



IN THE
TENTH COURT OF APPEALS

No. 10-19-00008-CR

SERGIO HERRERA,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the County Court at Law No. 2
McLennan County, Texas
Trial Court No. 2017-3862-CR2**

MEMORANDUM OPINION

Sergio Herrera appeals from a judgment that placed him on deferred adjudication community supervision for the offense of possession of marijuana. Herrera complains that the trial court erred by denying his motion to suppress evidence pursuant to an illegal initial detention. Because we find that the officer had reasonable suspicion to detain Herrera at the time of the initial encounter, we affirm the judgment of the trial court.

Facts

On the day of Herrera's arrest, an officer with the Beverly Hills Police department was patrolling in a commercial area around 3:00 a.m. and observed a truck parked in front of a business in a strip shopping center. The officer shined a spotlight on the truck and observed that it had two occupants inside. Earlier that same night, the officer had responded to a call regarding a store-front window next door to where the truck was parked in the same strip of stores that had been shattered by a BB or pellet gun. There had been several reports that evening in Waco¹ about people driving down the street displaying BB guns.

The officer was familiar with the vehicles driven by some of the owners of the businesses in the strip center but did not recognize the truck. No lights were on in any of the businesses in the shopping center. The police department had a policy to check on the businesses in Beverly Hills while the businesses were closed. The officer parked his vehicle behind the truck in a way that blocked it in and approached the truck. Herrera got out of the truck and the officer immediately smelled the odor of marijuana coming from the truck, which ultimately led to the discovery of the drugs that formed the basis of the complaint in this proceeding.

Herrera filed a motion to suppress the evidence gained from the detention, arguing that the officer had no reasonable suspicion to initiate a detention of his truck

¹ Beverly Hills and Waco are adjacent to each other.

in the shopping center parking lot. The trial court overruled the motion to suppress after a hearing at which the officer testified and the trial court issued written findings of fact and conclusions of law in support of his denial of Herrera's motion. Herrera pled guilty to the offense and the trial court placed him on deferred adjudication community supervision and gave Herrera the right to appeal the denial of the motion to suppress.

In his sole issue, Herrera complains that the trial court erred by denying his motion to suppress evidence that was based on an illegal detention of his truck. Herrera argues that the officer did not have reasonable suspicion to block his truck and to initiate contact with him.

STANDARD OF REVIEW

We review a trial judge's ruling on a motion to suppress by viewing all of the evidence in the light most favorable to the trial judge's ruling. *Wade v. State*, 422 S.W.3d 661, 666 (Tex. Crim. App. 2013). When the trial judge makes explicit findings of fact, we afford those findings almost total deference as long as the record supports them. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008). We conduct a *de novo* review, however, of a trial court's application of the law of search and seizure to the facts. *Wade*, 422 S.W.3d at 667; *Garcia-Cantu*, 253 S.W.3d at 241.

REASONABLE SUSPICION

Under the Fourth Amendment, a warrantless detention of the person that amounts to less than a full-blown custodial arrest must be justified by a reasonable

suspicion. *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011). A police officer has reasonable suspicion to detain a person if he has specific, articulable facts that, combined with rational inferences from those facts, would lead him reasonably to conclude that the person detained is, has been, or soon will be engaged in criminal activity. *York v. State*, 342 S.W.3d 528, 536 (Tex. Crim. App. 2011). This standard is an objective one that disregards the actual subjective intent of the arresting officer and looks, instead, to whether there was an objectively justifiable basis for the detention. *Derichsweiler v. State*, 348 S.W.3d at 914. It also looks to the totality of the circumstances; those circumstances may all seem innocent enough in isolation, but if they combine to reasonably suggest the imminence of criminal conduct, an investigative detention is justified. *Id.* "[T]he relevant inquiry is not whether particular conduct is innocent or criminal, but the degree of suspicion that attaches to particular non-criminal acts." *Id.*

The concept of reasonable suspicion cannot be reduced to "a neat set of legal rules." *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1 (1989); *Tanner v. State*, 228 S.W.3d 852, 856 (Tex. App.—Austin 2007, no pet.). The facts are judged under "an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief that the action taken was appropriate?' *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889 (1968). Thus, we should avoid a formulaic approach or a piecemeal comparison of similar factors in other cases, and instead, we consider the

totality of the circumstances in this case and rely on common sense inferences, asking whether the officer was justified in drawing inferences from and deductions about the cumulative information available to him at the time of the detention. *See Tanner*, 228 S.W.3d at 857. Neither time of day nor level of criminal activity in an area are suspicious in and of themselves individually; however, the two are certainly factors to be considered together in determining the existence of reasonable suspicion. *Crain v. State*, 315 S.W.3d 43, 53 (Tex. Crim. App. 2010). Indeed, an officer who does not have enough information upon which to base an arrest is not required to simply shrug his shoulders and allow a crime to occur or a criminal to escape. *See Tanner*, 228 S.W.3d at 852, 858-859.

In this proceeding, because the officer blocked Herrera's truck with his patrol car, the relevant inquiry is whether or not the officer had reasonable suspicion to initiate the contact with Herrera at that time. Using a common-sense approach in viewing the facts as found by the trial court that are supported by the record and any logical inferences drawn from the totality of the circumstances, we conclude that the officer had specific, articulable facts that, combined with rational inferences from those facts, would lead him reasonably to conclude that the person he ultimately detained was, had been, or soon would be engaged in criminal activity. Thus, the trial court did not err by finding that the officer had reasonable suspicion to initiate the detention of Herrera. Herrera's sole issue is overruled.

CONCLUSION

Having found no reversible error, we affirm the trial court's denial of the motion to suppress evidence.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed

Opinion delivered and filed July 22, 2020

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