TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00816-CR

Ariana Kristina Oliveira, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 8 OF TRAVIS COUNTY,
NO. C-1-CR-14-209113,
HONORABLE CARLOS HUMBERTO BARRERA, JUDGE PRESIDING**

M E M O R A N D U M O P I N I O N

Appellant, Ariana Kristina Oliveira, was convicted of the offense of driving while intoxicated. *See* Tex. Penal Code § 49.04. In a single point of error, Oliveira challenges the trial court's denial of her motion to suppress evidence on the basis that it was obtained pursuant to an unlawful detention. We will affirm the judgment.

BACKGROUND

At the suppression hearing, the trial court heard evidence that, on June 6, 2014, at approximately 1:45 a.m., Austin Police Department Officer Bryce Sakamoto saw a car stopped on the side of the road just west of the southbound I-35 frontage road in south Austin. The location of the car was lightly trafficked and "somewhat remote and isolated." Officer Sakamoto pulled up behind the car and activated his overhead emergency lights. He testified that he stopped "primarily to investigate what the reason was for her to be not on the roadway and also to check welfare, to

make sure everything was okay." He further testified that he activated his emergency lights "primarily [as] a safety issue," explaining that his lights were necessary to indicate to other motorists that an emergency vehicle was operating at that location and to alert back-up officers as to his location. Officer Sakamoto exited his patrol car, approached Oliveira's driver-side window (which she had lowered) and asked her, "What's up?" Officer Sakamoto testified that he immediately smelled the odor of alcohol coming from appellant and observed other indications of intoxication. Sakamoto ultimately arrested Oliveira for driving while intoxicated.

Oliveira moved to suppress the above evidence of her intoxication on the basis that Officer Sakamoto's initial interaction with her constituted an unlawful detention. *See* U.S. Const. amend. IV; Tex. Const. art. I, § 9; *Cady v. Dombrowski,* 413 U.S. 433, 441 (1973); *Wright v. State,* 7 S.W.3d 148, 151 (Tex. Crim. App. 1999). The State responded that, at the time Officer Sakamoto first encountered Oliveira, there was no detention. Therefore, according to the State, there was no need for Officer Sakamoto to have had reasonable suspicion before approaching the vehicle.[1]

The trial court found that the interaction did not constitute a detention and denied Oliveira's motion to suppress.[2] Oliveira pleaded no contest to the offense of driving while intoxicated. *See* Tex. Penal Code § 49.04. The trial court placed her on two years' deferred-adjudication community supervision and assessed a $1000 fine. Oliveira appealed.

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[1] The State alternatively argued that either the officer had reasonable suspicion to detain Oliveira or that the requirements of the community-caretaking exception were satisfied.

[2] The trial court made further findings and conclusions that the community-caretaking exception was satisfied and that the detention did not begin until after Officer Sakamoto observed signs of intoxication.

STANDARD OF REVIEW

A trial court's ruling on a motion to suppress is reviewed on appeal for abuse of discretion. *State v. Dixon,* 206 S.W.3d 587, 590 (Tex. Crim. App. 2006). The trial court's ruling will be upheld if it is reasonably supported by the record and is correct under any applicable legal theory. *Id.* That rule holds true even if the trial court gave the wrong reason for its ruling. *Armendariz v. State,* 123 S.W.3d 401, 404 (Tex. Crim. App. 2003). The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony. *State v. Ross,* 32 S.W.3d 853, 855 (Tex. Crim. App. 2000); *Guzman v. State,* 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We give trial courts almost complete deference in determining historical facts, but we review de novo the trial court's application of the law. *Carmouche v. State,* 10 S.W.3d 323, 327 (Tex. Crim. App. 2000).

DISCUSSION

Oliveira asserts that the trial court abused its discretion in denying her motion to suppress because Officer Sakamoto's initial "detention" of her was not justified by reasonable suspicion as required under the Fourth Amendment. The State maintains that Officer Sakamoto's interaction with Oliveira was merely an encounter that did not implicate her constitutional rights.[3]

I. Law regarding police-citizen encounters and detentions

Police and citizens may engage in three distinct types of interactions: consensual encounters, investigative detentions, and arrests. *State v. Woodard,* 341 S.W.3d 404, 411-12 (Tex.

[3] The State again alternatively argues that the officer had reasonable suspicion to detain Oliveira.

Crim. App. 2011). Detentions and arrests are Fourth Amendment seizures and thus implicate Fourth Amendment safeguards. *State v. Castleberry,* 332 S.W.3d 460, 466 (Tex. Crim. App. 2011). A detention "'occurs when a person yields to the police officer's show of authority under a reasonable belief that he is not free to leave.'" *Johnson v. State*, 414 S.W.3d 184,193 (Tex. Crim. App. 2013) (quoting *Crain v. State,* 315 S.W.3d 43, 49 (Tex. Crim. App. 2010)). Detentions require a showing that the detaining officer had reasonable suspicion. *Id.*; *see also State v. Nelson,* 228 S.W.3d 899, 902 (Tex. App.—Austin 2007, no pet.) ("A warrantless automobile stop is a Fourth Amendment seizure analogous to a temporary detention, and it must be justified by reasonable suspicion."). Reasonable suspicion exists if the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person actually is, has been, or soon will be engaged in criminal activity. *Castro v. State,* 227 S.W.3d 737, 741 (Tex. Crim. App. 2007) (citing *Garcia v. State,* 43 S.W.3d 527, 530 (Tex. Crim. App. 2001)).

Encounters, by contrast, are consensual interactions between citizens and police that do not require reasonable suspicion and do not implicate Fourth Amendment protections. *Castleberry,* 332 S.W.3d at 466. Encounters occur when police officers approach an individual in a public place to ask questions, request identification, or request consent to search as long as the interaction is consensual—that is, as long as an officer does not convey a message that compliance with the officer's request is required. *Florida v. Bostick,* 501 U.S. 429, 434-35 (1991). In other words, "[p]olice officers 'do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal

prosecution his voluntary answers to such questions.'" *State v. Perez,* 85 S.W.3d 817, 819 (Tex. Crim. App. 2002) (quoting *Bostick,* 501 U.S. at 434).

To determine whether an encounter between a police officer and a citizen rises to the level of a detention, the inquiry is whether, "taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *State v. Garcia–Cantu,* 253 S.W.3d 236, 242 (Tex. Crim. App. 2008) (citing *Kaupp v. Texas,* 538 U.S. 626, 629 (2003)).

II. Officer Sakamoto's and Oliveira's interaction was an encounter and not a detention

Oliveira contends that a reasonable person in her position would not have felt free to leave when Officer Sakamoto pulled in directly behind her and activated his emergency lights. The State contends that Officer Sakamoto's conduct was necessary for safety under the circumstances and did not constitute a detention.

In support of its argument that the initial interaction between Officer Sakamoto and Oliveira was merely an encounter, the State relies on this Court's decision in *Franks v. State*, 241 S.W.3d 135 (Tex. App.—Austin 2007, pet. ref'd). In *Franks*, a police officer noticed a vehicle parked just off the highway "after dark." *Id*. at 139. The vehicle was stopped at a rest area, but its engine was running and its dome light was on. *Id*. The officer parked his patrol car behind the vehicle, activated his overhead lights, approached the vehicle, and began talking to Franks, the driver and sole occupant of the vehicle. *Id*. At some point during the conversation, Franks asked the officer if she could leave. *Id*. The officer told her that she could not. *Id*. Eventually, Franks was

asked to step out of her vehicle, the vehicle was searched, and cocaine was found. *Id*. Franks filed a motion to suppress the evidence, which the trial court denied. *Id*.

This Court held that, once the officer refused Franks's request to leave, the encounter became an investigative detention requiring reasonable suspicion of criminal activity. *Id*. at 142-43. Finding none, this Court reversed the trial court's denial of the motion to suppress. *Id*. at 145. However, this Court also explained why the initial interaction between the officer and Franks was not a detention:

> The initial interaction between [the officer] and appellant, after he approached the car, was an encounter. Although [the officer] parked his vehicle behind appellant's, nothing in the record suggests that the position of his vehicle blocked hers or prevented appellant from leaving the rest area by simply driving forward. Moreover, appellant does not allege that the patrol car's siren was activated, that she received any command over the patrol car's loudspeaker, or that [the officer] told her to turn off her car's engine when he approached.

Id. at 142. We further held that the officer's activation of his emergency lights "in an area that appeared dark and unoccupied . . . does not necessarily constitute a detention." *Id*. We determined that the record supported the officer's testimony that he activated the lights to illuminate the area, which was poorly lit. *Id*.

In *Cole v. State*, No. 03-08-00045-CR, 2008 WL 3877714, at *2 (Tex. App.—Austin Aug. 20, 2008, no pet.) (mem. op., not designated for publication), this Court again held that similar facts did not constitute a detention under the Fourth Amendment. In that case, Cole's vehicle was already pulled over on the side of the road when a police officer came into contact with her. *Id.* at *1. Cole's engine was running and the lights were on. *Id.* The officer parked her patrol car

behind Cole's, activated her rear emergency lights, approached the vehicle, and initiated a conversation with Cole. *Id.* The officer's patrol car had not blocked Cole's car or prevented her from leaving by simply driving forward. *Id.* at *3. The record did not indicate that the patrol car's siren was activated or that the officer had given Cole any command. *Id.* at *4.

This Court rejected Cole's assertion that the activation of the officer's rear emergency lights late at night made the initial interaction a detention. *Id.* As in *Franks*, this Court observed that the activation of a patrol car's lights does not necessarily convert an encounter into a detention. *Id*. This is because, "'depending on the facts, officers may well activate their emergency lights for reasons of highway safety or so as not to unduly alarm the stopped motorists.'" *Id*. (quoting *Martin v. State,* 104 S.W.3d 298, 301 (Tex. App.—El Paso 2003, no pet.). This Court concluded that the record supported the officer's testimony—and the trial court's implied finding—that the officer activated the patrol car's rear emergency lights for safety reasons, namely, so that other vehicles would not hit her car. *Id.*; *see also Iselt v. State*, No. 03-12-00120-CR, 2014 WL 1801748, at *4 (Tex. App.—Austin May 2, 2014, pet. ref'd) (mem. op., not designated for publication) (finding no detention where officer parked patrol car behind appellant's parked vehicle and asked appellant to open her door).

Here, the trial court made findings of fact that, "[a]lthough there was some traffic on the road" on which Oliveira was already stopped, "the location is somewhat remote and isolated." It determined that the officer activated his emergency light for safety purposes and so that his vehicle could be more easily located. We conclude that these findings are supported by the record. The record further shows that Officer Sakamoto issued no verbal commands, did not activate his siren,

did not physically prevent Oliveira from leaving, or engage in other conduct that would have signaled to a reasonable person that she was not free to leave.

Oliveira cites Officer Sakamoto's testimony that Oliveira was not free to leave once he activated his emergency lights in support of her argument that she was unlawfully detained. But Officer Sakamoto later testified that, had Oliveira driven away, he would not have pursued her. More importantly, an officer's subjective intent is not determinative, and there was no evidence that Officer Sakamoto communicated to Oliveira that she was not free to leave. *See Iselt*, 2014 WL 1801748, at *4 ("The test is not what the officer subjectively and secretly believed regarding the defendant's freedom to leave, nor is it what the defendant believed about her freedom to leave, but whether a reasonable person in the defendant's position could feel free to disregard the officer and go about her business.").

Oliveira also relies on *Crain*, 315 S.W.3d at 43-55, for her argument that Officer Sakamoto's conduct constituted a detention. But *Crain* is distinguishable: in addition to shining his patrol car's lights in the appellant's direction,"[4] the officer in *Crain* made a "request-that-sounded-like-an-order, to 'come over here and talk to me,' . . . ." *Id*. at 52. The court of criminal appeals held that the combination of a spotlight and the verbal command converted the encounter to a detention. *Id*. The record does not reveal that Officer Sakamoto issued any verbal

[4] In *Crain*, the officer activated the patrol car's "spotlight" and not the overhead emergency lights. *Crain v. State*, 315 S.W.3d 43, 46 (Tex. Crim. App. 2010). The court noted its previous holding that an officer's use of a spotlight alone would not lead a reasonable person to think he is not free to go. *Id.* at 50-51 (citing *State v. Garcia–Cantu,* 253 S.W.3d 236, 245 (Tex. Crim. App. 2008)).

command to Oliveira but instead merely asked her, "What's up?" *Crain* thus does not compel reversal in this case.

Oliveira further argues that, had she pulled away after Officer Sakamoto had activated his emergency lights, she would have violated section 542.501 of the Texas Transportation Code, which provides that "a person may not willfully fail or refuse to comply with a lawful order or direction of a police officer." However, she has failed to cite authority for the proposition that an officer's activation of a patrol car's emergency lights behind a stationary vehicle on the shoulder of a roadway constitutes an "order or direction" with which a person is required to comply.

Based on our previous holdings in factually similar cases, we conclude that, taking into account all of the circumstances surrounding the encounter, Officer Sakamoto's conduct in this case would not have communicated to a reasonable person that she was not free to ignore the officer's presence and leave. We hold that the record supports the trial court's conclusion that the initial interaction between Officer Sakamoto and Oliveira was an encounter and not a detention.[5]

The trial court did not abuse its discretion in denying Oliveira's motion to suppress. We overrule her sole issue.

CONCLUSION

We affirm the judgment of the trial court.

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[5] Because we decide that appellant was not detained, we do not reach the State's argument that Officer Sakamoto had reasonable suspicion before approaching her.

Cindy Olson Bourland, Justice

Before Justices Puryear, Goodwin, and Bourland

Affirmed

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