NUMBER 13-18-00506-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI–EDINBURG

ROBBIE LYNN COPELAND, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 2nd 25th District Court of Gonzales County, Texas.

MEMORANDUM OPINION

Before Justices Benavides, Hinojosa, and Perkes
Memorandum Opinion by Justice Perkes

Appellant Robbie Lynn Copeland was indicted for possession of a controlled substance (methamphetamine) in an amount larger than four grams but less than 200 grams, a second-degree felony. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(6), 481.115(d). Pursuant to a plea bargain agreement, Copeland pleaded guilty and was

placed on four years of deferred adjudication community supervision. *See* TEX. CODE CRIM. PROC. ANN. art. 42A.101. Copeland retained her right to appeal pretrial matters. *See* TEX. R. APP. P. 25.2(a)(2)(A). By one issue, Copeland argues that the trial court erred in denying her motion to suppress. We affirm.

I. BACKGROUND

The trial court held a hearing on Copeland's motion to suppress at which the State stipulated that Copeland was detained without a warrant.[1] The arresting officer, Thomas Garza of the Gonzales Police Department, was the only witness to testify.

According to Officer Garza, he was patrolling County Road 239 in Gonzales, Texas shortly after midnight on February 7, 2017. Officer Garza testified that he exclusively worked the "nightshift," and that this particular road was scarcely trafficked. With the exception of a single-family residence and one hauling business, the road was surrounded by vacant lots, "cows[,] and everything else of that nature." Officer Garza testified he was familiar with the location because he had "been instructed since day one to frequent [sic] patrol County Road 239 and 239A due to the high level of illegal dumping" in the area.

At approximately 12:36 a.m., Officer Garza testified he observed a black SUV "traveling very slowly" and "braking frequently" down the road. Officer Garza then witnessed the vehicle stop on the roadway for approximately five minutes. At that point, Officer Garza activated his patrol vehicle's overhead emergency lights and began his investigation.

[1] In a motion to suppress hearing based on a Fourth Amendment violation, "[i]f the State is unable to produce evidence of a warrant, then it must prove the reasonableness of the search or seizure." *State v. Martinez*, 569 S.W.3d 621, 623–24 (Tex. Crim. App. 2019).

Copeland was identified as the driver, and she volunteered that there were open containers of alcohol in the vehicle. Officer Garza searched the vehicle and found methamphetamine. Copeland and a passenger were subsequently arrested for possession of a controlled substance.

During cross-examination, Officer Garza stated he was unable to see whether any items were discarded or whether anyone entered or exited the vehicle before initiating the stop. Officer Garza explained, "It was dark that night. I couldn't see what was going on, to be honest with you. That's why I made the investigative stop." Officer Garza maintained that the frequent stopping past midnight in an area known for illegal dumping provided him with reasonable suspicion that the vehicle's occupants were looking for a place to dump something. Officer Garza's testimony was consistent with the information he provided in his offense report.

Following the trial court's denial of Copeland's motion to suppress, Copeland entered into a plea agreement with the State and pleaded guilty. The trial court assessed punishment at four years' deferred adjudication community supervision and ordered Copeland to pay a $750 fine. This appeal followed.

II. MOTION TO SUPPRESS

In her sole issue on appeal, Copeland argues that the trial court erred in denying her motion to suppress because Officer Garza lacked reasonable suspicion to effectuate the stop.

A. 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).

"Although we give almost total deference to the trial court's determination of historical facts, we conduct a *de novo* review of the trial court's application of the law to those facts." *Love v. State*, 543 S.W.3d 835, 840 (Tex. Crim. App. 2016) (internal quotation marks omitted). The record[2] is reviewed in the light most favorable to the trial court's determination, and the judgment will be reversed only if it is arbitrary, unreasonable, or "outside the zone of reasonable disagreement." *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006). The trial court's ruling must be affirmed if "it is correct under any theory of law applicable to the case, even if the trial court did not rely on that theory." *Leming v. State*, 493 S.W.3d 552, 562 (Tex. Crim. App. 2016).

B. Applicable Law

An investigative stop by law enforcement is a sufficient intrusion on an individual's privacy to implicate the Fourth Amendment's protections. *See Terry v. Ohio*, 392 U.S. 1, 19 (1968). To initiate an investigative detention, a police officer must have reasonable suspicion, supported by articulable facts, that criminal activity may be afoot. *See id.*; *see also Derichsweiler v. State*, 348 S.W.3d 906, 916 (Tex. Crim. App. 2011) (observing that because a "brief investigatory detention constitutes a significantly lesser intrusion upon the privacy and integrity of the person" compared to an arrest, the reasonable suspicion standard is much lower than the probable cause standard); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005) (noting that 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").

[2] Where, as here, the trial court does not make explicit findings of fact, "we will assume that the trial court made implicit findings of fact supported in the record that buttress its conclusion." *Carmouche v. State*, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000).

At a suppression hearing, although a defendant initially bears the burden of producing evidence that rebuts the presumption of proper police conduct, the burden shifts to the State once a defendant establishes that a search or seizure occurred without a warrant. *See Ford*, 158 S.W.3d at 492. The State must then elicit testimony demonstrating sufficient facts to prove that reasonable suspicion existed. *See Foster v. State*, 326 S.W.3d 609, 613 (Tex. Crim. App. 2010) (observing that reasonable suspicion "requires only some minimal level of objective justification").

The court, employing an objective standard, must "take into account the totality of the circumstances in order to determine whether a reasonable suspicion existed for the stop." *Martinez v. State*, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011); *see also Miller v. State*, 418 S.W.3d 692, 696 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd) ("We determine, using an objective standard, whether the facts available to the officer at the moment of detention warrant a person of reasonable caution to believe that the action taken was appropriate.").

Relevant factors considered in the "totality of the circumstances" analysis include: the time of day, the location of the stop, the officer's training and expertise, and the officer's observations. *See State v. Garcia-Cantu*, 253 S.W.3d 236, 239 (Tex. Crim. App. 2008) (determining that the officer had reasonable suspicion to detain a vehicle parked in "a 'high-crime' area for drugs and prostitution" on a dead-end street at 4 a.m. with only two homes in close proximity); *Ford*, 158 S.W.3d at 493 (holding that law enforcement training and experience are factors in the reasonable suspicion analysis); *but see U.S. v. Arvizu*, 534 U.S. 266, 274 (2002) (noting that although "the concept of reasonable

suspicion is somewhat abstract," the court has "deliberately avoided reducing it to neat set of legal rules") (internal quotations omitted).

C. Analysis

Copeland argues that although the stop occurred at nighttime in an area known for illegal dumping, "there must be something more" for an officer to form reasonable suspicion to stop a vehicle.

Copeland likens the facts of this case to those of *Shaffer v. State*, 562 S.W.2d 853, 854 (Tex. Crim. App. 1978) and *White v. State*, 574 S.W.2d 546, 547 (Tex. Crim. App. 1978) and urges us to follow the same analysis. We find both cases to be inapplicable.[3] To the extent that this case shares factual similarities with *Shaffer*, where the defendant was driving his taxicab at 3 a.m., when an officer observed him drive slowly down the street and stop at a green light before turning, we nonetheless determine our case to be distinguishable. *See Shaffer*, 562 S.W.2d at 854; *cf. White*, 574 S.W.2d at 547 (assessing reasonableness where the defendant was detained mid-day for being in a shopping mall parking lot for several minutes).

Unlike *Shaffer*, the officer here testified to factors that he considered in addition to the time of night and the defendant's unusual driving pattern. Officer Garza testified he considered the aforementioned coupled with information he knew about the propensity for illegal dumping in the area, the absence of legitimate business in the area, and his

[3] The court in *Shaffer v. State*, 562 S.W.2d 853, 854 (Tex. Crim. App. 1978) and *White v. State*, 574 S.W.2d 546, 547 (Tex. Crim. App. 1978) relied on a standard that has since been overruled. The notion that reasonable suspicion can never be established by conduct which is "as consistent with innocent activity as with criminal activity" was rejected by the United States Supreme Court in *United States v. Sokolow,* 490 U.S. 1, 109 (1989) (holding individual factors when taken by themselves were consistent with innocent travel, but when taken together they amounted to reasonable suspicion) and by the Texas Court of Criminal Appeals in *Holladay v. State,* 805 S.W.2d 464 (Tex. Crim. App. 1991) (holding that the test for reasonable suspicion is not whether conduct is innocent or guilty, but rather, the degree of suspicion that attaches to noncriminal acts).

training and expertise to conclude that Copeland may have been or would soon be engaging in criminal behavior. *See Garcia-Cantu*, 253 S.W.3d at 239; *see, e.g.*, *Tanner v. State*, 228 S.W.3d 852, 858 (Tex. App.—Austin 2007, no pet.) (holding that the trial court did not err in determining that an officer's detention was supported by reasonable suspicion when the officer observed "two individuals coming out from behind a darkened place of business at 3:00 a.m.," reasoning the officer "made an on-the-spot observation of conduct that, by any standard, is unusual and highly consistent with criminal behavior"); *State v. Lopez*, 148 S.W.3d 586, 590 (Tex. App.—Fort Worth 2004, pet. ref'd) (finding that the action of driving slowly down the street was not criminal in itself, but when combined with the information available to the officer, it was reasonable for an officer to determine the defendant's conduct was consistent with criminal activity and demanded further investigation). However innocuous driving slowly late at night in a high-crime area may purportedly be, "[t]he possibility of an innocent explanation does not deprive the [detaining] officer of the capacity to entertain reasonable suspicion of criminal conduct." *Leming v. State*, 493 S.W.3d 552, 565 (Tex. Crim. App. 2016) (quoting *Woods v. State*, 956 S.W.2d 33, 37 (Tex. Crim. App. 1997); *see also Garcia-Cantu*, 253 S.W.3d at 244 ("[A] piecemeal or 'divide and conquer' approach is prohibited.").

We find Officer Garza had reasonable suspicion to temporarily detain Copeland. *See Martinez*, 348 S.W.3d at 923; *Foster*, 326 S.W.3d at 613; *see also Ploeger v. State*, No. 13-18-00250-CR, 2019 WL 2221680, at *3 (Tex. App.—Corpus Christi–Edinburg May 23, 2019, no pet. h.) (mem. op., not designated for publication) (holding the same for Copeland's co-defendant passenger). Accordingly, the trial court did not err by denying

Copeland's motion to suppress. *See Dixon*, 206 S.W.3d at 590. We overrule Copeland's sole issue.

III. CONCLUSION

The trial court's judgment is affirmed.

GREGORY T. PERKES
Justice

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

Delivered and filed the
15th day of August, 2019.