Affirmed and Opinion filed September 16, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01084-CR

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NARCISCO ORTEGA, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 751,352

O P I N I O N

Narcisco Ortega, Jr. (Appellant) was indicted for the third degree felony offense of knowingly or intentionally possessing more than five pounds but less than fifty pounds of marijuana. Appellant's indictment included enhancement paragraphs for two previous felony convictions. Following the denial of his pre-trial motion to suppress, appellant pleaded guilty to the instant offense and "true" to the enhancement paragraphs. The trial court accepted his pleas and sentenced Appellant to twenty-five years' confinement. 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 evidence against him was obtained as the result of an illegal detention, and (2) the police officers lacked effective consent to search his vehicle and its contents. We affirm.

BACKGROUND

During the late evening hours of April 24, 1997, two detectives from the Harris County Sheriff's Department began monitoring potential narcotics activity occurring at the Leisure Inn Motel, located on the Eastex Freeway. The detectives were specifically monitoring room 111 of the motel. At approximately 7:53 a.m. the following morning, Detective Frank Fullbright observed appellant and a passenger arrive at the motel in an orange Mustang. A second automobile arrived at the same time, operated by a Hispanic female. The three individuals entered room 111.

At approximately 9:10 a.m., appellant and one individual exited room 111 and opened the trunk of the Mustang. Detective Fullbright saw Appellant place a red bag inside the trunk. Shortly thereafter appellant drove away from the Leisure Inn Motel. Detective Fullbright followed appellant for several minutes, observing him commit several traffic violations. Fullbright alerted marked patrol units to stop appellant because of the traffic violations. After appellant's automobile was safely stopped by the marked patrol units, the detective approached appellant, identified himself, and told appellant "that he was stopped for traffic violations and that [he] believed him to be involved in a narcotics transaction . . . and [that he] was going to summon a K-9 [dog]." Detective Fullbright testified that appellant responded by stating "there's no need, that he had 15 or 20 pounds of marijuana in his car." Detective Fullbright testified that he asked appellant to sign a "Voluntary Consent to Search" and that appellant voluntarily signed it. Appellant's Mustang was subsequently searched, and Detective Fullbright found a "reddish colored . . . laundry bag with two bricks of marijuana" in the trunk. The detectives then placed appellant under arrest for possession of marijuana.

STANDARD OF REVIEW

As a general rule, in reviewing a trial court's ruling on a motion to suppress, appellate courts afford almost total deference to the trial court's determination of the historical facts that the record supports, especially when the trial court's fact findings are based upon an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App. 1997). Appellate courts afford the same amount of deference to trial courts' rulings on "application of law to fact questions," also known as "mixed questions of law and fact," if the resolution of those ultimate questions turns upon an evaluation of credibility and demeanor. *Id.* The appellate courts may review *de novo* "mixed questions of law and fact" not falling within this category. *Id.* The legal rules for probable cause and reasonable suspicion acquire content only through application. *Id.* at 87. Independent, or *de novo*, review of those issues is therefore necessary if appellate courts are to maintain control of, and to clarify the legal principles. *See id.*

DISCUSSION

In his first point of error, appellant contends that the evidence obtained against him was the product of an illegal detention. Appellant alleges in his motion to suppress that his "arrest and detention was made without a warrant and contrary to the fourth, fifth, and fourteenth amendments to the United States Constitution, Article I, Section 9 of the Texas Constitution, and Chapter 14 of the Texas Code of Criminal Procedure. The fruits of this arrest and detention should be suppressed pursuant to Article 38.23 of the Texas Code of Criminal Procedure." In his second point of error, appellant contends that the officers did not have "effective consent" to search his vehicle. We address appellant's points of error together.

As noted above, appellant was initially stopped and detained because he committed multiple traffic violations in the presence of Detective Fullbright. It is well-settled that a traffic violation committed in an officer's presence authorizes a stop. *Valencia v. State*, 820 S.W.2d 397, 399 (Tex.App.–Houston [14th dist.] 1991, pet. ref'd). After an officer validly stops a vehicle for a traffic offense, the officer may conduct a brief investigative detention of the

occupants of the vehicle, based upon his observations of suspicious activity by the occupants of the vehicle before and after the stop, combined with his knowledge of the area and the frequency of crime in the area, and the reasonable inferences to be drawn from the behavior of the occupants of the vehicle. *Id.* at 400 (citing *Goodwin v. State*, 799 S.W.2d 719, 727 (Tex.Crim.App. 1990), *cert. denied*, 501 U.S. 1259, 111 S.Ct. 2913, 115 L.Ed.2d 1076 (1991)).

In this case, Detective Fullbright testified that the Leisure Inn Motel is a notorious location for illegal narcotics activity. He testified that he previously made "numerous, numerous narcotics arrests out of that hotel." The reason for his surveillance of the Leisure Inn on the day that appellant was arrested was based upon information he received concerning narcotics activity occurring in room 111 of the motel. This is the same room that Detective Fullbright observed appellant enter and exit, carrying a red bag that he placed inside the truck of his automobile. Then, after following behind appellant's automobile for several minutes and observing him commit multiple traffic violations, Detective Fullbright possessed authority to stop appellant. *See id.* at 399. Detective Fullbright also possessed authority to conduct a reasonable investigative detention of appellant, based upon what he observed at the motel a few minutes earlier. *See id.* at 400. Detective Fullbright explained to appellant that he was stopped because of traffic violations, that he believed appellant to be involved in a narcotics transaction, and that a narcotics canine would be summoned. At this point, before any questions were even asked of him, appellant unexpectedly exclaimed to Detective Fullbright that "he had 15 or 20 pounds of marijuana in his car." Prior to conducting a search of the automobile, to Detective Fullbright presented appellant with a form, entitled "Voluntary Consent to Search and Seizure." The record shows that appellant voluntarily signed the form. No evidence of coercion appears in the record.[1] Detective Fullbright searched the automobile

[1] We note that Appellant neither testified nor presented any evidence during the hearing on his motion to suppress. The lone witness appearing in the record was Detective Fullbright, presented by the State.

and discovered marijuana inside its trunk, located inside of the red bag that Detective Fullbright earlier observed appellant place inside the trunk after exiting the motel.

Based upon the facts and circumstances of this case, Detective Fullbright had authority to stop appellant and sufficient reasonable suspicion to conduct an investigative detention of appellant based upon his observations of appellant prior to the traffic stop. Detective Fullbright was also justified in conducting his search and seizing the evidence recovered in this case. *See Valencia*, 820 S.W.2d at 400; *Wall v. State*, 878 S.W.2d 686, 689 (Tex.App.–Corpus Christi 1994, pet. ref'd); *Owens v. State*, 861 S.W.2d 419, 421 (Tex.App.–Dallas 1993, no pet.). Accordingly, based upon our *de novo* review of the record in this case, we conclude that the trial court did not err in denying appellant's motion to suppress. Points of error one and two are respectively overruled.

The judgment is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed September 16, 1999.

Panel consists of Justices Yates, Fowler, and Frost.

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