NUMBER 13-16-00401-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JOSE MANCIA, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 299th District Court of Travis County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Longoria

Appellant Jose Mancia pled guilty to driving while intoxicated (DWI), a third degree felony—having been twice convicted for the same offense in 2008 and 2012. *See* TEX.

PENAL CODE ANN. §§ 49.04, 49.09(b) (Westlaw, Westlaw through Ch. 49, 2017 R.S.). In one issue, Mancia argues that the trial court erred by denying his motion to suppress. We affirm.

I. BACKGROUND[1]

At approximately 2:30 am, Texas Burrell, a security guard, witnessed Mancia's truck stopped in the middle of the road, blocking a public roadway. Burrell testified that Mancia appeared to be unconscious in his vehicle with the engine running, in gear, and with his foot on the brake pedal. Concerned for Mancia's welfare, Burrell tapped on the window of Mancia's truck to examine his condition. Mancia awoke from deep sleep and opened the door. According to Burrell, Mancia smelled of alcohol and was disoriented and confused. Burrell asked Mancia to exit the truck so he could talk to him. Burrell then called 911, and the Round Rock Police Department arrived four to five minutes later. Burrell testified that Mancia was not combative or belligerent; rather, he was compliant and cooperative. After the police administered a field sobriety test, Mancia was arrested for DWI. *See Id*.

A grand jury indicted Mancia for DWI. Mancia filed a second amended motion to suppress asserting an illegal citizen's arrest, which was denied by the trial court. Findings of fact and conclusions of law were entered by the trial court. The trial court accepted a plea bargain which placed Mancia in the Texas Department of Criminal Justice—Institutional Division for ten years, probated for six years with the following conditions: treatment and counseling as recommended, no refusal of breath or blood test if pulled

[1] Pursuant to a docket-equalization order issued by the Supreme Court of Texas, this appeal was transferred to this Court from the Third Court of Appeals in Austin. *See* TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through Ch. 49, 2017 R.S.).

over on suspicion of DWI, ignition interlock device for half the term, eighty hours of community service, suspended driver's license, and ten days in Travis County jail. This appeal ensued.

II. Standard of Review and Applicable Law

In viewing the trial court's ruling on a motion to suppress, we apply a bifurcated standard of review. *Amador v. State,* 221 S.W.3d 666, 667 (Tex. Crim. App. 2007). When supported by the record, the trial court's findings of facts and the application of law to the facts are given nearly full deference. *Miller v. State*, 393 S.W.3d 255, 261–62 (Tex. Crim. App. 2012). The trial court's holding that the encounter was consensual and not a citizen's arrest is reviewed *de novo*. *Guzman v. State*, 955 S.W.2d 85, 88 (Tex. Crim. App. 1997). We view the facts in the light most favorable to the verdict. *Id*.

The touchstone of the Fourth Amendment is to protect citizens against unreasonable searches and seizures. U.S. CONST. amend. IV; *see Wiede v. State*, 214 S.W.3d 17, 24 (Tex. Crim. App. 2007). In a motion to suppress, the defendant bears the burden of proof to show that he was searched and seized without a warrant. *Bishop v. State*, 85 S.W.3d 819, 822 (Tex. Crim. App. 2002). If the defendant meets the burden of proof, the burden then shifts to the State requiring it to provide a recognized exception to the warrant requirement. *See id*. (requiring the State to establish that warrantless searches or seizures are reasonable). A search or seizure without a warrant is deemed reasonable if a well-delineated exception applies. *E.g. State v. Sanchez*, 501 S.W.3d 165, 169 (Tex. Crim. App. 2017) (recognizing the consent exception).

We examine the distinction between the three types of police-citizen interactions: consensual encounters, investigative detentions, and arrests. *Crain v. State*, 315 S.W.3d

43, 49 (Tex. Crim. App. 2010). Fourth Amendment issues are raised by investigative detentions and arrests, but not by consensual encounters. *See Florida v. Bostick*, 501 U.S. 429, 434 (1991) (holding if an encounter "loses its consensual nature," the Fourth Amendment will be triggered); *State v. Woodard*, 341 S.W.3d 404, 410–11 (Tex. Crim. App. 2011) (establishing that consensual encounters do not implicate the Fourth Amendment).

Currently, there is no bright-line rule to govern when a consensual encounter becomes a seizure. *Woodard*, 341 S.W.3d at 411. Generally, however, an encounter is no longer consensual when an officer restrains an individual's liberty through force or authority. *See Bostick*, 501 U.S. at 434 (ruling that liberty restraint is deemed a detention or arrest); *Woodard*, 341 S.W.3d at 411 (stating that a consensual encounter is one in which a reasonable person in the defendant's position would have felt free to terminate the interaction or ignore the request); *Crain v. State*, 315 S.W.3d 43, 49 (Tex. Crim. App. 2010) (same). To determine if an arrest occurred, courts consider: (1) the amount of force displayed; (2) the duration of the detention; (3) the efficiency of the investigative process and whether it is conducted at the original location or the person is transported to another location; (4) the officer's expressed intent; and (5) any other relevant factors. *See Melendez v. State*, 467 S.W.3d 586, 592–93 (Tex. App.—San Antonio 2015, no pet.). Additionally, signs of mandatory compliance indicate that the encounter was not consensual. *See Crain*, 315 S.W.3d at 49–50 (considering threatening presence, display of a weapon, physical touching, use of language and tone of voice). However, the mere act of questioning an individual does not turn a consensual encounter into a seizure. *See Bostick*, 501 U.S. at 434 (providing that only when someone's liberty is restrained has a

seizure occurred). Any private citizen may approach an individual at any time of the day and ask questions. *State v. Garcia-Cantu*, 253 S.W.3d 236, 251 (Tex. Crim. App. 2008).

When a detention occurs, courts must determine if there was reasonable suspicion that the individual "is, has been, or soon will be" involved in criminal activity. *Woodard*, 341 S.W.3d at 411. The burden for proving reasonable suspicion is significantly lower than proving probable cause for an arrest. *Derichsweiler v. State*, 348 S.W.3d 906, 916 (Tex. Crim. App. 2011) (observing that the reasonable suspicion standard is much lower than the probable cause standard because a "brief investigatory detention constitutes a significantly lesser intrusion upon the privacy and integrity of the person" compared to an arrest). The Texas exclusionary rule can apply even in cases of citizen arrests. *See Miles v. State*, 241 S.W.3d 28, 45 (Tex. Crim. App. 2007).

III. ANALYSIS

Under Mancia's points of error, he argues the trial court erred in denying his motion to suppress because Burrell either conducted a citizen's arrest without having sufficient probable cause or detained Mancia without reasonable suspicion given the totality of the circumstances. As such, Mancia contends that all evidence obtained from his encounter with Burrell should be suppressed. The State argues that the encounter was a consensual encounter or, at most, a brief detention.

A. Mancia was not Arrested

Before we address the issue of whether the citizen's arrest was lawful, we must first determine what type of encounter took place. By analyzing the factors in *Melendez,* 467 S.W.3d at 592–93, we agree with the State and conclude that there was no arrest.

1) The Amount of Force Employed

We first note that there are no signs of mandatory compliance in the present case. *See id.* At no point did Burrell order Mancia to do anything. Further, the Texas Court of Criminal Appeals has held that a police officer may tap on the window and even open the door of a sleeping driver without detaining or arresting the individual. *See Garcia-Cantu*, 253 S.W.3d at 243 (explaining that a request to roll the window down or open the car door may be part of a consensual encounter); *see also Ashton v. State*, 931 S.W.2d 5, 7 (Tex. Crim. App. 1996) (holding a detention did not occur on similar facts).

There is also no evidence in the record to show that Burrell used physical force of any kind. We find no evidence to support Mancia's claim that he was ordered out of his vehicle. Instead, we defer to the trial court's findings of fact, which states that Burrell merely "tapped" on the window and "asked" Mancia to step out of his vehicle to talk. Also, Burrell did not obstruct the path of Mancia's truck, he did not use or point his weapon, nor did he handcuff Mancia; Burrell merely asked Mancia to sit on the bed of the truck and engaged in a conversation. *See Bostick*, 501 U.S. at 434.

Moreover, recent cases have found that an arrest did not take place in situations where much more force was used to detain the defendant than in the present case. *See Melendez*, 467 S.W.3d at 590–93 (determining that a security guard that handcuffed an individual suspected of selling drugs until the police arrived did not conduct an arrest); *see also Jones v. State*, 490 S.W.3d 592, 594 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (finding that a security guard that asked the defendant to empty his pockets, conducted a pat-down, and handcuffed him until the police arrived did not conduct an arrest); *Turner v. State*, 901 S.W.2d 767, 769 (Tex. App.—Houston [14th Dist.] 1995, pet.

ref'd) (concluding that the officer conducted an investigative detention, not an arrest, when he asked the defendants to exit the vehicle, obtained identification, and conducted a pat-down search). Thus, we see no evidence of Burrell exerting force over Mancia.

2) The Duration of the Encounter

The duration of the encounter also favors the conclusion that the encounter was not an arrest. As the trial court found, the encounter lasted four to five minutes. No rule exists to determine the length of time one must be held to constitute an arrest; however, we agree with our sister court of appeals' holding in *Castro* that an encounter this short could rarely be an arrest. *See Castro v. State*, 373 S.W.3d 159, 165–66 (Tex. App.—San Antonio 2012, no pet.) (holding that approximately from half an hour to one hour was "merely" long enough to classify the encounter as an investigatory detention). The duration of the encounter in this case strongly suggests that Burrell conducted a brief detention rather than an arrest.

3) The Efficiency and Location of the Investigative Process

Next, as shown in the record, Mancia remained in the original location throughout his encounter with Burrell and the police. Mancia argues that his facts are akin to those in *Hardinge*, where it was held that an arrest took place. *Hardinge v. State*, 500 S.W.2d 870, 873 (Tex. Crim. App. 1973). We disagree. In *Hardinge*, an arrest took place because the intoxicated defendant, who was simply observing a large picture outside a radio station, was transported by the city police to a new location to meet with the military police. *Id*. at 873 (holding defendant was not in breach of the peace, thus no reasonable suspicion existed). In our case, Mancia remained at his own vehicle for several minutes without being restrained before police arrived.

4) Express Intent and Other Factors

Also, Burrell's expressed intent supports the State's argument against classifying the encounter as an arrest. Burrell testified that he expressed his intent to "talk to" Mancia. Given the condition in which Burrell first found Mancia, Burrell was justified in being "concerned" for Mancia's health. Finally, we consider any other relevant factors. In the case at hand, we consider Burrell's uniform a relevant factor. Burrell was in full uniform with a utility belt, which contained a weapon, handcuffs, and a flashlight, when he approached Mancia. However, this factor alone is not sufficient to establish an arrest.

5) Summary

Burrell, acting as a concerned citizen and not an officer, was as free as anyone to stop and question Mancia. *See Garcia-Cantu*, 253 S.W.3d at 251. Burrell exerted no force over Mancia and did not make any demands of mandatory compliance. Considering the totality of the circumstances and viewing the evidence in the light most favorable to the trial court ruling, we conclude that a reasonable person in Mancia's shoes would have felt free to terminate or ignore the initial encounter. *See Crain*, 315 S.W.3d at 49. Thus, we conclude that this was a consensual encounter, not a citizen's arrest. Being a consensual encounter, the Fourth Amendment was not implicated, and the trial court did not err in denying the motion to suppress. *See Woodard*, 341 S.W.3d at 410.

B. Reasonable Suspicion to Detain

Alternatively, assuming there was no arrest, Mancia argues that Burrell conducted an investigate detention without possessing reasonable suspicion. We disagree. Even assuming that the initial encounter was not consensual, we find that Burrell possessed reasonable suspicion to briefly detain Mancia.

A police officer may temporarily detain an individual when the officer has reasonable suspicion to believe that an individual "actually is, has been, or soon will be engaged in criminal activity." *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). Reasonable suspicion exists when the officer has specific and articulable facts that, when combined with the inferences from those facts, lead the officer to reasonably believe that the individual is, has been, or will soon be engaged in crime. *Id.* In the present case, Burrell approached Mancia's vehicle and noticed that even though he was unconscious, the car was in drive and his foot was on the brake pedal. Upon the car opening, Mancia noticed a strong smell of alcohol and observed that Mancia seemed groggy and disoriented. These facts could have led Burrell to reasonably believe that Mancia had been or would be soon engaged in the offense of DWI. *See* TEX. PENAL CODE ANN. § 49.04 (Westlaw, Westlaw through Chapter 49, 2017 R.S.). Or, similarly, these circumstances could have reasonably led Burrell to believe that Mancia was currently committing the offense of public intoxication. *See id.* § 49.02(a) (West, Westlaw through Chapter 49, 2017 R.S.).

As such, when viewing all the questions of law *de novo*, we conclude that Burrell had sufficient reasonable suspicion to temporarily detain Mancia.

C. Summary

We conclude that Mancia was not illegally seized without a warrant because the initial encounter was consensual. Further, even if the encounter had not been consensual, it was not an arrest. At most, Burrell conducted a brief investigatory detention supported by sufficient reasonable suspicion of either DWI or public intoxication. Thus, the trial court did not abuse its discretion in denying the motion to suppress.

IV. CONCLUSION

We affirm the trial court's judgment denying the motion to suppress.

NORA L. LONGORIA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
17th day of August, 2017.