NO. 12-24-00263-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

CHAD EVERETTE JOHNSTON, APPELLANT	*§*	***APPEAL FROM THE 114TH***
V.	*§*	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	*§*	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Chad Everette Johnston appeals his conviction for possession of between 200 and 400 grams of methamphetamine with intent to deliver. In one issue, Appellant argues that the trial court abused its discretion by overruling his motion to suppress. We reverse and remand.

BACKGROUND

Following a traffic stop, and K-9 open-air sniff, officers searched Appellant's vehicle and discovered a large quantity of methamphetamine. Appellant was charged by indictment with possession of between 200 and 400 grams of methamphetamine with intent to deliver. Thereafter, Appellant filed a motion to suppress the evidence discovered during the alleged, illegal search of his vehicle. The trial court conducted a hearing on Appellant's motion and, ultimately, denied the motion. Following the denial of his motion to suppress, pursuant to a plea bargain, Appellant pleaded "guilty" as charged, and the trial court sentenced him to imprisonment for thirty years. This appeal followed.

MOTION TO SUPPRESS

In his sole issue, Appellant argues that the trial court abused its discretion in overruling his motion to suppress the evidence seized from his vehicle, which he argues resulted from his being detained absent reasonable suspicion of criminal activity and, thus, a search conducted in violation of his Fourth-Amendment rights.

Standard of Review

We review a trial court's ruling on a motion to suppress under a bifurcated standard. ***Hubert v. State***, 312 S.W.3d 554, 559 (Tex. Crim. App. 2010); ***Carmouche v. State***, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). A trial court's decision to grant or deny a motion to suppress is generally reviewed under an abuse of discretion standard. ***Crain v. State***, 315 S.W.3d 43, 48 (Tex. Crim. App. 2010); ***Shepherd v. State***, 273 S.W.3d 681, 684 (Tex. Crim. App. 2008). We give almost total deference to a trial court's determination of historical facts, especially if those determinations turn on witness credibility or demeanor and review de novo the trial court's application of the law to facts not based on an evaluation of credibility and demeanor. ***Neal v. State***, 256 S.W.3d 264, 281 (Tex. Crim. App. 2008). At a suppression hearing, a trial court is the exclusive trier of fact and judge of the witnesses' credibility. ***Maxwell v. State***, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002). Accordingly, a trial court may choose to believe or to disbelieve all or any part of a witness's testimony. ***State v. Ross***, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). However, a trial court has no discretion in determining what the law is or applying the law to the facts. ***State v. Kurtz***, 152 S.W.3d 72, 81 (Tex. Crim. App. 2004). Thus, a failure by a trial court to analyze or apply the law correctly constitutes an abuse of discretion. ***Id.***

Governing Law

A routine traffic stop closely resembles an investigative detention. ***Powell v. State***, 5 S.W.3d 369, 375 (Tex. App.–Texarkana 1999, pet. ref'd); *see also* ***United States v. Brigham***, 382 F.3d 500, 506 (5th Cir. 2004). Because an investigative detention is a seizure that implicates the United States and Texas Constitutions, the traffic stop must be reasonable. U.S. CONST. AMEND. IV; TEX. CONST. ART. I, § 9; ***Johnson v. State***, 365 S.W.3d 484, 488 (Tex. App.–Tyler 2012, no pet.). When evaluating the reasonableness of an investigative detention, we conduct the inquiry set forth by the United States Supreme Court in ***Terry v. Ohio*** to determine whether (1) the officer's action was justified at its inception; and (2) it was reasonably related in scope to the circumstances that initially justified the interference. *See* ***Terry v. Ohio***, 392 U.S. 1, 19–20, 88

S. Ct. 1868, 1879, 20 L. Ed. 2d 889 (1968); ***Davis v. State***, 947 S.W.2d 240, 242 (Tex. Crim. App. 1997).

Under the first part of the ***Terry*** inquiry, an officer's reasonable suspicion justifies an investigative detention. ***Davis***, 947 S.W.2d at 242–43. Specifically, the officer must have a reasonable suspicion that some activity out of the ordinary is occurring or has occurred. ***Id.*** at 244. An 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." ***State v. Elias***, 339 S.W.3d 667, 674 (Tex. Crim. App. 2011). This is an objective standard. ***Id.*** Thus, when an officer has a reasonable basis for suspecting that a person has committed an offense, the officer may legally initiate an investigative stop. *See* ***Powell***, 5 S.W.3d at 376 (citing ***Drago v. State***, 553 S.W.2d 375, 377–78 (Tex. Crim. App. 1977)).

An anonymous tip alone seldom is sufficient to establish reasonable suspicion. ***Matthews v. State***, 431 S.W.3d 596, 603 (Tex. Crim. App. 2014). But reasonable suspicion may be established based on information given to police officers by citizen informants, provided the facts adequately are corroborated by the officer. *See* ***Brother v. State***, 166 S.W.3d 255, 258–59 (Tex. Crim. App. 2005); ***State v. Griffey***, 241 S.W.3d 700, 704 (Tex. App.–Austin 2007, pet. ref'd). In such circumstances, the officer should evaluate the reliability of a citizen informant by examining "the very nature of the circumstances under which the incriminating information became known to him." ***Brother***, 166 S.W.3d at 258. A tip by an unnamed informant of undisclosed reliability may justify the initiation of an investigation; standing alone, however, it rarely will establish the requisite level of reasonable suspicion necessary to justify an investigative detention. *See* ***Matthews***, 431 S.W.3d at 603; ***Griffey***, 241 S.W.3d at 704. There must be some further indicia of reliability, some additional facts from which a police officer reasonably may conclude that the tip is reliable and a detention is justified. *See* ***State v. Fudge***, 42 S.W.3d 226, 230 (Tex. App.–Austin 2001, no pet.). Factors to be considered in determining how much weight the anonymous tip deserves include an officer's prior knowledge and experience and his corroboration of the details of the tip. ***Griffey***, 241 S.W.3d at 704. Other factors include (1) whether a detailed description of the wrongdoing was provided by the informant, (2) whether the wrongdoing was observed firsthand by the informant, (3) whether the informant somehow was connected to the police, and

(4) whether the informant placed himself in a position to be held accountable for the report. *See* ***Mitchell v. State***, 187 S.W.3d 113, 117 (Tex. App.–Waco 2006, pet. ref'd).

Under the second part of the ***Terry*** inquiry, the "investigative stop can last no longer than necessary to effect the purpose of the stop." ***Kothe v. State***, 152 S.W.3d 54, 63 (Tex. Crim. App. 2004). The issue is "'whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.'" ***Id.*** at 64 (quoting ***United States v. Sharpe***, 470 U.S. 675, 685–86, 105 S. Ct. 1568, 1575, 84 L. Ed. 2d 605 (1985)). With regard to a traffic stop, an officer can conduct a license and warrants check. ***Id.*** at 63; *see also* ***Rodriguez v. United States***, 575 U.S. 348, 354–55, 135 S. Ct. 1609, 1615, 191 L.Ed.2d 492 (2015). An officer can check for outstanding warrants against the driver and can conduct other tasks that have the objective of "ensuring that vehicles on the road are operated safely and responsibly." ***Rodriguez***, 575 U.S. at 355, 135 S. Ct. at 1615. An officer also may ask the driver to exit the vehicle. *See* ***Strauss v. State***, 121 S.W.3d 486, 491 (Tex. App.–Amarillo 2003, pet. ref'd).

An investigative stop that continues longer than necessary to complete the purpose of the stop is permitted if additional facts provide a reasonable suspicion of another crime or possible crime. ***Green v. State***, 256 S.W.3d 456, 462 (Tex. App.–Waco 2008, no pet.). If a valid traffic stop evolves into an investigative detention for a drug-related offense so that a canine sniff can take place, reasonable suspicion is necessary to prolong the detention. ***Id.***; *see also* ***Rodriguez***, 575 U.S. at 349, 135 S. Ct. at 1614 (authority for detention of person for traffic violation ends when tasks tied to the traffic infraction are or reasonably should have been completed). We examine the totality of the circumstances to determine the reasonableness of a temporary detention. ***Curtis v. State***, 238 S.W.3d 376, 380–81 (Tex. Crim. App. 2007).

An officer may request consent to search a vehicle, even after the purpose of the traffic stop has been accomplished, as long as the request is reasonable under the circumstances and the officer has not conveyed a message that compliance with the officer's request is required. ***Haas v. State***, 172 S.W.3d 42, 52 (Tex. App.–Waco 2005, pet. ref'd); ***Leach v. State***, 35 S.W.3d 232, 235–36 (Tex. App.–Austin 2000, no pet.); ***Simpson v. State***, 29 S.W.3d 324, 328 (Tex. App.–Houston [14th Dist.] 2000, pet. ref'd). But if consent is refused, the officer must have reasonable suspicion to continue to detain the person stopped. ***Haas***, 172 S.W.3d at 52.

While reasonable suspicion allows an officer to temporarily detain someone, the officer must act to confirm or dispel his suspicions quickly. *See* ***Matthews***, 431 S.W.3d at 603. One method of confirming or dispelling reasonable suspicion that an individual has committed a drug-related offense is to have a trained K–9 unit perform an "open air" search of the vehicle. ***Id.*** If the drug dog alerts, the presence of drugs is confirmed, and the officer may conduct a warrantless search. *See* ***id.*** at 603–04. If the drug dog does not alert, generally, the temporary detention ceases. ***Id.*** at 604.

The Evidence

At the suppression hearing, Smith County Sheriff's Detective and K-9 Handler Corey Cameron testified that on the afternoon of December 17, 2023, he initiated a traffic stop of a pickup truck driven by Appellant. Cameron testified that the truck displayed what he believed to be an unofficial or fictitious, front license plate and had window-tinting that "appeared to be a little bit on the dark side." Cameron approached the driver's side of the truck and, noting that the driver's window was down, he directed Appellant to show him his hands. Appellant complied and produced his driver's license. Because Appellant's truck was "lifted" and Cameron could not see inside, he ordered Appellant to exit the truck. Once Appellant exited the vehicle, Cameron conducted a pat-down search and began questioning Appellant. About four minutes into the stop, Cameron advised Appellant that he planned to issue warnings for the traffic violations.

Cameron continued to question Appellant about his criminal history, and Appellant told Cameron that he was a felon. Thereafter, Cameron asked for permission to search Appellant's truck, and Appellant refused. Soon thereafter, Cameron repeated his request for consent to search the vehicle, and Appellant again refused.

Cameron testified that as he explained the reasons why he stopped Appellant and asked him to exit the truck, Appellant "[s]eemed a little bit more on the nervous side . . . a little bit more nervous than normal." He further testified that he received information from a confidential informant about two months prior the stop, "that Appellant may or may not be transporting illegal narcotics from the Dallas area to Smith County, Texas." Cameron also stated that he was aware based on discussions with another confidential informant that, about three months before the stop, Appellant was arrested in the Fort Worth area for possession of "greater than maybe 400 grams"

of a controlled substance.[1]

Based on this information, Cameron decided to deploy his K-9 to conduct an open-air sniff of Appellant's truck; however, he had to wait for a backup officer to arrive on the scene before he safely could do so. More than ten minutes elapsed between the time when Cameron advised Appellant he would be issuing warnings for the traffic violations and when the K-9, open-air sniff commenced.

Cameron conceded that after he initiated the stop, he did nothing more to address or investigate the purported bases for the stop. Even after he advised Appellant that he would be issuing warnings for the traffic violations, he never prepared or issued such warnings. Instead, Cameron shifted his focus "from a normal traffic stop into an interdiction stop" and questioned Appellant about other matters.

Once the backup officer arrived, Cameron deployed the K-9, which ultimately alerted to the odor of illegal narcotics near the driver's window of the truck. Based on that alert, officers conducted a search of Appellant's vehicle and discovered and seized more than 200 grams of methamphetamine, a firearm, and several electronic devices.

Discussion

In his brief, Appellant argues that Cameron prolonged the traffic stop beyond the time necessary to complete the stop in order to conduct an open-air K-9 sniff of Appellant's truck, that he lacked reasonable suspicion to do so, and that this prolonged detention without reasonable suspicion exceeded the scope of the initial stop in violation of Appellant's Fourth-Amendment protections. We agree.

Reasonable suspicion that another offense was or is being committed is required in order to delay or prolong the duration of a driver's initial detention. ***State v. Martinez***, 638 S.W.3d 740, 750 (Tex. App.–Eastland 2021, no pet.) (citing ***Lambeth v. State***, 221 S.W.3d 831, 836 (Tex. App.–Fort Worth 2007, pet ref'd)). More specifically, reasonable suspicion is required to prolong a detention so that a K-9 sniff can occur. *See* ***Martinez***; 638 S.W.3d at 752; *see also* ***Haas***, 172 S.W.3d at 52. Here, Cameron set forth three reasons for his continuing Appellant's detention following the lawful traffic stop and initial encounter: (1) Appellant "[s]eemed a little bit more on

[1] Cameron stated that he believed the arrest occurred in September 2023, while the traffic stop at issue occurred on December 17.

the nervous side . . . a little bit more nervous than normal[;]"[2] (2) Cameron received information from a confidential informant about two months before the stop "that Appellant may or may not be transporting illegal narcotics from the Dallas area to Smith County, Texas[;]" and (3) Cameron was aware that about three months before the stop, Appellant was arrested in the Fort Worth area for possession of "greater than maybe 400 grams" of a controlled substance.

Following the suppression hearing, the trial court made the following, relevant findings of fact and/or conclusions of law:

> 8. While nervousness alone cannot serve as the basis for reasonable suspicion, here the officer also knew of the defendant's prior drug arrests and allegations from other members of law enforcement the defendant was, or recently had been, engaged in drug-related offenses.
>
> 9. Thus, the totality of circumstances [nervousness coupled with suspicion of recent drug activity] gave rise to reasonable suspicion to believe the defendant engaged in criminal activity and justified his continued detention for a dog search . . . .

First, as the trial court recognized, nervousness, alone, is not sufficient to establish reasonable suspicion. *See* ***Monjaras v. State***, 679 S.W.3d 834, 849 (Tex. App.–Houston [1st Dist.] 2023, no pet.). Furthermore, Cameron's suspicions based on Appellant's changing lanes because Appellant appeared to not want Cameron's patrol vehicle behind his vehicle is insufficient to constitute a basis for reasonable suspicion for a detention. *Cf.* ***id.*** at 847–48; *cf., e.g.*, ***Rodriguez v. State***, 578 S.W.2d 419, 419–20 (Tex. Crim. App. 1979) (unreasonable to stop pedestrian "solely because he looks over his shoulder in direction of police car"); ***Contraras v. State***, 309 S.W.3d 168, 171–72 (Tex. App.–Amarillo 2010, pet. ref'd) (although defendant looked "quickly . . . to the right, away from the [officers]" as they passed, conduct of defendant did not give rise to reasonable suspicion that defendant was engaged, had engaged, or was about to engage in criminal conduct); ***Gonzalez-Gilando v. State***, 306 S.W.3d 893, 895–96 (Tex. App.–Amarillo 2010, pet. ref'd) ("It is not a crime in this State to . . . look away from passing police officers . . . . A student looking down in the classroom upon the teacher asking a question does not ipso facto mean the student committed a misdeed. The same can be said of those who look away from law enforcement officials while driving on the roadway"); ***Gamble v. State***, 8 S.W.3d 452, 453–54 (Tex. App.–Houston [1st Dist.] 1999, no pet.) ("Standing alone, neither the area's high-crime reputation nor appellant's watching

[2] Cameron also noted that before initiating the traffic stop, when he positioned his patrol car behind Appellant's, Appellant maneuvered his car into the righthand lane as if he did not want Cameron's patrol vehicle to be behind his vehicle.

the passing police car would have sufficed to justify a detention"); ***Leday v. State***, 3 S.W.3d 667, 672 (Tex. App.–Beaumont 1999, pet. ref'd) ("Merely looking at a police car has been held insufficient to constitute a basis for reasonable suspicion for a detention"). Assuming arguendo that Appellant changed lanes because he, in fact, did not want Cameron's patrol vehicle to be driving closely behind his vehicle in the lefthand lane is not indicative of anything warranting suspicion.

Next, while information an officer receives from a confidential informant can form the basis for reasonable suspicion to justify further detaining a person during a traffic stop, additional facts must be present to demonstrate the informant's reliability. *See* ***Fudge***, 42 S.W.3d at 230; *but see* ***Matthews***, 431 S.W.3d at 603 (anonymous tip alone seldom is sufficient to establish reasonable suspicion). As set forth above, factors to be considered in determining how much weight an anonymous tip deserves include the officer's prior knowledge and experience with the informant and his corroboration of the details of the tip. ***Griffey***, 241 S.W.3d at 704. Other factors include whether (1) a detailed description of the wrongdoing was provided by the informant, (2) the wrongdoing was observed firsthand by the informant, (3) the informant somehow was connected to the police, and (4) the informant placed himself in a position to be held accountable for the report. *See* ***Mitchell***, 187 S.W.3d at 117. Here, the record does not indicate whether either informant observed the wrongdoing firsthand, was connected to the police, or was in a position to be held accountable for the information provided. Instead, Cameron's testimony suggests he received the information about Appellant's involvement in drug trafficking between the Dallas-Fort Worth area and Smith County in conjunction with an interview conducted by other officers, which he observed. Furthermore, the level of detail provided by this informant is vague—Appellant "may *or may not* be transporting illegal narcotics from the Dallas area to Smith County, Texas"—and the information was provided approximately two months prior to Cameron's encounter with Appellant. The same also can be said for Cameron's stated awareness that Appellant previously was arrested in Fort Worth for possession of a controlled substance (greater than *maybe* 400 grams) three months prior to the encounter in question. While Appellant told Cameron he was arrested about three months prior to the encounter, he did not say where he was arrested or the basis of the arrest other than it involved an altercation with two other people in his truck. Assuming, without deciding, that an officer's knowledge of a suspect's prior arrest could be a basis for reasonable suspicion, nothing in the record supports any of the aforementioned

factors, which would suggest that any such information provided was reliable, and we cannot conclude that any of the information related to Cameron by Appellant during their interaction served to corroborate this information.[3]

Finally, nothing in the record serves to corroborate the information provided by the informant that Appellant was involved in drug trafficking between Dallas-Fort Worth and Smith County. Cameron first observed Appellant's vehicle driving west on Highway 31 in Smith County, Texas near Texas Tollway 49. Highway 31 is not a direct route from Smith County to the Dallas-Fort Worth area. Further still, based on our review of the video, Appellant did not provide Cameron any information to support a conclusion that he was traveling to Dallas Fort Worth from Smith County. The mere fact that Appellant was driving a motor vehicle does not serve to corroborate the reliability of the information provided by the informant that Appellant may *or may not* be transporting illegal narcotics from the Dallas area to Smith County. Indeed, the "may or may not" caveat attached to this anonymous tip serves to generate more scrutiny as to the reliability of the information than it does confidence.

We recognize that Cameron was permitted to question Appellant about matters unrelated to the reason for the stop, so long as the questioning did not measurably extend the duration of the stop. *See* ***Lerma v. State***, 543 S.W.3d 184, 190 (Tex. Crim. App. 2018). He also was permitted to gather information related to the traffic stop such as validating the vehicle's registration and running a check for warrants. *See* ***Kothe***, 152 S.W.3d at 64. But as Cameron testified, he did not run a check for warrants, he could not recall whether he ran the vehicle registration, and he did not seek to check the front plate or tint to confirm the stated basis for his stop. Nor did he even begin the process of writing the warnings he suggested he would issue because he "wanted to go a little bit -- step further versus just writing a traffic ticket and sending somebody down the road." *See* ***id.*** (once original purpose for the stop is exhausted, police may not detain drivers unnecessarily solely in hopes of finding evidence of some other crime); *see also* ***Haas***, 172 S.W.3d at 51 (once reason for stop has been satisfied, stop may not be used as "fishing expedition" for unrelated

[3] After Cameron told Appellant he would be deploying the K-9 to perform an open-air sniff and while they waited on the backup officer to arrive, Cameron asked Appellant about what the basis was for his status as a felon, and Appellant replied that it was "for drugs." He previously told Cameron his status as a felon resulting from something he was involved in twenty years ago. As they waited for the backup officer to arrive, in response to Cameron's queries, Appellant also told Cameron he was on parole, but he did not mention the nature of the underlying conviction or whether his parole resulted from a decade's-old conviction. The State does not argue that Appellant's status as a felon was a basis for reasonable suspicion, nor is this court aware of any authority which would support such a proposition.

criminal activity). Based on our review of the video evidence, none of the information related to Cameron by Appellant during the encounter served to provide an independent basis for reasonable suspicion or otherwise bolster the previously-noted, stated bases for reasonable suspicion to permit Cameron's deployment of the K-9 for an open-air sniff.

Based on our review of the record, we conclude that even when the totality of the circumstances is considered together in a light most favorable to the trial court's ruling, Cameron's stated reasons for continuing his detention of Appellant so he could employ the K-9 to conduct an open-air sniff are insufficient to constitute reasonable suspicion that Appellant was engaged in criminal activity.[4] Moreover, none of the information Cameron learned during his exchange with Appellant was sufficient to constitute reasonable suspicion, even when considered in conjunction with the other stated bases for the continued detention. Accordingly, we conclude that because Cameron extended the length of Appellant's detention to conduct a K-9 open-air sniff when he lacked reasonable suspicion to do so, his actions violated Appellant's Fourth-Amendment protections. As a result, the resulting search and seizure of contraband in violation of Appellant's Fourth-Amendment rights was improper, and the trial court abused its discretion in overruling Appellant's motion to suppress. *See* ***State v. Jackson***, 464 S.W.3d 724, 731–33 (Tex. Crim. App. 2015).

Harm

We review constitutional error under Rule 44.2(a). *See* ***State v. Roberts***, _ S.W.3d _, 2024 WL 3364045, at *3 (Tex. App.—Waco July 11, 2024, pet. ref'd) ("When a trial court erroneously denies a motion to suppress and admits evidence obtained in violation of the Fourth Amendment, the error is constitutional and subject to the harmless-error analysis under Rule 44.2(a)") (citing ***Dixon v. State***, 595 S.W.3d 216, 225–26 (Tex. Crim. App. 2020) (Hervey, J., concurring))); ***Leleo v. State***, Nos. 01-20-00034-CR, 01-20-00035-CR, 2022 WL 243917, at *31 (Tex. App.–Houston [1st Dist.] Jan. 27, 2022, no pet.) (mem. op., not designated for publication); *see also* ***Hernandez v. State***, 60 S.W.3d 106, 108 (Tex. Crim. App. 2001). Under this type of review, if there is a

[4] In its brief, the State makes reference to a separate finding the trial court made about there being no delay in summoning the K-9 to the scene because Cameron was a K-9 officer and argues that Appellant failed to challenge the related finding that the short delay in deploying the K-9 was to allow an additional officer to reach the scene so Cameron and his K-9 could perform the open-air sniff. However, the reasonableness of the delay is immaterial to our analysis since Cameron lacked reasonable suspicion to continue the detention to conduct the K-9 open-air sniff. *See* ***State v. Martinez***, 638 S.W.3d 740, 750 (Tex. App.–Eastland 2021, no pet.); ***Haas v. State***, 172 S.W.3d 42, 52 (Tex. App.–Waco 2005, pet. ref'd).

reasonable likelihood that the error materially affected the outcome of the case, then the error was not harmless beyond a reasonable doubt. *See* ***Wesbrook v. State***, 29 S.W.3d 103, 119 (Tex. Crim. App. 2000); *see also* ***Neal v. State***, 256 S.W.3d 264, 284 (Tex. Crim. App. 2008).

Our harmless-error analysis should not focus on the propriety of the outcome at trial. *See* ***Scott v. State***, 227 S.W.3d 670, 690 (Tex. Crim. App. 2007). Instead, we determine the likelihood that the constitutional error actually was a contributing factor in the outcome—in other words, whether the error adversely affected "the integrity of the process leading to" the conviction. *See* ***id.***; *see also* ***Wesbrook***, 29 S.W.3d at 119.

We "should take into account any and every circumstance apparent in the record that logically informs an appellate determination whether 'beyond a reasonable doubt the error did not contribute to the conviction or punishment.'" ***Snowden v. State***, 353 S.W.3d 815, 822 (Tex. Crim. App. 2011) (quoting TEX. R. APP. P. 44.2(a)). While the most significant concern must be the error and its effects, the presence of overwhelming evidence supporting the finding in question can be a factor in evaluating harmless error. ***Wesbrook***, 29 S.W.3d at 119. Other factors to consider may include, if applicable, the nature of the error, the extent that the State emphasized it, its probable collateral implications, and how a juror would probably weigh the error. ***Snowden***, 353 S.W.3d at 822. This harmless-error test requires us to evaluate the entire record in a neutral, impartial, and even-handed manner, not in the light most favorable to the prosecution. ***Balderas v. State***, 517 S.W.3d 756, 810 (Tex. Crim. App. 2016) (Alcala, J., dissenting).

Here, Appellant was convicted of possession of between 200 and 400 grams of methamphetamine with intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(6), 481.112 (a), (e) (West Supp. 2024). A person commits a violation of Section 481.112(a) when he possesses methamphetamine with the intent to deliver. *See* ***id.*** §§ 481.102(6), 481.112(a). Without the evidence of the methamphetamine and other contraband which was discovered as a result of his illegal detention, the State had no untainted evidence of an essential element of the offense charged. Because Appellant's decision to plead "guilty" necessarily was influenced in part by the trial court's ruling on his motion to suppress, we cannot conclude beyond a reasonable doubt that the trial court's error made no contribution to Appellant's conviction. *See, e.g.*, ***Crain v. State***, No. 07-08-0224-CR, 2010 WL 3325406, at *1 (Tex. App.–Amarillo Aug. 24, 2010, no pet.) (mem. op., not designated for publication). Appellant's sole issue is sustained.

DISPOSITION

Having sustained Appellant's sole issue, we ***reverse*** the trial court's judgment and ***remand*** the cause for further proceedings consistent with this opinion.

JAMES T. WORTHEN
Chief Justice

Opinion delivered June 4, 2025.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 4, 2025

NO. 12-24-00263-CR

CHAD EVERETTE JOHNSTON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-0366-24)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, because it is the opinion of this court that there was error in the judgment of the court below, it is ORDERED, ADJUDGED, and DECREED by this court that the judgment be **reversed** and the cause **remanded** to the trial court **for further proceedings**; and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.