Affirmed and Opinion filed February 15, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-00-00665-CR

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MIKE RAY CROOKS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from 185th District Court
Harris County, Texas
Trial Court Cause No. 833,464

O P I N I O N

Mike Ray Crooks appeals a conviction for unlawful possession of a firearm by a felon on the grounds that the trial court erred in denying his motion to suppress because: (1) the police lacked reasonable suspicion to stop appellant's vehicle; (2) his subsequent detention exceeded its permissible duration and scope; (3) his consent to search the vehicle was not given knowingly and voluntarily; and (4) the search extended beyond the scope of any consent that may have been given. We affirm.

Background

Appellant was stopped by Officers Teweleit and Smith for running a red light. Teweleit asked Cato, the front seat passenger in appellant's vehicle, if he was carrying a weapon. Cato said he was carrying a pistol in his front jacket pocket. Upon discovering Cato's weapon, Smith asked appellant if he had any weapons in the vehicle. Appellant said he did not. Smith then asked appellant if he could search his vehicle to make sure, and appellant said he could. Smith discovered a loaded pistol in a bag in appellant's trunk. Appellant was indicted for possession of a firearm by a felon.[1] Appellant filed, and the trial court denied, a motion to suppress the evidence found in appellant's car. Appellant was found guilty by the court and sentenced to three years' confinement.

Standard of Review

In reviewing a trial court's decision on a motion to suppress, we give almost total deference to the trial court's determination of historical facts and mixed questions of law and fact which turn on an evaluation of credibility and demeanor, but we review its application of law, such as on questions of reasonable suspicion and probable cause, *de novo*. *See Ornelas v. United States*, 517 U.S. 690, 697-99 (1996); *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). Where, as here, a trial court makes no explicit findings of historical fact, we presume it made findings necessary to support its ruling as long as those implied findings are supported by the record. *Carmouche*, 10 S.W.3d at 327-28.

Reasonable Suspicion for Stop

Appellant's first point of error argues that he was denied the right to be free from an unreasonable search and seizure under the United States and Texas Constitutions because there were not sufficient *credible* reasons for the police to form a reasonable suspicion justifying the stop of appellant's vehicle. In challenging the credibility of the evidence, appellant contends that the officers' testimony regarding the events that occurred conflict except as to whether or not he ran the red light and swerved. Additionally, appellant claims that it is not believable that someone would run a red light while knowing police were directly behind him.

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[1] Appellant was convicted of possession of a controlled substance in 1990.

A police officer has authority to stop and temporarily detain a driver who has violated a traffic law. *McVickers v. State*, 874 S.W.2d 662, 664 (Tex. Crim. App. 1993). Running a red light is such a traffic violation. *See* TEX. TRANS. CODE ANN. § 544.004(a) (Vernon Supp. 2000). According to the testimony, Teweleit and Smith pulled appellant over because he ran a red light. Because there was evidence to support it, we must defer to the trial court's determination that appellant was stopped for running a red light. Accordingly, appellant's first point of error is overruled.

Duration and Scope of Detention

Appellant's second point of error contends that even if the initial stop was justified, his subsequent detention exceeded the permissible duration and scope, and thereby denied him the right to be free from unreasonable searches and seizures under the United States and Texas Constitutions.

A routine traffic stop is a detention and thus, must be reasonable under the United States and Texas Constitutions. *See Davis v. State*, 947 S.W.2d 240, 244 (Tex. Crim. App. 1997). To be reasonable, a traffic stop must be temporary and last no longer than is necessary to effectuate the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500 (1983); *Davis*, 947 S.W.2d at 245. During a traffic stop, an officer may demand identification, a valid driver's license, and proof of insurance from the driver, and may also check for outstanding warrants. *Davis*, 947 S.W.2d at 245 n.6. However, once the reason for the stop has been satisfied, the stop may not be used as a fishing expedition for unrelated criminal activity. *See Ohio v. Robinette*, 519 U.S. 33, 41 (1996) (Ginsburg, J., concurring); *Davis*, 947 S.W.2d at 243. Rather, any continued detention must be based on articulable facts which, taken together with rational inferences from those facts, would warrant a man of reasonable caution in the belief that a continued detention was justified, *i.e.*, that the detainee was or would soon be engaged in criminal activity. *See Davis*, 947 S.W.2d at 244-45. In other words, once the purpose of the original detention has been effectuated, any continued detention must be supported by some additional reasonable suspicion, that is, something out of the ordinary that is occurring and some indication that the unusual circumstance is related to crime. *See id.* (holding that

after officers determined that driver was not intoxicated, continued detention of driver and search of his car without his consent was unreasonable where not supported by reasonable suspicion of other criminal activity).

To establish reasonable suspicion, an officer must be able to articulate something more than an inchoate and unparticularized suspicion or hunch. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). However, the fact that an officer does not have in mind the reasons that justify the action does not invalidate the action as long as the circumstances justify it. *See Robinette*, 117 S. Ct. at 420-21. The determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. *Illinois v. Wardlow*, 120 S. Ct. 673, 676 (2000).

In *Robinette*, the United States Supreme Court held that a continued detention and request to search a detainee's car following a traffic stop was reasonable, where consent was given, even though no circumstances were noted that would have constituted reasonable suspicion of any criminal activity. *See* 117 S. Ct. at 420-21. By contrast, in *Davis*, the Court of Criminal Appeals found the officers' conduct unreasonable where, after the detainee refused to consent to a search of his car, the officers nevertheless detained the vehicle and thus its occupants who had no other means to depart. *See* 947 S.W.2d at 241. We have interpreted *Davis* and *Robinette* to mean that an officer may request consent to search a vehicle after a traffic stop but may not detain the occupants or vehicle further if such consent is refused unless reasonable suspicion of some criminal activity exists. *See Simpson v. State*, 29 S.W.3d 324, 328 (Tex. App.—Houston [14th Dist.] 2000, pet. filed).

In this case, both Teweleit and Smith testified that they pulled appellant over because he ran a red light. Teweleit testified that Cato appeared very nervous and was fidgeting a lot. According to Teweleit, Cato's nervousness raised his suspicions because it usually indicates that something is not right. Concerned for his safety, Teweleit requested Cato to step out of the vehicle and asked him if he had any weapons. After Cato admitted to having a weapon, Smith asked appellant if he had any weapons in the vehicle.

As noted above, we interpret *Robinette* and *Davis* to allow Smith to have asked for consent to search appellant's vehicle. However, even if they do not, we believe Smith had reasonable suspicion to do so based on Cato's nervousness[2] and the fact that he was carrying a loaded pistol in his jacket. Both of those facts supported a reasonable suspicion that there could be other guns in appellant's car and justified a continued detention to merely ask appellant whether there were any other guns in the car and for permission to search it.[3] Because appellant's second point of error thus fails to establish that such a detention violated his constitutional rights, it is overruled.

Consent to Search

Appellant's third point of error argues that he did not give consent to search his vehicle knowingly and voluntarily.

Voluntariness is a question of fact to be determined from all the circumstances. *Robinette*, 519 U.S. at 40. In order to be voluntary, the consent must not be coerced by covert force, implied threat, or otherwise. *Carmouche*, 10 S.W.3d at 331. The Texas Constitution requires that the State show by clear and convincing evidence that the consent was freely given. *Id.* The voluntariness of a consent to search involves mixed questions of law and fact.

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2 *See Wardlow*, 120 S. Ct. at 676 ("[N]ervous evasive, behavior is a pertinent factor in determining reasonable suspicion").

3 *See generally Powell v. State*, 5 S.W.3d 369, 378-79 (Tex. App.—Texarkana 1999, pet. ref'd) (concluding that appellant's nervousness, conflicting information, prior drug offenses, and lying about previous arrests were sufficient to warrant further detention and a request for consent to search); *Josey v. State*, 981 S.W.2d 831, 837 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd) (finding that reasonable suspicion of drug activity was demonstrated by car being parked in the middle of the road with a bag of money on seat); *Ortiz v. State*, 930 S.W.2d 849, 856 (Tex. App.—Tyler 1996, no pet.) (finding that reasonable suspicion was established where driver gave vague answers regarding his work as a contractor, knew little about the building industry, was unable to name the members of his crew, could not remember where he bought his car, was nervous, did not make eye contact, and took a lot of time to answer each question); *Bustamante v. State*, 917 S.W.2d 144, 146 (Tex. App.—Waco 1996, no pet.) (finding that reasonable suspicion existed based on nervousness, conflicting statements, and out-of-place screw on side panel of vehicle); *Foster v. State*, 814 S.W.2d 874, 878-79 (Tex. App.—Beaumont 1991, pet. ref'd) (finding reasonable suspicion based on extreme nervousness, discrepancy between insurance date and stated date of purchase of the car, no hang-up clothing on overnight trip, and inconsistent statement of destination).

Stephenson v. State, 494 S.W.2d 900, 904 (Tex. Crim. App. 1973). Therefore, we afford almost total deference to the trial court's determinations of such questions where they are based on an evaluation of credibility and demeanor and are supported by the record. *Maldonado v. State*, 998 S.W.2d 239, 247 (Tex. Crim. App. 1999).

In this case, Teweleit and Smith testified that appellant said "yes" to Smith's request to search the car, whereas appellant testified that he did not give Smith permission to search his vehicle. In light of the conflicting evidence, we must defer to the trial court's implied determination that appellant consented to the search. Accordingly, appellant's third point of error is overruled.

Scope of Consent

Appellant's fourth point of error asserts that Smith's search of appellant's trunk exceeded the scope of the consent expressly requested by Smith. Appellant argues that an objectively reasonable person would conclude that the consent pertained only to the part of the car in which appellant had been and would not include the trunk and any closed containers therein.

The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness, *i.e.*, what a reasonable person would have understood by the exchange between the officer and the suspect. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). The scope of a search is also defined by its expressed object, and a suspect is free to delimit the scope of the search to which he consents. *Id*. at 251-52. Unless an officer's request, or a suspect's consent, limits a search to a particular area of a vehicle, such as the passenger compartment, trunk, or the like, we believe that a request for a search "of the car" reasonably includes all areas of the vehicle in which the object of the search might reasonably be placed. Thus, because Smith had asked appellant whether he had any weapons in the vehicle immediately before asking to search the vehicle, the object of the search would be construed by a reasonable person as encompassing any area of the car in which a weapon could be placed. Because that area would include the trunk and closed containers in it, we

overrule appellant's fourth point of error and, accordingly, affirm the judgment of the trial court.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed February 15, 2001.

Panel consists of Justices Anderson, Fowler, and Edelman.

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