Affirmed and Opinion filed December 2, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00151-CR

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JUAN JOSE GERMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 739,592

O P I N I O N

Appellant, Juan Jose German, was indicted for felony possession of marijuana more than five pounds and less than fifty pounds. Following denial of his pretrial motion to suppress the evidence, appellant entered a plea of guilty and was sentenced to six years' confinement, with the understanding that he could appeal the motion to suppress ruling.

In his sole point of error, appellant contends that the trial court erred in denying his motion to suppress, as the contraband was seized during a warrantless arrest without the State proving any applicable exception. After reviewing the record, we overrule the point of error and affirm.

On December 6, 1997, Houston narcotics officers received a tip that appellant was involved in a narcotics transaction. They followed appellant and his family by unmarked car to a house located in Houston. Appellant entered the house and came back out a while later carrying a large ice chest. Someone else came out of the house and handed appellant a large bulky plastic bag, followed by appellant's teen-aged son with a smaller plastic bag. Appellant placed both bags and the ice chest in his car trunk and drove away.

The officers continued to follow appellant's vehicle as he drove over the speed limit, weaving in and out of the traffic. They radioed for a marked police car to stop appellant and to try to obtain consent to search the vehicle. Officer Esquival received the radio request and spotted appellant speeding and cutting in and out of traffic. Officer Esquival pulled appellant over for traffic violations, and asked if he could search the car. Appellant consented to the search, but initially refused to sign a written consent form. The narcotics officers arrived and identified themselves to appellant, but he again only verbally consented to the search and would not sign the written consent.

At this point, appellant's and the State's versions of ensuing events differed dramatically. Appellant stated that he eventually signed the written consent form, but only under coercion and duress when the officers threatened his family. He also stated he had seen the police officer's vehicle and had been careful not to violate any traffic laws. The police officers, on the other hand, verified the traffic violations, and testified that no one threatened or intimidated appellant or his family, and that appellant ultimately agreed to sign the consent form on his own accord. Both sides agree that the officers then searched the vehicle and found that the ice chest and plastic bags all contained bundles of marijuana.

On appeal, appellant argues that the marijuana was illegally seized without a warrant, that the traffic stop was a mere pretext, and that his consent to the search was coerced and involuntary. The State counters that the traffic stop was a valid stop based on an observed traffic violation, and that consent was voluntarily given.

A traffic violation committed in an officer's presence or otherwise directly observed by the officer authorizes the officer to make a traffic stop. *McVickers v. State*, 874 S.W.2d 662, 664 (Tex. Crim. App. 1993); *Valencia v. State*, 820 S.W.2d 397, 399 (Tex. App. –Houston [14th Dist.] 1991, pet. ref'd). The police officers were authorized to stop and detain appellant when they observed him speeding and improperly changing lanes of traffic.

A search and seizure conducted pursuant to consent is an exception to the warrant and probable cause requirements of the Fourth Amendment of the U.S. Constitution and Article 1, Section 9 of the Texas Constitution. *Juarez v. State*, 758 S.W.2d 772, 782 (Tex. Crim. App. 1988). Because consent to a search or seizure may not be lightly inferred, the State has the burden of proving to the trial court by clear and convincing evidence that positive and unequivocal consent was given, free of duress or coercion. See *State v. Ibarra*, 953 S.W.2d 242, 245 (Tex. Crim. App. 1997); *Allridge v. State*, 850 S.W.2d 471, 493 (Tex. Crim. App. 1991). The question of whether consent was freely given is a question of fact to be determined from the totality of the circumstances. *Johnson v. State*, 803 S.W.2d 272, 286 (Tex. Crim. App.), *cert. den'd* 111 S. Ct. 2914 (1991).

The standard of review on a motion to suppress is whether there was an abuse of discretion. *Alvarado v. State*, 853 S.W.2d 17, 23 (Tex. Crim. App. 1993). In a suppression hearing, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999). The trial court may thus believe or disbelieve any or all of the witnesses' testimony. See *Johnson v. State*, 871 S.W.2d 744, 748 (Tex. Crim. App. 1994). As the trier of fact, the trial court may disbelieve testimony even if the testimony is uncontroverted. *Mattias v. State*, 731 S.W.2d 936, 940 (Tex. Crim. App. 1987).

In reviewing rulings on motions to suppress, we afford almost total deference to trial courts' determinations of historical facts that the record supports and their rulings on application of law to fact questions, also known as mixed questions of law, when those fact findings and rulings are based on an evaluation of credibility and demeanor. *Loserth v. State*, 963 S.W.2d 770, 772 (Tex. Crim. App. 1998); *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997).

Applying these standards for review as stated above, we find there was no abuse of discretion in denying the motion to suppress, and overrule appellant's point of error.

The judgment below is affirmed.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed December 2, 1999.

Panel consists of Justices Robertson, Cannon, and Lee.*

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

* Senior Justices Sam Robertson, Bill Cannon, and Norman R. Lee sitting by assignment.