In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00227-CR

DONNIS LYNN DOWNEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 07-01852

MEMORANDUM OPINION

Donnis Lynn Downey pled guilty to the offense of possession of a controlled substance, a special first degree felony. TEX. HEALTH & SAFETY CODE ANN. § 481.115(f) (Vernon Supp. 2009). The trial court sentenced Downey to ten years' imprisonment. In two appellate issues, Downey contends the trial court erred in denying his motion to suppress evidence from his traffic stop because he was detained for an undue period of time without reasonable suspicion or probable cause and because he did not freely consent to the search of his vehicle. We affirm.

Background

Around 1:00 a.m. on February 9, 2007, Trooper Johnson stopped Downey on IH-10. Downey, who was driving a 1999 Toyota 4-Runner with Louisiana license plates, was stopped because his license plate light was out. Johnson testified that Downey was "abnormally nervous." When Downey removed his driver's license from his pocket, he also pulled out a large sum of money. Johnson asked Downey how much money he had, and Downey responded that "it was his income tax money." Afterwards, Downey told Johnson that he had around $2,700. Downey claimed to be driving his mother-in-law's vehicle because they had exchanged vehicles as a result of her health condition.

Although Downey told Johnson that he had been living in Louisiana for about two years, he gave Johnson a Texas driver's license. Because Downey lived in Louisiana but did not have a Louisiana license, Johnson obtained information about Downey's records in both Texas and Louisiana. The criminal history check revealed Downey had been arrested in a drug case that involved between 4 and 200 grams of cocaine.

After Johnson obtained Downey's criminal history, Johnson returned to Downey's vehicle and questioned Downey further. Johnson asked if Downey had drugs in his vehicle. Downey stated that he did not. Johnson then asked Downey if he could search the vehicle, and Downey consented. Approximately thirteen minutes later, Johnson found approximately 512 grams of cocaine inside two cakes that he found on the front floorboard.

Standard of Review

In reviewing a trial court's ruling on a motion to suppress, we "apply a bifurcated standard of review, 'giving almost total deference to a trial court's determination of historical facts' and reviewing *de novo* the trial court's application of the law." *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000) (quoting *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). At a suppression hearing, the trial judge "is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony." *Wiede v. State*, 214 S.W.3d 17, 24-25 (Tex. Crim. App. 2007) (quoting *State v. Ballard*, 987 S.W.2d 889, 891 Tex. Crim. App. 1999)). When, as here, the trial court makes explicit findings of fact, "we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports those findings." *State v. Iduarte*, 268 S.W.3d 544, 548 (Tex. Crim. App. 2008).

Issue One

In Downey's first issue, he contends that Johnson exceeded the scope of the valid stop and prolonged his detention for an undue period of time without reasonable suspicion or probable cause. Johnson's initial stop of Downey was justified because Downey's license plate light was out. *See* TEX. TRANSP. CODE ANN. § 547.322 (Vernon 1999). Because Johnson articulated specific facts that would lead a reasonable person to conclude that a traffic violation had occurred, he could conduct a lawful temporary detention. *See Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005).

"To determine the reasonableness of such an investigative detention the [United States Supreme] Court adopted a dual inquiry: (1) whether the officer's action was justified at its inception; and, (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Davis v. State*, 947 S.W.2d 240, 242 (Tex. Crim. App. 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). In this case, because the traffic stop was justified, we focus on the second prong of *Terry* which deals with the scope of the detention. *Davis*, 947 S.W.2d at 243. "[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). The trial court is required to give due regard to the experience and training of police officers to determine whether their actions are reasonable under the circumstances. *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004) (en banc).

Johnson's initial investigation of Downey's traffic violation took approximately six minutes. In assessing whether a detention is too long to be justified as an investigative stop, an appeals court examines "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *United States v. Sharpe*, 470 U.S. 675, 683, 686, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985) (analyzing whether a 20-minute stop was unreasonable). Johnson's six-minute investigation consisted of checking

Downey's driver's license, car registration, and criminal history, as well as asking him questions about his trip's origination and destination. "All these inquiries are within the scope of investigation attendant to the traffic stop." *Brigham*, 382 F.3d at 508; s*ee also Kothe v. State*, 152 S.W.3d 54, 63-64 (Tex. Crim. App. 2004).

After completing the traffic stop, Johnson questioned Downey further regarding the vehicle he was driving, the purpose of his trip, and his criminal history. Johnson's subsequent questioning lasted approximately six minutes and the trial court could have reasonably concluded that the additional questions were intended to dispel reasonable suspicion that had developed during the initial stop. *Brigham*, 382 F.3d at 507-08. Given Downey's criminal record, Downey's possession of significant cash, and the fact that he was driving a vehicle that was not registered to him, Johnson's additional questions were fully within the scope of the detention justified by the information gathered in his initial investigation that followed the traffic stop and were reasonable under the circumstances. *See Brigham*, 382 F.3d at 508.

In this case, the videotape established that Johnson diligently pursued his investigation of the stop. Because we find Johnson's actions were not unreasonable under the circumstances, Downey's twelve minute detention did not violate the Fourth Amendment. *See Brigham*, 382 F.3d at 512. We overrule Downey's first issue.

Issue Two

Downey argues that his consent to search was not voluntary. The Texas Constitution requires voluntariness of consent to be shown by clear and convincing evidence. *Carmouche v. State*, 10 S.W.3d 323, 331 (Tex. Crim. App. 2000). We have explained that Johnson's actions in stopping Downey and conducting an investigation were reasonable. "A consent to search satisfies the Fourth Amendment so long as 'the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied.'" *Houston v. State*, 286 S.W.3d 604, 609 (Tex. App.--Beaumont 2009, pet. ref'd), *cert. denied*, 130 S.Ct. 1082 (2010) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 248, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)).

Downey consented to a search after being asked if he had drugs in his vehicle. A reasonable person would have understood that Johnson had asked for consent to search Downey's vehicle for drugs. *See Florida v. Jimeno*, 500 U.S. 248, 251, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). While waiting for a K-9 unit, Johnson asked Downey to cut the cake on the floorboard of his car. Downey cut the cake, which revealed a plastic bag containing a white powder; the powder was subsequently determined to be cocaine.

Johnson testified that Downey consented to the search, and Downey did not contradict Johnson's testimony. In addition, the videotape supports the trial court's finding that Downey's consent was voluntary. Because the initial stop and its duration did not violate the Fourth Amendment, Downey's consent to search was not

unconstitutionally tainted. *See Kothe*, 152 S.W.3d at 67; *Brigham*, 382 F.3d at 512. Because the record supports the trial court's finding that Downey consented to the search, we overrule Downey's second issue.

Conclusion

We conclude that the trial court did not err in denying Downey's motion to suppress. The judgment of conviction is affirmed.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on March 3, 2010
Opinion Delivered April 7, 2010
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Before McKeithen, C.J., Kreger and Horton, JJ.