



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00790-CR

Russell Clayton **HAMMER**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 218th Judicial District Court, Wilson County, Texas
Trial Court No. 16-06-080-CRW
The Honorable Russell Wilson, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: November 8, 2017

AFFIRMED

During a trial to the jury, appellant, Russell Clayton Hammer, urged his pre-trial motion to suppress, which the trial court denied. The jury found appellant guilty of possession of a controlled substance and assessed punishment at twelve months' confinement. In a single issue on appeal, appellant asserts the trial court erred by denying his motion to suppress. We conclude the trial court did not err and we affirm the trial court's judgment.

STANDARD OF REVIEW

We review a trial court's decision to deny a motion to suppress for an abuse of discretion. *Ex Parte Moore*, 395 S.W.3d 153, 158 (Tex. Crim. App. 2013); *Shepherd v. State*, 273 S.W.3d 681, 684 (Tex. Crim. App. 2008). A trial court's denial of a motion to suppress is reviewed under a bifurcated standard of review. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). First, we afford almost complete deference to the trial court's determination of historical facts, "especially if those are based on an assessment of credibility and demeanor." *Crain v. State*, 315 S.W.3d 43, 48 (Tex. Crim. App. 2010). We afford the same deference with respect to the trial court's rulings on application of the law to questions of fact and to mixed questions of law and fact, if resolution of those questions depends on an evaluation of credibility and demeanor. *Id.* Second, we conduct a de novo review of mixed questions of law and fact that do not hinge on credibility or demeanor determinations. *Id.* When, as here, the trial court does not make express findings of fact, we view the evidence in the light most favorable to the trial court's ruling, and will assume it made implicit findings that are supported by the record. *Brodnex v. State*, 485 S.W.3d 432, 436 (Tex. Crim. App. 2016). We will sustain the trial court's decision if we conclude the decision is correct under any applicable theory of law. *Arguellez v. State*, 409 S.W.3d 657, 662-63 (Tex. Crim. App. 2013).

MOTION TO SUPPRESS

William Wallie testified he was driving on County Road 320 in Wilson County when he thought he saw a man standing next to a parked vehicle hitting someone inside the vehicle. Wallie saw the man, whom he identified in court as appellant, pull a woman out of the car. He said appellant and the woman spoke, and then they both got back into the car and drove away. Wallie later told the sheriff's deputy he initially thought appellant had pulled a body out of the car and he thought appellant had killed someone. However, Wallie admitted the woman did not ask for help,

he did not hear her scream, and she was not restrained in any way. As Wallie followed appellant, he called the Sheriff's Department and provided a license plate number and description of appellant's car.

Deputy Richard Lee Nichols, a Wilson County Sheriff's Department investigator, testified he responded to the "be on the lookout" call regarding a man possibly assaulting a woman. Deputy Nichols eventually stopped appellant's car, at which time he asked appellant for his driver's license. Nichols asked appellant to get out of his car, and when he did so, Nichols asked appellant to explain what happened. Appellant told Deputy Nichols that he and his girlfriend had been arguing because she was jealous. Appellant told the deputy he did not hit the woman. Deputy Nichols said the woman was crying, she was not wearing shoes, her pants were unbuttoned and the zipper was down, and her neck appeared red. However, the woman did not ask the deputy for help; instead, she asked him to go away.

Deputy Nichols then contacted dispatch with appellant's identifying information and was told appellant had two active warrants, one from the Parole Board for his return to prison. Nichols then arrested appellant and placed him in handcuffs. Nichols patted down appellant's pockets and found a small zip-locked baggie containing methamphetamine. Appellant told the deputy he did not know what was in his pocket. Following Deputy Nichols's testimony, the trial court heard arguments on appellant's motion to suppress, which it denied.

On appeal, appellant asserts Deputy Nichols's actions exceeded the time needed to investigate the matter that initiated the stop—an alleged assault. According to appellant, the deputy's investigation should have ended the moment he confirmed appellant did not assault the woman in the car.

Appellant does not argue the deputy's action was not justified at its inception. Therefore, we determine only whether the search and seizure was reasonably related, in scope, to the

circumstances that justified the stop in the first place. The general rule is that an investigative stop can last no longer than necessary to effect the purpose of the stop. *Kothe v. State*, 152 S.W.3d 54, 63 (Tex. Crim. App. 2004). “In other words, if a driver is stopped on suspicion of driving while intoxicated, once the police officer determines that the driver is not impaired, he should be promptly released.” *Id.* “However, there is an additional component to a routine traffic stop—the license and warrants check.” *Id.* “On a routine traffic stop, police officers may request certain information from a driver, such as a driver’s license and car registration, and may conduct a computer check on that information.” *Id.* “It is only after this computer check is completed, and the officer knows that this driver has a currently valid license, no outstanding warrants, and the car is not stolen, that the traffic-stop investigation is fully resolved. It is at this point that the detention must end and the driver must be permitted to leave.” *Id.* at 63-64.¹

Here, the license check revealed appellant had two outstanding arrest warrants, at which point Deputy Nichols placed appellant in handcuffs and conducted a search incident to arrest. On appeal, appellant does not contest the validity of the search incident to his arrest. *See State v. Ballard*, 987 S.W.2d 889, 892 (Tex. Crim. App. 1999) (“If an officer has probable cause to arrest, a search incident to arrest is valid if conducted immediately before or after a formal arrest.”). We conclude Deputy Nichols’s actions did not exceed the time needed to complete his investigation. Therefore, the trial court did not err by denying appellant’s motion to suppress.

¹ At trial and on appeal, appellant relied on the court of appeals’s decision in *Ramirez-Tamayo v. State*, 501 S.W.3d 788, 800 (Tex. App.—Amarillo 2016), that the deputy lacked reasonable suspicion to prolong appellant’s detention once he decided to end the purpose of the original stop by opting to give appellant a warning ticket. The Court of Criminal Appeals recently reversed that decision. *See Ramirez-Tamayo v. State*, No. PD-1300-16, 2017 WL 4159140, at *7 (Tex. Crim. App. Sept. 20, 2017) (holding, “court of appeals erred by failing to defer to the trial court’s implicit determination that the deputy was credible and reliable in explaining why the otherwise apparently innocent behaviors gave rise to reasonable suspicion under the circumstances, and by failing to consider the combined logical force or the totality of the evidence in assessing the existence of reasonable suspicion.”).

CONCLUSION

We overrule appellant's issue on appeal and affirm the trial court's judgment.

Sandee Bryan Marion, Chief Justice

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