISCUSSION

In his opening brief, Aguirre argues the trial court should have granted his motion to suppress because the search of the truck was unlawful. According to Aguirre, the officers lacked probable cause to search the truck, the search was not incident to a lawful custodial arrest, and the cocaine was not in plain view.

In its brief, the State counters that the trial court correctly denied the motion to suppress because Aguirre did not have standing to complain about the search of the truck. The State

emphasizes that Aguirre did not claim a possessory interest in the truck and that the evidence shows that Aguirre was a mere passenger in the truck.

In his reply brief, Aguirre concedes that he did not have a possessory interest in the truck. Nevertheless, Aguirre argues he has standing to challenge the search because his detention was “unlawfully prolonged because instead of beginning the necessary traffic stop investigation, which includes a check for warrants, the officers instead immediately conducted an illegal search of the vehicle.” According to Aguirre, his “standing argument is based on his right not to be detained past a point that is constitutionally permissible.”

The purpose of both the Fourth Amendment and Article I, section 9 of the Texas Constitution is to safeguard an individual’s legitimate expectation of privacy from unreasonable governmental intrusions. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). Thus, a defendant seeking to suppress evidence obtained in violation of the Fourth Amendment must first show that he personally had a reasonable expectation of privacy that the government invaded. *Kothe v. State*, 152 S.W.3d 54, 59 (Tex. Crim. App. 2004). The defendant must prove that he was a “victim” of the unlawful search or seizure; he has no standing to complain about the invasion of someone else’s rights. *Id.* Only after a defendant has established his standing to complain may a court consider whether he suffered a substantive constitutional violation. *Id.*

Consistent with these principles, a defendant who shows no more than mere presence as a passenger in a vehicle when it is searched does not establish his standing to complain about the search. *Lewis v. State*, 664 S.W.2d 345, 347 (Tex. Crim. App. 1984) (citing *Rakas v. Illinois*, 439 U.S. 128 (1978)). However, this does not mean that a mere passenger automatically lacks standing to challenge the search of a vehicle. *Id.* 347-48. A defendant has standing to challenge a vehicle search if he shows the search “has been come at by exploitation of an infringement on his personal Fourth Amendment rights.” *Id.* at 348. In other words, “a mere passenger can challenge the search

of the automobile in which he is riding *if* the search resulted from an infringement (such as an illegal detention) of the *passenger's* Fourth Amendment rights.” *Id.* (emphasis in original).

In reviewing a trial court’s ruling on a suppression motion, appellate courts defer to the trial court’s factual findings and view them in the light most favorable to the prevailing party. *Kothe*, 152 S.W.3d at 59. Nevertheless, the issue of standing presents a legal question that we review de novo. *Id.* Furthermore, “[i]n addressing standing, it is critical that the precise police conduct being objected to be properly identified, for this may itself turn out to be determinative on the standing issue.” *Id.* at 60 (internal quotations omitted).

Here, Aguirre does not challenge the legality or the reasonableness of the initial stop, which he concedes was legal and reasonable. Nor does Aguirre claim that he had an ownership interest in the truck.¹ Instead, Aguirre asserts that he has standing because his detention was prolonged and the officers failed to begin their investigation into the traffic violations immediately after stopping the truck. In making this argument, Aguirre contends the evidence shows that the officers did not conduct a warrant check or proceed with the investigation of the traffic violations and, thus, prolonged his detention.

Courts measure “reasonableness” under the Fourth Amendment in objective terms by examining the totality of the circumstances. *Kothe*, 152 S.W.3d at 63. A reasonableness determination is fact-specific in nature, and therefore, eschews bright-line rules. *Id.* The general rule is that an investigative stop can last no longer than necessary to effect the purpose of the stop; however, no rigid time limitation exists on the duration of an investigative stop. *Id.* at 63-64.

¹Aguirre also claims in his reply brief that he has standing “independent of his illegal detention” because he had “an independent expectation of privacy in the cash bundle and the cigarette box that he left inside the vehicle.” The burden was on Aguirre to prove in the trial court that he had such an expectation of privacy. *See Kothe v. State*, 152 S.W.3d 54, 59 (Tex. Crim. App. 2004). Because Aguirre failed to argue, much less prove, in the trial court that he had expectation of privacy in the cash bundle and the cigarette box, we cannot consider this argument on appeal.

During a routine traffic stop, an officer may request certain information from a driver, such as a driver's license and car registration, and an officer may conduct a computer check on that information. *Id.* An officer may inquire about the purpose of the trip and the intended destination. *St. George v. State*, 197 S.W.3d 806, 817-18 (Tex. App.—Fort Worth 2006), *aff'd*, 237 S.W.3d 720 (Tex. Crim. App. 2007); *Freeman v. State*, 62 S.W.3d 883, 888 (Tex. App.—Texarkana 2001, *pet. ref'd*). An officer is permitted to make these inquires of the driver and of any passengers. *Kothe*, 152 S.W.3d. at 63-64 n.36; *Freeman*, 62 S.W.3d at 888.

No requirement exists that officers perform an investigation of a traffic violation in any particular order. *See Kothe*, 152 S.W.3d at 65-66 (“Fourth Amendment ‘reasonableness’ does not require a ‘single, formulaic approach’ to a traffic stop investigation, nor does it require rigid adherence to ‘the least intrusive means’ of investigation defined by Monday-morning reviewing courts.”). Additionally, in determining whether the duration of a detention is reasonable, we consider legitimate law enforcement purposes served by the stop as well as the time reasonably needed to effectuate those purposes. *United States v. Sharpe*, 470 U.S. 675, 685, 688 (1985). The law imposes no rigid time limitation on investigative stops; however, the brevity of the stop is an important factor in determining whether the seizure is justifiable. *Id.* (holding a twenty-minute stop was reasonable when the police acted diligently and the suspect's actions contributed to the delay). “[I]n evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria.” *Id.* Finally, once a valid traffic stop is made, officers are entitled to take sufficient measures to guarantee their safety. *Goodwin v. State*, 799 S.W.2d 719, 727 (Tex. Crim. App. 1990), *cert. denied*, 501 U.S. 1259 (1991), *superseded on other grounds by Long v. State*, 823 S.W.2d 259, 272 (Tex. Crim. App. 1991).

The evidence in this case showed that one of the officers approached the driver's side of the truck and attempted to communicate with the driver; however, it appears that this

communication was hampered by a language barrier. The officer asked the driver to show his hands and inquired about the number of people in the car. The officer looked inside the truck and saw two people, the driver and a passenger, who was later identified as Aguirre. Before the officer had a chance to inquire about where the driver was coming from, the driver stated that he and Aguirre had been pouring concrete. The officer expressed doubts about this statement because it was almost 10:00 at night and he had just seen the driver leave a known drug house. Meanwhile, the other officer, Aelvoet, observed Aguirre shuffling around in the passenger seat and attempting to conceal items. Because Aguirre was actively hiding things on his person, Aelvoet directed him to exit the truck. Aelvoet suspected Aguirre could have weapons on him or something else that could harm them. As he exited the truck, Aguirre shoved his hand to the left of the passenger's seat. When Aguirre exited the truck, his erratic movements continued and the officers had to instruct him multiple times to relax and calm down. Thereafter, Aelvoet asked Aguirre if she could conduct a search of his person and he consented.

The evidence showed that the officers had justifiable concerns for their own safety, not only because of Aguirre's nervous, restless behavior, but also because the stop was made late at night after the officers had seen the truck leave a known drug house. Because of these circumstances, the officers took precautions, such as having the driver and Aguirre exit the truck, handcuffing them, and conducting pat-down searches. Additionally, one of the officers searched the passenger area of the truck where Aguirre had been sitting. The cocaine was found in this area. Less than four minutes after the cocaine was found, Aelvoet asked the driver if he had a form of identification with him. She also asked the driver for his name and birth date. Again, communication between Aelvoet and the driver appeared to be hampered by a language barrier. Aelvoet then asked Aguirre for his name and for the driver's name.

Aguirre claims his detention was unreasonably prolonged because one of the officers searched the passenger compartment of the truck instead of investigating the traffic violations. According to Aguirre, the search of the truck unreasonably lengthened his detention. We disagree. The evidence shows the search of the passenger compartment took less than two minutes and it was performed at the same time Aelvoet conducted a pat-down search of Aguirre. The evidence also shows the officers took steps to ensure their safety before seeking more routine information needed for their investigation. In sum, the record does not support the conclusion that Aguirre's detention was prolonged, nor does it show that the search unreasonably lengthened Aguirre's detention. To the contrary, the events that transpired during the stop occurred quickly. Less than four minutes elapsed from the time the officers first approached the truck to the time the cocaine was found. And, less than four minutes later, Aelvoet began questioning the driver about his identification card, name, and birth date.

The main case Aguirre relies on to support his argument is *Kothe*. In *Kothe*, an officer lawfully stopped the defendant, who was the driver of the vehicle, for suspected driving while intoxicated. 152 S.W.3d at 58. After conducting field sobriety tests and determining the defendant was not intoxicated, the officer continued to detain the defendant and a passenger. *Id.* During the continued detention, the passenger told the officer that she was hiding heroin in her clothing and that the defendant had asked her to do so. *Id.* The defendant was indicted for possession of a controlled substance and moved to suppress the heroin, arguing that his continued detention after the officer had determined that he was not intoxicated was constitutionally unreasonable and illegal. *Id.* The State argued that the defendant lacked standing to complain about any search and seizure of the passenger. *Id.* However, the Texas Court of Criminal Appeals held that the defendant had a reasonable expectation of privacy in not being subjected to an unduly prolonged detention

and, thus, he had standing to challenge the seizure of evidence obtained by exploiting that detention. *Id.* at 57, 61-62.

Kothe is readily distinguishable from the present case. In *Kothe*, the defendant argued that he was subjected to a continued detention after the officer had completed his initial investigation and that the search of the passenger was made by exploiting this initial illegality. *Id.* at 60. The *Kothe* court concluded that the testimony in the case established that the defendant had a reasonable expectation of privacy in not being detained beyond the time necessary for the officer to complete his initial investigation. *Id.* at 61. Here, unlike *Kothe*, the evidence does not show that Aguirre was subjected to a continued detention after the officers' initial investigation was completed, nor does it show that Aguirre's detention was unduly prolonged.

We conclude that Aguirre failed to establish that he was the victim of an unlawful seizure. Therefore, we reject Aguirre's argument that he has standing to complain about the search of the truck and overrule his sole issue on appeal.

CONCLUSION

We affirm the trial court's order denying Aguirre's motion to suppress.

Karen Angelini, Justice

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