Affirmed and Opinion filed September 30, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01395-CR

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MICHAEL JOSEPH RHODES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 8
Harris County, Texas
Trial Court Cause No. 97-31288

O P I N I O N

Appellant, Michael Joseph Rhodes, was charged with driving while intoxicated on July 26, 1997. On November 19, 1997, pursuant to a plea bargain, appellant pled no contest and was sentenced to 180 days in jail, probated for 12 months, and a $500 fine. The trial court gave appellant permission to appeal. Appellant asserts the trial court erred in denying his motion to suppress the fruits of his arrest because the State failed to show reasonable suspicion or probable cause for his initial stop in violation of the Fourth Amendment of the U.S. Constitution and Tex. Const. art. I, § 9. We affirm.

On July 26, 1997, at approximately 1:40 a.m., appellant was pulled over in his car by Officer Dumas of Houston Police Department. Officer Dumas then observed appellant had an odor of alcohol and exhibited signs of being intoxicated. He called Sergeant Levitt to the scene who conducted sobriety tests on appellant. Appellant failed the tests, was arrested by Sergeant Levitt, and charged with DWI.

Appellant moved to have the evidence of the fruits of his arrest suppressed. At the suppression hearing, appellant's counsel called Sergeant Levitt and established the stop was warrantless. He further examined Sergeant Levitt:

> Q. Okay, Officer, I want to basically focus on things that happened as how it got to the station. To you [sic] knowledge, the way this case started out, Officer Dumas made a traffic stop of Michael Rhodes because Mr. Michael Rhodes had been northbound on Unity, and he ran a stop sign at Unity at Fairdale; is that correct?
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> A. That's correct.

No additional evidence regarding the basis for the stop of appellant was given at the motion to suppress hearing. Appellant contends that in light of the evidence adduced, the State failed to meet its burden of proof that the warrantless stop was based on reasonable suspicion or probable cause.

Discussion

We review the trial court's ruling on a motion to suppress under an abuse of discretion standard.[1] Under this standard, we view the evidence in the light most favorable to the trial court's ruling, affording almost total deference to findings of historical fact that are supported by the record.[2] When the resolution of the factual issue does not turn upon an evaluation of credibility or demeanor, we review the trial court's

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[1] *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App.1997).

[2] *Id*.

determination of the applicable law, as well as its application of the appropriate law to the facts it has found, *de novo*.[3]

A routine traffic stop does not normally constitute a custodial arrest but a temporary investigative detention.[4] Circumstances short of probable cause will permit an officer to detain a person.[5] However, the investigative detention must be founded on a reasonable, articulable suspicion that the person detained is connected with a criminal activity.[6] In order to justify the detention, it is insufficient for an officer to provide conclusory explanations. An officer must be able to point to specific and articulable facts that reasonably warrant the detention.[7]

At the suppression hearing, appellant's own counsel elicited testimony articulating specific reasons for the detention, namely that Officer Dumas observed appellant driving northbound on Unity, and he ran a stop sign at Unity at Fairdale. Appellant argues that this testimony was conclusory. But because appellant's counsel did not object to the testimony on any basis, any objections were waived and cannot be raised on appeal.[8]

In any case, Sergeant Levitt's uncontroverted testimony itself was not conclusory, only concise. While more facts could have been brought out, the trial judge may interpret the testimony in a realistic and common sense manner and is entitled to draw reasonable inferences from it.[9] If anything concerning this evidence is conclusory, it is the very question elicited by appellant's trial counsel. In affording great

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[3] *Id.*

[4] *Dempsey v. State,* 857 S.W.2d 759, 761 (Tex. App.–Houston [14th Dist.] 1993, no pet.).

[5] *Id.*

[6] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968); *Amores v. State*, 816 S.W.2d 407, 411 (Tex. Crim. App. 1991).

[7] *Terry*, 392 U.S. at 1; *Dickey v. State*, 716 S.W.2d 499, 503-4 (Tex. Crim. App. 1986).

[8] *Highwarden v. State*, 846 S.W.2d 479, 482 (Tex. App.–Houston [14th Dist.] 1993) *pet. dism'd, improvidently granted*, 871 S.W.2d 726 (Tex. Crim. App. 1994).

[9] *Rumsey v. State*, 675 S.W.2d 517, 521 (Tex. Crim. App. 1984).

deference to the trial court's determination of historical facts leading up to the stop, we conclude the evidence established a sufficient factual basis for its ruling the stop was lawful.

Appellant also claims that art. I, § 9 of the Texas Constitution affords him greater protection than the U.S. Constitution such that he is entitled to a determination of whether the stop was made pursuant to probable cause. The Court of Criminal Appeals has held the *Terry* standard of reasonable suspicion is to be employed with regard to temporary investigative stops and that there is no reason to employ a stricter standard under the Texas Constitution.[10]

Accordingly, we overrule appellant's points of error and affirm the conviction.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed September 30, 1999.

Panel consists of Justices Amidei, Edelman and Wittig.

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

[10] *Rhodes v. State*, 945 S.W.2d 115, 117 (Tex. Crim. App. 1997).