

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00461-CR

MELANIE KAYE SMITH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 9th District Court
Montgomery County, Texas
Trial Cause No. 14-04-04197-CR**

MEMORANDUM OPINION

Arguing that she was detained longer than necessary by police while they investigated a tip that she was selling drugs at a county fair and that a warrant was required to authorize a search of the motor home where she lived, Melanie Kaye Smith seeks to overturn the trial court's ruling denying her motion to suppress the fruits of the search that was conducted on the motor home. In three issues, Smith

contends the evidence obtained by the police in their search should have been suppressed because (1) the motor home should not be treated as an automobile for the purposes of determining whether it was lawfully subjected to a warrantless search, (2) the police did not have reasonable suspicion justifying Smith's detention while they searched the motor home, and (3) Smith was detained longer than necessary for police to dispel their suspicions that she was selling drugs at the fair. We overrule Smith's issues and affirm the trial court's order denying Smith's motion to suppress.

Background

In April 2014, police arrested two individuals on warrants from another county charging them with credit card abuse. The man worked for a traveling carnival, which at that time was being operated at the Montgomery County fairgrounds. The other person who was arrested was the man's girlfriend, who was living with him. Department of Public Safety Sergeant Josh Pullen interviewed the two separately. During these interviews, both individuals stated that they knew of methamphetamine being sold at the carnival by a woman named "Melanie" and a man called "New York Tony." The methamphetamine was being kept in an off-white motor home and sold from a carnival game booth.

Following the interviews, Sergeant Pullen contacted the Conroe Police Department, which sent other police officers to the fairgrounds to investigate the information given to them by Sergeant Pullen. Officers from the Conroe Police Department went to the fairgrounds one morning before the carnival opened for the day, and located the off-white motor home where they found Melanie Smith and Anthony Stable inside. While the officers were at the motor home, a carnival manager in charge of the carnival game where Smith worked gave the police permission to search that booth. Some of the officers went to the booth and searched it, but they did not find any drugs there. Shortly after the officers completed their search of the booth, a canine unit arrived at the scene and the dog assigned to the unit was used to sniff the motor home. After the drug dog alerted on the motor home, the officers searched it and found methamphetamine inside. *See* Tex. Health & Safety Code Ann. § 481.112(a), (c) (West 2017). The police arrested Smith and Stable.¹ Subsequently, both were indicted for possession with intent to deliver methamphetamine that weighed between one and four grams. *See id.*

Prior to her trial, Smith filed a motion to suppress. In her motion, Smith asked the trial court to suppress the evidence that police recovered in their search of the

¹ The proceedings in Smith's case reflect that Stable died while he was on his way to court on the day before the court conducted the hearing on Smith's motion to suppress.

motor home. In the hearing on Smith's motion, Smith argued that the motor home was improperly subjected to a warrantless search and that the police should have obtained a search warrant before searching the motor home, which she claimed was the equivalent of her residence. In the alternative, Smith argued that should the motor home be treated as a vehicle for the purposes of the search, the evidence failed to demonstrate that the police had reasonable suspicion to search the motor home given the information that police received from the trooper who interviewed the individuals who were arrested for credit card abuse. Additionally, Smith argued that even if reasonable suspicion existed that justified the search, she was detained longer than reasonably required for police to investigate whether she was selling drugs at the fair.

Four witnesses, three law enforcement officers and Smith, testified during the hearing on Smith's motion to suppress. Sergeant Pullen, the trooper who interviewed the two individuals for credit card abuse, was the first witness who testified in the hearing. Sergeant Pullen explained that in early April 2014, he received information from another Department of Public Safety Officer in the Austin area that a man and a woman believed to be with a traveling carnival operating at the Montgomery County fairgrounds had outstanding warrants authorizing their arrests on charges of

credit card abuse. According to Sergeant Pullen, he went to the Montgomery County fairgrounds and arrested both individuals.

After arresting the individuals, Sergeant Pullen interviewed them. According to Sergeant Pullen, both of the individuals, in separate interviews, told him that methamphetamine was being sold at the carnival by an individual named “Melanie,” a carnival game worker, and another individual named “New York Tony,” a carnival manager. According to Sergeant Pullen, one of the individuals that he interviewed told him that “Melanie” was selling methamphetamine “in the balloon activities there at the carnival ground.” Both individuals told Sergeant Pullen that Melanie and Tony were living in a moveable vehicle, which one described as an “RV” and the other as a “dirty white” motor home. Both of the individuals told Sergeant Pullen that Melanie and Tony were living together in the vehicle on the grounds of the fair, and that Melanie and Tony kept their drugs inside the vehicle.

Sergeant Pullen further testified that he passed the information about the claimed drug activity at the fair to the Conroe Police Department. According to Sergeant Pullen, he never promised any leniency or made any deals with the individuals he interviewed in return for the information he was given during the interviews. We note that the transcript from the hearing on Smith’s motion to suppress reflects that the interviews of the individuals Sergeant Pullen conducted

were recorded, and that the trial court reviewed the video recordings before it ruled on Smith's motion.

The second witness who testified at the hearing was the Conroe Police Department narcotics officer who led the investigation that ensued following Sergeant Pullen's report about drugs being sold at the fair. The narcotics officer testified that in April 2014, he received a tip from Sergeant Pullen that a female named Melanie and a male named Tony were staying at the carnival in an off-white motor home and selling methamphetamine out of their motor home and from a carnival game. The narcotics officer explained that after receiving the tip, he and the two other Conroe Police Department officers went to the fairgrounds. After locating the off-white motor home, which the narcotics officer indicated appeared to be in a drivable condition, the police knocked on the door of the motor home. A man came to the door who identified himself as Tony.² Tony told the officer that he traveled with the carnival, and that Smith was inside. When Smith came outside, she provided the officer with her name and date of birth, and stated that she had previously been arrested for driving under the influence.

The narcotics officer explained that after he spoke to Smith, the Conroe Police Department advised him that Smith had previously been arrested on a charge of

² Subsequently, Tony told the officers that his name was Anthony Stable.

possession of methamphetamine. The officer explained that after he established that Stable owned the motor home, Stable refused to allow the police to search it. While the officers were attempting to obtain permission to search the motor home, a carnival manager approached the officers and gave them permission to search the carnival booth where Smith worked. Before searching the booth, the police requested that the Conroe Police Department send a canine unit to Stable's motor home.

When the search of the carnival booth where Smith worked was not fruitful, the narcotics officer returned to the motor home. Smith and Stable were detained outside the motor home by police during the period that the narcotics officer searched the booth. Just as the narcotics officer was returning to the motor home, the canine unit arrived. According to the narcotics officer, he watched the canine unit as it conducted a search around the exterior of the motor home, and he saw the unit's drug dog, Ninja, alert on the motor home. After Ninja alerted outside the motor home, the police went inside, searched the motor home for drugs, and found some methamphetamine inside.

On cross-examination, the narcotics officer agreed that Smith was detained by police from the point that she came outside the motor home until she was arrested. The narcotics officer's testimony indicates that in the entire period that Smith was

detained, the police were investigating the tip they received from Sergeant Pullen that Smith was selling methamphetamine on the fairgrounds.

The third witness in the hearing was Joe Foxworth, an officer with the Conroe Police Department assigned to the canine unit. Officer Foxworth is Ninja's handler, and he explained that he brought Ninja to the fairgrounds in response to the narcotics officer's request. Officer Foxworth described Ninja's training, and he explained the process used in having Ninja sniff the motor home. According to Officer Foxworth, Ninja alerted while standing in front of two of the doors to the motor home. Ninja's alerts on the motor home indicated to him that Ninja smelled narcotics inside the motor home.

After the State rested, Smith's attorney called Smith to establish that the motor home was being used as Smith's home on the day the motor home was searched. Smith testified that the motor home was parked in a fenced area of the fairgrounds, and that it was located in an area shared with fifty or sixty other motor homes, house trailers, and recreational vehicles. According to Smith, she slept and ate in the motor home while traveling and working with the carnival, which traveled between several states. Smith testified that in Montgomery County, the motor home was in an area where utilities were provided to carnival workers who wanted to live on the fairgrounds in return for paying a fee. Smith also explained that on the day the search

occurred, the motor home was connected to sewer, water, and electrical utilities that were provided for carnival workers living at the fairgrounds. Smith also described the procedure that was required to prepare the motor home to be moved. According to Smith, the procedure required to move the motor home took approximately thirty minutes to an hour. Smith admitted during the hearing that police found methamphetamine inside the motor home when it was searched, but she denied that she knew where the methamphetamine was located when it was discovered.

At the conclusion of the hearing, the trial court advised the parties that it had decided to deny the motion to suppress. The trial court explained that from the evidence, the court had concluded that the motor home was readily mobile. The record does not show that the trial court reduced its findings to writing following the hearing, nor does it show that any of the parties requested the trial court to make any written findings.³

After the trial court denied Smith's motion to suppress, Smith agreed to plead guilty to possession with intent to deliver, between one and four grams of methamphetamine, based on the terms of a plea bargain that allowed her to appeal the trial court's ruling on her motion to suppress. Under the plea agreement, the trial

³ On a motion to suppress evidence, a trial court must state its findings of fact and conclusions of law upon the losing party's request. *State v. Cullen*, 195 S.W.3d 696, 699 (Tex. Crim. App. 2006). However, Smith apparently made no such request.

court deferred making a finding on Smith's guilt, placed Smith on community supervision for seven years, and ordered her to pay a \$1,500 fine, court costs, and restitution. Subsequently, Smith exercised her right to appeal the trial court's ruling on the motion to suppress.

Standard of Review

We use a bifurcated standard when reviewing a trial court's ruling on a motion to suppress. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). In our review, we give the trial court's findings of historical fact almost total deference when the findings are supported by the record. *Id.* When the issues being reviewed involve findings that were based on the trial court's resolution of mixed questions of law and fact, the findings are given almost total deference if the findings turn on the trial court's evaluation of the credibility and demeanor of any witnesses. *Id.* In contrast, when the trial court's findings are based on its evaluation of a mixed question of law and fact that do not depend on the trial court's evaluation of the credibility or demeanor of the witnesses or their testimony, the ruling is reviewed using a de novo standard. *Id.* (citing *Montanez v. State*, 195 S.W.3d 101, 107 (Tex. Crim. App. 2006)); *Guzman*, 955 S.W.2d at 89. If no findings of fact are requested or filed following a hearing on a motion to suppress, which is the situation in Smith's case,

we “impl[y] the necessary fact findings that would support the trial court’s ruling if the evidence (viewed in the light most favorable to the trial court’s ruling) supports these implied fact findings.” *State v. Kelly*, 204 S.W.3d 808, 818-19 (Tex. Crim. App. 2006); *accord State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000).

Warrantless Search

In issue one, Smith argues the trial court erred by treating the motor home as a vehicle and not a residence for the purpose of determining if the search was reasonable. According to Smith, because she was using the motor home as her residence, the police were required to obtain a search warrant to conduct a lawful search.

In support of her argument, Smith points to the evidence from the suppression hearing that tends to show the motor home, when it was searched, was in an area that was fenced. Smith also points to the evidence, her testimony, which tends to show the motor home was connected to water, sewer, and electric utilities when the search occurred. Smith disputes the trial court’s conclusion that the motor home was readily moveable, and she relies on her testimony that moving the motor home could take up to an hour.

In its brief, the State argues that the trial court did not abuse its discretion based on the evidence presented in the hearing in concluding that the motor home

was readily moveable. Generally, absent one of several possible exceptions, the Fourth Amendment protects citizens against searches and seizures by government officials unless the official obtains a search warrant. U.S. CONST. amend. IV. There are several recognized exceptions to the requirement that government officials obtain a search warrant before conducting a search. These include the consent exception, the exigency exception, the automobile exception, the search-incident-to-arrest exception, and the special-needs exception. *State v. Rodriguez*, 521 S.W.3d 1, 9-10 (Tex. Crim. App. 2017) (citing *O'Connor v. Ortega*, 480 U.S. 709 (1987); *California v. Carney*, 471 U.S. 386 (1985); *Mincey v. Arizona*, 437 U.S. 385 (1978); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *United States v. Robinson*, 414 U.S. 218 (1973)). In Smith's case, the issue is whether the trial court properly applied the automobile exception to a motor home under circumstances where Smith was using the motor home as a place to live while working for a traveling carnival.

In *Carroll v. United States*, 267 U.S. 132 (1925), the United States Supreme Court first recognized the automobile exception to the Fourth Amendment's general requirement that a search warrant is needed to authorize a search conducted by police because a "vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.* at 153. In *Carney*, the Court extended the exception to a motor home parked in a parking lot, explaining that the motor home was readily

moveable and that it was being used when the search occurred for the purpose of transportation. 471 U.S. at 394. The Texas Court of Criminal Appeals has also applied the automobile exception to a motor home where the circumstances showed that the motor home was being used primarily as a vehicle, not a residence. *See Powell v. State*, 898 S.W.2d 821, 827 (Tex. Crim. App. 1994).

In Smith's case, Smith relies primarily on her testimony in the suppression hearing to establish that she was using the motor home as a residence on the day the search occurred. Although Smith testified that the motor home was hooked up to water, sewer and electric utilities that day, a photograph of the motor home that was in evidence in the hearing does not show the utility connections that Smith described. While a large black cord on the ground near the motor home can be seen in the photo, and the cord appears to be an electrical extension cord of some type, the photograph does not show whether the cord was connected or disconnected from the motor home when the search occurred. Additionally, the photograph of the motor home does not show whether any of the other utilities Smith described were connected to the motor home on the day the search occurred. Although Smith claimed that carnival workers were billed for utilities, the record contains no bills showing that Smith or Stable were being charged for utilities that Smith claimed were provided by the fair.

In Smith's case, the mobility of the motor home *at the time the search occurred* was the issue in dispute. The trial court was not required to believe Smith's testimony, so it was not required to believe that the motor home had been hooked up to utilities on the day the search occurred. *See Ross*, 32 S.W.3d at 855 (permitting a trial judge, as the trier of fact and judge of witness's credibility, to believe or disbelieve the testimony of a witness at a suppression hearing). In Smith's case, no one associated with the organization in charge of the fair testified in the hearing on the motion to suppress about whether utilities were provided to carnival workers who were living at the fair, and no bills for utilities were admitted in the hearing to show that Smith or Stable were being charged for water, sewer, or electricity on the day the search occurred. In the absence of objective evidence showing that the motor home was attached to the electrical, water and sewer utilities, the trial court was not required to believe Smith's suggestion that the motor home could not be moved easily because it was attached to various utilities that would have complicated the movement of the motor home on the day it was searched. *Id.*

Importantly, none of the testimony in the hearing shows that the motor home was blocked into the location where it was found on the day it was searched. Generally, the evidence introduced during the hearing shows that the motor home had an engine that worked and tires that were inflated on the day the search occurred.

These facts, together with the trial court's right to disregard Smith's testimony as not credible, and the absence of any other evidence showing that the motor home could not be readily moved on the day of the search allowed the trial court to exercise its discretion and find that the motor home was readily moveable on the day the search occurred.

Viewed with the deference required by the standard of review that applies to motions to suppress, the trial court could reasonably conclude from the evidence admitted during the hearing that the motor home had a working engine, that it had inflated tires, that it was parked in a public place and not a residential area, that the motor home did not have any utilities attached to it in a manner to impede the motor home's quick movement, and that Smith and Stable, on the day of the search, were using the motor home primarily as transportation to move between cities while working for a traveling carnival. Giving the trial court the deference that we must when reviewing mixed questions of law and fact, we hold the trial court did not abuse its discretion by concluding that the automobile exception applied to the motor home. *See Keehn v. State*, 279 S.W.3d 330, 334 (Tex. Crim. App. 2009) (noting that reviewing courts afford almost total deference to a trial court's determination of a mixed question of law and fact if its resolution turned on the evaluation of credibility

and demeanor); *see also Carney*, 471 U.S. at 392-94; *Powell*, 898 S.W.2d at 827. We overrule Smith's first issue.

Initial Detention and Reasonable Suspicion

In issue two, Smith argues the State failed to prove during the hearing on the motion to suppress that the officers who detained her had a reasonable suspicion that she was, had been, or would soon be engaged in criminal activity. According to Smith, the tip the narcotics officer received from Sergeant Pullen was insufficient to establish that sufficient suspicion existed to justify the decision made by the narcotics officer to detain Smith after she came outside the motor home. Relying on *State v. Hill*, 299 S.W.3d 240, 246 (Tex. Crim. App. 2009), Smith argues that the information Sergeant Pullen obtained by interviewing the individuals he arrested for credit card abuse did not give the police the reasonable suspicion needed to justify their search.

In our opinion, *Hill* is distinguishable from Smith's case on its facts. *Id.* at 242. In *Hill*, the Court of Criminal Appeals considered whether the four corners of an affidavit contained sufficient information to justify a magistrate's decision to issue a search warrant. *Id.* In contrast, Smith's case does not involve a magistrate's review of information that is confined to the four corners of an affidavit. In Smith's case, the trial court based its determination on its evaluation of the credibility and

demeanor of the witnesses who testified and its evaluation of the credibility of the informants from the video recordings that it reviewed of their interviews. Unlike *Hill*, the trial court in Smith's case had information that allowed it to independently assess the credibility of the informants who were interviewed by Sergeant Pullen. *Id.*

Under the Fourth Amendment, a police officer can stop and briefly detain a person for investigative purposes when the officer has a reasonable suspicion supported by articulable facts that the person was or soon would be involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 29 (1968); *Woods v. State*, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997). Reasonable suspicion, not probable cause, is the standard that applies when an officer briefly detains an individual for the purpose of investigating the existence of possible criminal activity. *Id.* The parties do not dispute that Smith's detention occurred because the police were investigating whether she was involved in selling drugs. According to the State, Smith's detention was reasonably justified based on the information that police obtained from the individuals who claimed that Smith was involved in selling methamphetamine at the fair.

In determining if reasonable suspicion exists, courts should consider “the cumulative information known to the cooperating officers at the time of the stop[.]”

Derichsweiler v. State, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011) (citing *Hoag v. State*, 728 S.W.2d 375, 380 (Tex. Crim. App. 1987)). In this case, the tip conveyed to the narcotics officer by Sergeant Pullen was not from an anonymous source, as the identities of the individuals who provided Sergeant Pullen with the information that led to the search of the motor home were known. When information is provided by citizens who are identified, the citizens can be held accountable for the accuracy and veracity of their reports. *Derichsweiler*, 348 S.W.3d at 914-15. Consequently, the police, and the trial court, may regard information about criminal activity that is provided by such individuals as being reliable. *Id.*

Additionally, in deciding a motion to suppress, a trial court is required to determine “whether the information that the known citizen-informant provide[d], viewed through the prism of the detaining officer’s particular level of knowledge and experience, objectively supports a reasonable suspicion to believe that criminal activity is afoot.” *Id.* at 915. An objective standard is employed to determine whether a police officer developed a reasonable suspicion justifying further investigation into alleged criminal activity, and in reviewing an officer’s decision to continue the investigation, courts evaluate whether the facts available to the officer would “warrant a man of reasonable caution in the belief” that the action taken was appropriate[.]” *Terry*, 392 U.S. at 21-22 (quoting *Carroll*, 267 U.S. at 162);

Hernandez v. State, 983 S.W.2d 867, 869 (Tex. App.—Austin 1998, pet. ref'd) (citing *Davis v. State*, 947 S.W.2d 240, 243 (Tex. Crim. App. 1997)).

In Smith's case, the video recordings of the interviews of the two individuals arrested for credit card abuse were admitted into evidence without objection. The record shows the trial court reviewed the recordings of the interviews. The recordings confirm Sergeant Pullen's account that the interviews were conducted separately, that both of the individuals who were interviewed identified Smith as a person who was selling methamphetamine at the fair, and that both of the individuals indicated that methamphetamine might be found either where Smith worked or in the motor home. Since the trial court reviewed the recordings of the interviews and the names of the individuals that Sergeant Pullen interviewed were not confidential sources, it was reasonable for the trial court to view the individuals that Sergeant Pullen interviewed as citizen informants who could be held accountable for the information they were providing to the police. *See Derichsweiler*, 348 S.W.3d at 914.

Viewing the evidence before the trial court objectively, we conclude the trial court did not abuse its discretion by viewing the information that Sergeant Pullen obtained from the individuals he interviewed as sufficient justification to detain Smith to allow police to conduct an investigation into the claim made by the

individuals that Smith was selling drugs at the fair. *Id.* We overrule Smith’s second issue.

Unduly Prolonged Detention

In her third issue, Smith argues that her detention was unduly prolonged because she was detained longer than necessary for police to complete their investigation into whether she was selling drugs at the fair. A police officer is allowed to detain a person on a temporary basis to investigate the officer’s reasonable suspicion that criminal activity is afoot. *Terry*, 392 U.S. at 29; *Woods*, 956 S.W.2d at 35. The reasonableness of the duration of the detention depends on whether the police diligently pursued the investigation in a manner that was likely to confirm or dispel any suspicions quickly while detaining the defendant. *United States v. Sharpe*, 470 U.S. 675, 686 (1985); *see also Belcher v. State*, 244 S.W.3d 531, 539 (Tex. App.—Fort Worth 2007, no pet.). It is unlawful for police officers to prolong a stop beyond the time reasonably required to complete the purpose of the stop. *Rodriguez v. United States*, 135 S.Ct. 1609, 1616 (2015). Factors that are considered in deciding whether a person has been detained for an unreasonable period of time include whether a legitimate need for law enforcement was served by any delays that were attendant to the investigation. *Belcher*, 244 S.W.3d at 539.

Generally, if the evidence in a suppression hearing shows that police acted swiftly to a developing situation, an appellate court should not indulge in unrealistic second-guessing. *See Sharpe*, 470 U.S. at 686. In Smith's case, the narcotics officer discussed in detail the choices he made to investigate the claim that Smith was involved in selling drugs at the fair. During the hearing, the narcotics officer indicated he located the motor home described by the informants at the fairgrounds, he identified Smith and Stable as the individuals who were inside, and after contacting Smith and Stable, he requested their criminal histories from dispatch. According to the narcotics officer, within twenty minutes after the police arrived at the motor home, Stable refused to allow the motor home to be searched. At that point, the narcotics officer requested that a canine unit be sent to the fairgrounds, and he described how he obtained permission from a carnival manger to conduct a search of the location where Smith worked, another of the locations that police had reason to believe that Smith might be storing illegal drugs. After searching the carnival booth, the narcotics officer returned to the motor home. At that point, the canine unit that the officer requested earlier that morning arrived at the fair. The police radio log that was relevant to the investigation the police conducted at the fairgrounds was admitted into evidence during the hearing. The times on the log

indicate that the canine unit arrived on the fairgrounds approximately 33 minutes after the narcotics officer first arrived there.

The record shows that the narcotics officer's request for a canine unit was a step taken in the investigation that furthered a legitimate need for law enforcement because it was designed under the circumstances of this case to quickly dispel the suspicion formed by police that Smith was selling drugs at the fair. The evidence allowed the trial court to conclude the request for the canine unit was made in a timely fashion, and that the canine unit arrived within a reasonable period after the narcotics officer requested the unit. *See Sharpe*, 470 U.S. at 686. In our opinion, the record supports the trial court's conclusion that the police diligently pursued their investigation into whether Smith was selling drugs at the fair, and that the investigation was pursued in a reasonable and timely fashion in a way that was designed to quickly resolve whether Smith had committed a crime. *Id.*; *see also Belcher*, 244 S.W.3d at 539. We overrule Smith's complaint that her detention was unduly prolonged.

Having carefully considered Smith's arguments, we hold the trial court did not abuse its discretion by denying Smith's motion to suppress. We overrule Smith's issues, and we affirm her conviction.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on May 23, 2017
Opinion Delivered October 4, 2017
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.