In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00208-CR

THE STATE OF TEXAS, APPELLANT

V.

GERARDO RICO, JR., APPELLEE

On Appeal from the 320th District Court
Potter County, Texas
Trial Court No. 79817-D, Honorable Pamela Sirmon, presiding

May 2, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Pending before the Court is the State's appeal from an order granting Gerardo Rico's motion to suppress evidence. The State indicted Rico for possessing, with intent to deliver, between four and 200 grams of methamphetamine. The substance was discovered after officers were called to a local convenience store to have an individual "trespassed" from it.[1] The person had already left by the time the officers arrived.

[1] The factual scenario we describe was obtained from the trial court's written findings of fact and conclusions of law.

Nevertheless, the store clerk not only informed the police that the person walked across the street to a parking lot but also described her as an "Hispanic female with a buzz haircut, dark shirt and blue jeans." With that information, officers left the store, walked across the street, and encountered one female and two males. As they approached, one of the males (Rico) mounted his bicycle in preparation to leave. The officers stopped him, obtained his identity, checked it through police records, and discovered that he had an outstanding arrest warrant. His arrest ensued as did a search of his person. The latter revealed the methamphetamine underlying the prosecution. Prior to stopping him, "[t]he officers had not observed any violations of the law." Nor did Rico "match the description given by the store clerk for the individual they wanted trespassed."

The State urges three issues on appeal. The first concerns whether the trial court applied the wrong legal standard in determining if the stop was lawful. The second involves the presence of reasonable suspicion permitting the temporary detention of Rico, while the third concerns the attenuation doctrine. We reverse.

Standard of Review

In appeals such as this, we (1) must remember that the trial court is the sole trier of fact and judge of witness credibility, *Martinez v. State,* 620 S.W.3d 734, 740 (Tex. Crim. App. 2021); (2) afford almost total deference to the trial judge's factual findings if they are supported by the record, *State v. Woodard*, 341 S.W.3d 404, 410 (Tex. Crim. App. 2011); (3) view the evidence in the light most favorable to that ruling, *Gutierrez v. State*, 221 S.W.3d 680, 687 (Tex. Crim. App. 2007); (4) draw all reasonable inferences from that evidence in favor of the decision, *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); and (5) sustain the ruling if reasonably supported by the record and correct

on any theory of law applicable to the case. *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006). However, no deference is afforded the trial court's application of the law to facts; we consider that de novo. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010).

Wrong Standard

Among the trial court's initial conclusions of law is one declaring that the officers had neither a warrant nor probable cause justifying Rico's initial detention.[2] Yet, neither was necessary, according to the State. The officers need only have had reasonable suspicion to believe crime was afoot to detain him. Thus, the State viewed the trial court as utilizing the wrong legal standard in assaying the legitimacy of the stop. The initial findings of facts and conclusions of law could be read to suggest as much. However, the trial court filed supplemental findings and conclusions which clarified the matter. In them, it expressly addressed the subject of reasonable suspicion to detain Rico. Given that, we cannot say it applied the wrong legal standard.

Attenuation

Next, we skip the topic of whether the officer actually had reasonable suspicion to detain Rico and instead jump to attenuation. Allegedly, the officers' discovery of an existing arrest warrant demanding Rico's seizure cleansed discovery of the methamphetamine of the taint arising from his initial and supposedly unlawful detention. We sustain the issue.

[2] We abated this appeal and remanded it to the trial court on February 18, 2022. So too did we direct it to execute additional or supplemental findings of fact and conclusions of law. The trial court complied. Thus, the record contains both original and supplemental findings of fact and conclusions of law.

"When police find and seize physical evidence shortly after an illegal stop, in the absence of the discovery of an outstanding arrest warrant in between, that physical evidence should ordinarily be suppressed, even if the police misconduct is not highly purposeful or flagrantly abusive of Fourth Amendment rights." *State v. Mazuca*, 375 S.W.3d 294, 306–07 (Tex. Crim. App. 2012). Uncovering such a warrant may suffice to attenuate the link between an improper stop and the ensuing discovery of contraband, but not always. Much depends on three factors. They are (1) the temporal proximity between the improper stop and ensuing search, (2) the intervention of a circumstance such as an outstanding arrest warrant, and (3) the purposefulness and/or flagrancy of the police misconduct, the latter being the more important. *Id.*

Here, no one disputes that the officers detained Rico and thereafter determined that an outstanding arrest warrant demanded his seizure. Nor does anyone deny that, had the officers known of the arrest warrant and acted upon it, they could have lawfully searched him incident to arrest. That the officers searched him soon after initially detaining him is also beyond doubt.

Nevertheless, various of the trial court's findings are highly influential. For instance, the trial court said, in its supplemental findings, that "[t]hough officers received the same dispatch, they had conflicting conceptions of the suspect's physical description." One officer (Casey) "understood the suspect was a Hispanic male wearing a black shirt and jeans"; indeed, such was the description provided in the aforementioned dispatch, according to that officer. And, of import is the trial court expressly finding the officer to be "credible" in this belief.

Another officer (Harlan) "described the suspect as a Hispanic female wearing a dark, black shirt and blue jeans." This officer, whom the trial court also deemed "credible," (1) "learned" upon entering the store that "the female suspect with the buzz haircut had left the store and walked across the street to the Goodwill parking lot," (2) encountered a female with Rico across the street from the store, (3) noticed the female had a "buzzcut" but no other feature matching the store clerk's description, and (4) saw "an individual who was wearing clothing matching the description of the suspect's attire, but that individual was a man, who was later identified as" Rico. To that we add the finding about the suspect whom store personnel wanted "trespassed" as having "committed thefts over the past few days."

Each of the foregoing findings generally comports with the testimony presented at the suppression hearing. And together, they illustrate the morass encountered by the four officers on scene. That is, while they may have been dispatched to "trespass" someone from Cefco, they also were told of that person having committed theft. We know of nothing obligating them to ignore the latter when performing the former. So too were they given conflicting descriptions of the suspected trespasser and thief. One came from the dispatcher, another from the store clerk. The officers then encountered individuals matching aspects of the two conflicting descriptions at the very locale to which the store clerk directed them, that being the parking lot across the street. And, as one officer approached the lot, one of the two people who matched aspects of those descriptions, i.e., Rico, tried to leave. That led an officer to temporarily stop him to garner opportunity to conduct their investigation of the crimes about which they heard.

Officers regularly find themselves in morphing and convoluted circumstances when responding to a dispatch. They cannot freeze the scene like investigators can in fictional movies. Nor can they slow down time, as far as we know. They can only react. Their reaction here, i.e., temporarily stopping someone from leaving who happened to match conflicting descriptions of a suspect, depicts effort to garner a few moments to assess the situation and scene. That is not flagrant misconduct of the ilk contemplated in *Mazuca*. Assuming it were misconduct in the first instance, it is not so weighty as to overcome the subsequent intervention of a pre-existing, yet unknown, arrest warrant. So, in applying the very findings of the trial court to the factors discussed in *Mazuca*, we conclude that only one favors suppression, it being the indicia of temporal proximity. The others do not.

Like the *Mazuca* court, we too "conclude that the behavior of the arresting officers . . . was not so particularly purposeful and flagrant that the discovery of the appellee's outstanding arrest warrant[] may not serve to break the causal connection between the illegal stop and the discovery of the [contraband] . . . thus purging the primary taint," if any. *Mazuca*, 375 S.W.3d at 310. Moreover, the exercise of our judgment in this regard does not trample upon the trial court's authority to determine historical fact. Rather, it illustrates effort to apply the law to the very facts encompassed within the trial court's findings. Such is our duty since we "conduct[] a de novo review of the proper application of law to the factual disputes and credibility issues as thus resolved, in order to say whether the trial judge has reached the correct legal conclusion with respect to 'the legal significance of the facts . . . found.'" *Id.* at 307.

Having found that any impropriety assignable to Rico's initial detention was attenuated by the discovery of an arrest warrant, we hold that the trial court erred in granting his motion to suppress, which error was harmful. Thus, we reverse that order, deny the motion, and remand the cause.

Brian Quinn
Chief Justice

Do not publish.