IN THE
TENTH COURT OF APPEALS

No. 10-18-00336-CR

MICHAEL RAY FERGUSON,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the County Court at Law
Navarro County, Texas
Trial Court No. C37620-CR

MEMORANDUM OPINION

Michael Ray Ferguson pled guilty, without the benefit of a plea bargain, to the offense of possession of a controlled substance over 400 grams with the intent to deliver. *See* TEX. HEALTH & SAFETY CODE § 481.112(a). After a punishment hearing to the court, Ferguson was sentenced to 75 years in prison. *See id.* (f). Because the trial court did not err in denying Ferguson's motion to suppress and did not abuse its discretion in sentencing Ferguson to 75 years in prison, the trial court's judgment is affirmed.

BACKGROUND

Ferguson was travelling in a new Mustang with a teenage female in Kerens, Texas. Because of erratic driving, Ferguson was stopped by the Kerens Chief of Police. After a Department of Public Safety trooper was called to the scene, the decision was made to call a drug-sniffing dog. When the dog and its handler arrived a little over an hour after the initial stop, the dog alerted to Ferguson's entire vehicle. Cocaine residue and 2 kilograms of methamphetamine were discovered in the vehicle.

MOTION TO SUPPRESS

Ferguson contends the trial court erred in denying Ferguson's motion to suppress because Ferguson's continued detention while awaiting the drug-sniffing dog was unreasonable.

Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Lerma v. State,* 543 S.W.3d 184, 189-90 (Tex. Crim. App. 2018); *Furr v. State,* 499 S.W.3d 872, 877 (Tex. Crim. App. 2016). At a motion to suppress hearing, the trial judge is the sole trier of fact and judge of credibility of witnesses and the weight to be given to their testimony. *Lerma,* 543 S.W.3d at 190; *State v. Ross,* 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). Therefore, we afford almost complete deference to the trial court in determining historical facts—if supported by the record. *Wade v. State,* 422 S.W.3d 661, 666 (Tex. Crim. App.

2013). However, we review de novo a trial judge's application of the law of search and seizure to the facts. *Id.* at 667. When the trial court does not make explicit findings of fact, as in this case, we view the evidence in the light most favorable to the trial court's ruling and assume the trial court made implicit findings of fact supported by the record. *Lerma*, 543 S.W. 3d at 190. We will sustain the ruling of the trial court if it is correct under any applicable theory of law. *Wade*, 422 S.W.3d at 667.

Facts

Ferguson does not contest the initial stop; his complaint is that his continued detention, the time between the initial stop and the arrival of a drug-sniffing dog, was unreasonable. Seventy-two minutes passed between the time Chief Miers stopped Ferguson's vehicle and the drug dog arrived from another town. During that time, Miers learned that Ferguson was driving with an invalid driver's license; was traveling from Dallas to Houston and needed to be on Interstate-45, which was about 20 miles away; and was following his GPS which did not seem to be working.

Ferguson's female passenger, who looked to be underage, had no identification and gave Miers multiple dates for the year in which she was born. While running a check on Ferguson, Miers ran a check on the passenger. Just after dispatch returned with information on Ferguson, Miers also learned from

dispatch that a child safety alert had been issued for a female with the name and one of the multiple birth dates given by Ferguson's passenger. Miers became concerned that the passenger was a victim of human trafficking.

Miers also learned that Ferguson and his passenger had conflicting stories as to where they had been. Ferguson said they had been in Dallas to visit the passenger's grandmother who was in good health. The passenger told Miers that they had been in Dallas for her great grandmother's funeral. They both told Miers that they were cousins, but later Ferguson conceded they were not cousins.

Not long after the dispatch returned information on Ferguson and the passenger, DPS Trooper Albritton arrived and Miers related what he knew to the trooper. Based on what he was told, Albritton suspected that narcotics were involved. After talking with Ferguson and the passenger, Albritton agreed that their stories were conflicting. Further, the passenger told Albritton that they had not brought any clothes, other than what they were wearing, to the funeral. When Albritton commented about a box with a picture of a safe on it which was in the back seat, the passenger stated it was empty and that she had left it in there because she did not want to litter. Ferguson, on the other hand, acknowledging that a safe was in the box, first said there was nothing in the safe, then said there should not be anything in the safe. Ultimately, he said there were "sexual things" in the safe because he did not want them to be openly seen.

Albritton was also concerned with human trafficking because the passenger had tattoos which she claimed were home-made and which were consistent with human trafficking. Albritton requested dispatch to follow up on the child safety alert. Dispatch confirmed that the passenger was the person named in the child safety alert. Albritton then called Child Protective Services. A few minutes after the canine unit arrived, Child Protective Services informed Albritton that a representative would go to the scene to meet with the passenger.

Continued Detention

An investigative detention based on reasonable suspicion must be temporary and last no longer than is necessary to effectuate the purpose of the detention. *See Florida v. Royer,* 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed 2d 229 (1983). During a traffic stop, the officer may request certain information from a driver, such as the driver's license, vehicle registration, and proof of insurance, and may run a computer check on that information. *Lerma v. State,* 543 S.W.3d 184, 190 (Tex. Crim. App. 2018). An officer is also permitted to ask drivers and passengers about matters unrelated to the purpose of the stop, so long as the questioning does not measurably extend the duration of the stop. *Id.* There is no *per se* rule that an officer must immediately conduct a computer check on the driver's information before questioning the occupants of the vehicle. *Id.* at 190-91.

If an investigative stop continues indefinitely, at some point it can no longer be

justified as an investigative stop. *United States v. Sharpe*, 470 U.S. 675, 685, 105 S. Ct. 1568, 1575, 84 L. Ed. 2d 605 (1985). But case law imposes no rigid time limitation, and common sense and ordinary human experience must govern over rigid criteria. *Id.* Once the computer check is completed, and the officer knows that the driver has a current valid license, no outstanding warrants, and the car is not stolen, the traffic stop investigation is fully resolved. *Lerma*, 543 S.W.3d at 191. However, if the officer develops reasonable suspicion during a valid detention, and before the purpose of the original stop ends, that the detainee is engaged in criminal activity, prolonged or continued detention is justified. *See Haas v. State*, 172 S.W.3d 42, 52 (Tex. App.—Waco 2005, pet. ref'd).

Application

Here the traffic stop investigation never ended before the drug-sniffing dog arrived. Ferguson was driving without a valid license. And even if the officers should have decided more promptly to either arrest Ferguson or write a ticket for driving without a valid license, the officers developed reasonable suspicion, based on the conflicting stories between Ferguson and his passenger regarding where they had been, whether they were cousins, and what the roll of the safe or box was, the difference between where Ferguson was stopped and where he wanted to be, and especially the child safety alert, that Ferguson was engaged in criminal activity. Thus, Ferguson's continued detention until the drug-sniffing dog arrived was reasonable.

Accordingly, Ferguson's first issue is overruled.

APPROPRIATE SENTENCE

Ferguson next complains that the trial court abused its discretion in assessing punishment at 75 years in prison. Specifically, Ferguson asserts that the trial court failed to consider mitigating factors in assessing his punishment.

A trial court has wide discretion in imposing an appropriate sentence. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim App. 1984). Generally, as long as a sentence is within the range of punishment and has a factual basis in the record, it will not be disturbed on appeal. *Nunez v. State*, 565 S.W.2d 536, 538 (Tex. Crim. App. 1978).

The punishment range for the offense of which Ferguson was convicted is 15 to 99 years or life in prison. *See* TEX. HEALTH & SAFETY CODE § 481.112(f). While some may argue the sentence Ferguson received was harsh, given that Ferguson was cooperative with authorities, took responsibility for the crime, and had a poor upbringing and some mental health issues, there was also testimony that he was with an underaged female, was in possession of two kilograms of methamphetamine when he was stopped, was a member of a recognized gang, had been to prison before for aggravated robbery, was involved in a narcotics distribution scheme where he would pick up and sell two to three kilograms of methamphetamine weekly or bi-weekly, and stored methamphetamine and

cocaine in a safe in his room at his grandmother's home where he was living. Thus, the sentence is within the range of punishment for the offense charged and has a factual basis in this record.

Accordingly, the trial court did not abuse its discretion in sentencing Ferguson to 75 years in prison, and Ferguson's second issue is overruled.

CONCLUSION

Having overruled each issue on appeal, we affirm the trial court's judgment.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
Affirmed
Opinion delivered and filed July 23, 2020
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