Affirmed as Modified and Opinion filed March 30, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00067-CR

ANTHONY T. JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 778,607

O P I N I O N

Anthony T. Johnson (Appellant) was indicted for the first degree felony offense of possession of four grams or more but less than 200 grams of cocaine, with intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(d) (Vernon Supp. 2000). He pled not guilty and was tried before a jury. After the jury convicted Appellant, the trial court sentenced him to thirty years' imprisonment. On appeal to this Court, Appellant assigns two points of error, contending that the trial court erred in denying his motion to suppress because (1) the police officers lacked reasonable suspicion to initially detain him, and (2) the evidence against him was not voluntarily abandoned but was obtained in violation of his

constitutional and statutory rights. The State assigns a cross-point of error, contending that because the trial court's written judgment contains a clerical error relating to an element of the offense of which Appellant was convicted, we should modify the trial court's written judgment to accurately reflect the jury's findings. We affirm as modified.

BACKGROUND

Two Houston Police officers were dispatched to investigate a domestic disturbance between a male and female at an apartment complex. Upon arriving, they observed Appellant descending a flight of stairs from the third-floor apartment where the disturbance was reported. Appellant was arguing, cussing and making hand gestures toward the female inside the apartment. Before Appellant made it to the ground-level, the officers ordered him to stop. Appellant refused and continued walking down the stairs. After Appellant made it to the ground-level, he was again ordered to stop by the police officers. He again refused and began walking away from the officers. Appellant's walk quickly escalated to running away from the police officers, who then gave chase. During his attempt to evade the police officers, he reached inside a pocket and tossed out two plastic bags. One officer recovered the bags and the other apprehended Appellant at gun point. The officers field-tested the substance contained inside the plastic bags, which confirmed their suspicion that the substance was cocaine. The weight of the cocaine was 98.3 grams. Appellant was arrested and transported to the Harris County Jail.

STANDARD OF REVIEW

In reviewing the trial court's ruling on a motion to suppress evidence, an appellate court must determine the applicable standard of review. In *Guzman v. State*, 955 S.W.2d 85, 87-88 (Tex. Crim. App. 1997), the Court of Criminal Appeals made clear that while appellate courts should afford almost total deference to the trial judge's determination of the historical facts, mixed questions of law and fact not turning upon an evaluation of credibility and demeanor are to be reviewed *de novo*. Specifically, questions of reasonable suspicion and probable cause should be reviewed *de novo* on appeal. *Id*. at 87 (citing *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)). This is because

"the trial judge is not in an appreciably better position than the reviewing court to make that determination." *Id*. at 87.

DISCUSSION

Reasonable Suspicion

In his first point of error, Appellant argues that the trial court erred in denying his motion to suppress the evidence against him because the police officers lacked reasonable suspicion to stop him. Specifically, he contends that the "acts of talking in a loud voice to another while he was descending the stairs and walking briskly away after he descended does not sufficiently set him apart from innocent persons and does not alone create reasonable suspicion to justify [an] investigative stop."

A law enforcement officer is as free as anyone else to ask questions of their fellow citizens. *See Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995); *Rue v. State*, 958 S.W.2d 915, 917 (Tex. App.–Houston [14th Dist.] 1997, no pet.). An officer may briefly stop a suspicious individual to determine his identity or to maintain the status quo while obtaining more information. *See Gurrola v. State*, 877 S.W.2d 300, 302 (Tex. Crim. App. 1994). Only when the questioning becomes a detention, however, brief, must it be supported by reasonable suspicion. *See Holladay v. State*, 805 S.W.2d 464, 467 (Tex. Crim. App. 1991). To justify an investigative stop, the officer must have specific and articulable facts from which he can reasonably surmise that the detained person may be associated with a crime. *See Davis v. State*, 829 S.W.2d 218, 219 (Tex. Crim. App. 1992). In other words, the officer must reasonably suspect that (1) some activity out of the ordinary is occurring or has occurred; (2) the detained person is connected with the unusual activity; and (3) the activity is related to a crime. *See Gurrola*, 877 S.W.2d at 302. Circumstances which raise a suspicion that illegal conduct is taking place need not themselves be criminal. *See Rue*, 958 S.W.2d at 917. They only need to include facts which render the likelihood of criminal conduct greater than it would be otherwise. *See id*.

In this case, an unidentified caller contacted the Houston Police Department and reported a domestic disturbance between a male and female at an apartment complex. The police dispatcher contacted two police officers to investigate the domestic disturbance. Upon arriving at the specific

apartment where the disturbance was reported, the two police officers personally observed Appellant and a female arguing with each other as Appellant was leaving the apartment. Under these circumstances, the police officers were justified in asking Appellant to stop in order for the officers to investigate the reported—and ongoing—domestic disturbance. *See Hime v. State*, 998 S.W.2d 893, 896 (Tex. App.–Houston [14th Dist.] 1999, no pet.).

Furthermore, because of Appellant's flight from the police officers after they ordered him to stop, they had probable cause to believe that Appellant was evading arrest or detention. *See Rue*, 958 S.W.2d at 918 (citing *Reyes v. State*, 899 S.W.2d 319, 324 (Tex. App.–Houston [14th Dist.] 1995, pet. ref'd) (stating flight from show of authority is a factor in support of finding reasonable suspicion of criminal activity)). A person evades arrest or detention if he intentionally flees from a person he knows is a peace officer attempting to lawfully arrest or detain him. *See* TEX. PENAL CODE ANN. § 38.04(a) (Vernon Supp. 2000). A peace officer may arrest an offender without a warrant for any offense committed in the officer's presence or within the officer's view. *See* TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon 1977). Because the police officers sought to lawfully detain Appellant for questioning regarding their investigation of a domestic disturbance, and Appellant evaded the lawful detention, Appellant committed an offense in the presence of the police officers that justified his arrest. *See Rue*, 958 S.W.2d at 918.

We conclude that the police officers in this case possessed sufficient reasonable suspicion to stop and detain Appellant so that they could investigate and question him about the domestic disturbance. Therefore, the officers' subsequent recovery of the cocaine abandoned by Appellant after his attempt to evade the officers was properly admitted in evidence over his motion to suppress. Point of error one is overruled.

Abandoned Contraband

In his second point of error, Appellant contends that the evidence against him should have been suppressed by the trial court because it was not voluntarily abandoned but was obtained by the police officers in violation of his constitutional and statutory rights. As noted above, while running away from two

police officers who ordered him to stop, Appellant reached inside a pocket and tossed away two plastic bags containing 98.3 grams of cocaine.

We have previously upheld the legality of a seizure of cocaine where it is abandoned by a suspect before he submits to authority or is subjected to physical force. *See Crawford v. State*, 932 S.W.2d 672, 674 (Tex. App.–Houston [14th Dist.] 1996, pet ref'd) (citing *Johnson v. State*, 912 S.W.2d 227 (Tex. Crim. App. 1995)).

As the appellant did in *Crawford*, Appellant continued to move away from the police officers after he was ordered to stop. *See id.* After his walk escalated to a run and the officers began chasing him, the cocaine was abandoned by Appellant before any physical force was applied. The evidence showed no voluntary submission to the order to stop. A verbal order to stop, unaccompanied by submission or actual force does not constitute a seizure. *See id.*; *see also State v. Velasquez*, 994 S.W.2d 676, 679 (Tex. Crim. App. 1999). Accordingly, we uphold the legality of the seizure of the cocaine because it was abandoned before Appellant submitted to authority or was subjected to physical force. Therefore, the trial court did not err in denying Appellant's motion to suppress. Appellant's second point of error is overruled.

State's Cross-Point of Error

In its cross-point of error, the State contends that the trial court's written judgment contains a clerical error because while it reflects that Appellant was convicted of possession of cocaine weighing four grams or more but less than 200 grams, it omits the jury's finding of guilt relating to Appellant's intent to deliver the cocaine. The record supports the State's contention. The State asks this Court to reform the written judgment of the trial court to accurately reflect the jury's findings. *See French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). The State's cross-point of error is sustained.

Accordingly, we modify the portion of the trial court's written judgment relating to the offense for which the jury convicted Appellant to provide the following: Offense: Possession with intent to deliver cocaine, weighing 4 grams or more but less than 200 grams. In all other respects, the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed March 30, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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