

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00468-CR

JOSEPH VERNON METOYER, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 10-10781

MEMORANDUM OPINION

A jury found Joseph Vernon Metoyer, Jr. guilty of possession of cocaine, a controlled substance. He pled “true” to enhancement allegations. The trial court sentenced him to five years in prison. He challenges the validity of the stop and arrest.

While on patrol around midnight, Officer Stevenson saw Metoyer walking in the street in an area where a sidewalk was available. He was carrying a pink bag. Stevenson indicated that it is not common to see a man carrying a pink bag and walking down that particular stretch of road. The officer wondered where the man obtained the bag. Stevenson testified that a city ordinance requires a person to walk on an available

sidewalk. Based on the officer's observations, he concluded Metoyer violated the ordinance.

Stevenson stopped Metoyer. Metoyer was wearing baggy clothing and "acting a little nervous." Stevenson explained that the baggy clothing and the nervous demeanor made Stevenson concerned for his own safety, because anyone can conceal a weapon in his clothing. Based on his experience, Stevenson thought Metoyer was going to flee, because he looked around, "looked over his shoulders[,] and appeared nervous. Stevenson grabbed the back of Metoyer's jacket and pulled him back. Metoyer allowed Stevenson to conduct a pat-down search.

Stevenson testified he did not find any weapons, but he could feel Metoyer's body trembling. Stevenson explained that although it is common for a person to be nervous during a stop, the degree to which Metoyer was shaking was not common. Stevenson asked if Metoyer had anything illegal on him. Metoyer said no.

Stevenson requested permission to search Metoyer. The officer testified he did not understand Metoyer's response at first and repeated the question: "Yes or no, can I search you or not?" Stevenson testified Metoyer stated, "Yes, sir, you can search me." Upon searching Metoyer, Stevenson found a cigarette pack in Metoyer's shirt pocket. The cigarette pack contained two rocks of cocaine. The officer arrested Metoyer.

Metoyer argues the police did not have reasonable suspicion to stop him or

probable cause to arrest him.¹ A law enforcement officer “is free to stop and question a fellow citizen; no justification is required for an officer to request information from a citizen.”² As to a detention, “courts must decide whether the detaining officer had reasonable suspicion that the citizen is, has been, or soon will be, engaged in criminal activity.”³ And when there is a warrantless arrest, “courts must determine whether the arresting officer had probable cause to believe the same.”⁴

The Court of Criminal Appeals explained in *State v. Woodard* that a peace officer “may arrest an offender without a warrant for any offense committed in his presence or within his view.”⁵ Officer Stevenson indicated he believed Metoyer violated an ordinance. Although Stevenson could not identify the specific number of the ordinance, section 552.006 of the Texas Transportation Code provides:

(a) A pedestrian may not walk along and on a roadway if an adjacent sidewalk is provided and is accessible to the pedestrian.⁶

The officer could stop Metoyer to investigate.⁷ He had authority to pat down Metoyer for safety reasons.⁸ The officer testified that Metoyer consented to a search, and the

¹*State v. Woodard*, 341 S.W.3d 404, 410 (Tex. Crim. App. 2011) (standard of review).

²*Id.* at 411 (footnote omitted).

³*Id.*

⁴*Id.*

⁵*Id.* at 412 (quoting Tex. Code Crim. Proc. Ann. art. 14.01(b) (West 2005)).

⁶Tex. Transp. Code Ann. § 552.006 (West 2011).

⁷*See Magic v. State*, 878 S.W.2d 309, 312 (Tex. App.—Houston [1st Dist.] 1994, pet. ref’d) (Officers were authorized to stop defendant walking on road instead of sidewalk, because they had probable cause to believe he was committing a traffic violation in their presence.).

videotape does not contradict that testimony. The jury was instructed on the issue of consent, and by its verdict, found Metoyer consented to the search.⁹ Finding cocaine, the officer had probable cause to arrest him. We overrule Metoyer’s issue and affirm the conviction.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on May 29, 2012
Opinion Delivered July 25, 2012
Do Not Publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.

⁸*See State v. Castleberry*, 332 S.W.3d 460, 469 (Tex. Crim. App. 2011) (“If an officer has a reasonable belief that a citizen may be armed, a limited pat down of that citizen is permissible”; the question is whether a reasonably prudent person under the circumstances would be warranted in the belief that his safety or that of others was in danger.).

⁹Metoyer’s appellate issue does not contest Metoyer’s consent to the search.