Affirmed and Opinion filed October 14, 1999.

In The

Fourteenth Court of Appeals

NO. 14-98-00160-CR

JOHN CHARLES EAGLIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 769,708

O P I N I O N

A jury found appellant John Charles Eaglin guilty of murder and sentenced him to 99 years' confinement. He brings two points of error, alleging (i) illegal arrest, search and seizure, and (ii) ineffective assistance of counsel. We affirm.

In the late evening of January 17, 1997, Thomas Joseph Brown was shot and killed in his Pasadena driveway as he arrived home from his employment as manager of a Houston building supply store. His wife and neighbors ran outside after hearing the gunshots, and saw a black male run into a gray four-door Oldsmobile or Chevrolet and quickly drive off.

Pasadena police were dispatched and appellant was seen a few minutes later driving a gray four-door Chevrolet a few blocks from the Brown residence. He was pulled over by the police, but sped away when the officer approached the vehicle. A high-speed chase ensued until appellant lost control of his vehicle, crashed into a construction barricade and escaped on foot. A "fleeing suspect" police broadcast described him as a black male weighing about 145 pounds and wearing a black shirt. The arresting officer recalled the description as being for "a black male" in the Beltway 8 area. The officer spotted appellant walking in a nearby church parking lot, which was a few hundred yards from Beltway 8 and the only building in the otherwise undeveloped area.

The police officer approached appellant with his gun drawn, and told appellant to place his hands on the police car. The officer began a quick pat down, at which point appellant stated he had a gun in his pocket. Ballistics testing later revealed that appellant's gun was the one used in Brown's homicide, and a cellular telephone found in appellant's pocket was traced to a phone call made to Brown's store shortly before the shooting. Appellant subsequently signed a written statement admitting he had shot Brown, but testifying later at trial in his own behalf, recanted and blamed a friend who had switched cars with him.

In his first point of error, appellant contends that the gun and cellular phone were products of an illegal arrest based on an inadequate description of the fleeing suspect. Appellant argues that when the officer pulled his gun and stopped appellant in the parking lot, it was a warrantless arrest without probable cause; the State argues it was a valid temporary detention at which point appellant voluntarily informed the officer of the concealed handgun.

In *Terry v. Ohio*, 392 U.S. 1, 19,88 S. Ct. 1868 (1968), the Supreme Court recognized three categories of police-civilian interaction: (1) encounter; (2) temporary detention or stop, and (3) arrest. We know that of the three categories, only investigative detentions and arrests amount to "seizures" of persons. *See Terry*, 392 U.S. at 19. Law enforcement officers may stop and briefly detain persons suspected of criminal activity on less information than is constitutionally required for probable cause to arrest. *See Terry*, 392 U.S. at 22; *Davis v. State*, 947 S.W.2d 240, 244 (Tex. Crim. App. 1997).

To justify an investigative detention, the officer must have reasonable suspicion. *See Terry*, 392 U.S. at 21; *Davis*, 947 S.W.2d at 242-43. An investigative detention not based upon reasonable suspicion

is unreasonable, and, thus, violates the Fourth Amendment. *Id*. The reasonableness of a temporary detention must be examined in terms of the totality of the circumstances, and will be justified when the detaining officer has specific articulable facts, which taken together with rational inferences from those facts, lead him to conclude that the person detained is, has or soon will be engaged in criminal activity. *Woods v. State*, 956 S.W.2d 33, 38 (Tex. Crim. App. 1997). Where several officers are involved in investigating a crime, the sum of information known to the cooperating officers at the time of arrest is to be considered in determining whether probable cause existed for the arrest. *Rodriguez v. State*, 975 S.W.2d 667, 669 (Tex. App. – Texarkana 1998, pet. ref'd). As recognized in *Woods*, there may be instances when a person's conduct viewed in a vacuum, appears purely innocent, yet when viewed in the totality of the circumstances, gives rise to reasonable suspicion. 956 S.W.2d at 38. A suspect is not necessarily subjected to an arrest where officers draw their weapons and request the suspect to exit his car or submit to a safety pat down. *See Marsh v. State*, 684 S.W.2d 676, 679 (Tex. Crim. App. 1984).

In the present case, the homicide suspect had been seen fleeing in a gray four-door Chevrolet or Oldsmobile. He was described as a black male. Appellant was seen a few blocks from the Brown residence just moments after the shooting, driving a gray four-door Chevrolet. When approached by police, he sped away in a 100-mph chase until he crashed his car and escaped on foot. In approaching appellant in the parking lot moments after the crash, the investigating officer was responding to a "fleeing suspect" police broadcast, and was looking for a lone black male fleeing on foot in the immediate Beltway 8 area. Appellant was a lone black male on foot in the immediate Beltway 8 area, and was spotted around the only building located along a large undeveloped area of open field. When the officer saw appellant and turned on his patrol car lights, appellant changed direction and started walking away from him. When the officer then pulled up next to him, appellant turned around and put his hands up in the air.

While appellant argues that at each separate step of these events no probable cause or reasonable suspicion was shown, this is not the proper test under *Woods*. Looking at the totality of the circumstances, we find that the officers in this case articulated specific facts which, when taken together with rational inferences, led them to conclude that appellant had been involved in criminal activity. The officers had reasonable suspicion which justified the investigative detention of appellant. Officers who detain a suspect for investigation are permitted to use such force as is reasonably necessary to effect the goals of the stop,

including investigation, maintenance of the status quo and officer safety. *Rhodes v. State*, 945 S.W.2d 115, 117 (Tex. Crim. App.), *cert. denied*, __ U.S. __ , 118 S.Ct. 236 (1997). A limited search for weapons is permissible where it is reasonably warranted for the officer's safety. *Rodriguez v. State*, 975 S.W. 2d 667 (Tex. App. – Texarkana 1998, pet. ref'd). Appellant voluntarily stated he was carrying a concealed weapon at the inception of the safety pat down, prior to it being discovered by the investigating officer, and the officer's actions were reasonable.

We distinguish this case from that of *Farmah v. State*, 883 S.W.2d 674 (Tex. Crim. App. 1994). In *Farmah*, a vehicle reportedly involved in an unsolved sexual assault case was spotted alongside a road some nine days after the assault, with the defendant sitting on the trunk. He was unable to give the investigating officer a fixed address, and the officer arrested him as a suspect in the assault, prior to questioning him about the offense. The defendant was black; the two suspects in the assault case had been black. The complainant was unable to identify him from a photo spread. Nonetheless, the officer told the defendant he had been positively identified, and he signed a written confession to the assault.

The Texas Court of Criminal Appeals reversed the conviction, finding lack of probable cause for the defendant's arrest. The Court stated that although the officers may have had probable cause to believe the car was involved in the offense, there was nothing to connect the defendant to the offense beyond his race and his alleged ownership of the car.

We are presented with a different set of considerations here. Appellant was seen not days after the offense but within minutes after the homicide, driving a car matching the description of the one seen speeding away from the shooting. He was approached not in some remote location, but within the exact geographical area given in the police broadcast, based upon the location of the homicide and of the abandoned crashed vehicle. He was not detained and immediately arrested for suspicion of murder, but was stopped for questioning after initially trying to evade the investigating officer. The complained-of weapon was not seized from appellant during a post-arrest search, but, rather, came to light when appellant voluntarily stated he was carrying a concealed weapon. The cellular phone was found during a follow-up pat down following removal of the concealed handgun. We find no error.

Appellant's first point of error is overruled.

In appellant's second point of error he asserts that he was denied reasonably effective assistance of counsel in violation of the sixth and fourteenth amendments to the United States Constitution and Article 1, Section 10 of the Texas Constitution.

The standard of review for evaluating claims of ineffective assistance of counsel during the guilt-innocence phase of the trial is set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). *See Hernandez v. State*, 726 S.W.2d 53, 54-5 (Tex. Crim. App. 1986). Appellant must show both (1) that counsel's performance was so deficient that he was not functioning as acceptable counsel under the sixth amendment, and (2) that but for the counsel's error, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2064.

It is appellant's burden to prove ineffective assistance of counsel. *Id*. He must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. *Id*.

Appellant claims that his counsel failed to preserve error regarding the admission of the handgun and cellular phone seized as a result of an illegal arrest. However, this argument presumes that the items were fruits of an illegal search and seizure. As we determined under appellant's first point of error, the detention, investigation and search were lawful, and appellant's second point of error is moot. Regardless, there was no motion for new trial hearing in this case, and therefore the record is silent as to why appellant's trial counsel acted or failed to act in regard to the matters asserted by appellant. To find the trial counsel was ineffective solely based on appellant's arguments would call for speculation on our part, which we will not do. *See Jackson v. State*, 877 S.W. 2d 768, 711 (Tex. Crim. App. 1994).

Appellant's second point of error is overruled.

The judgment below is affirmed.

D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed October 14,1999.

Panel consists of Justices Draughn, Lee and Hutson-Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Joe Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.