In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-19-00259-CR

JOHNNY LYNN MARSHALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 76th District Court
Camp County, Texas
Trial Court No. CF-19-01955

Before Morriss, C.J., Burgess and Stevens, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

Johnny Lynn Marshall pled guilty to his second driving while intoxicated (DWI) offense after the trial court denied his motion to suppress evidence obtained during a traffic stop. Pursuant to a plea-bargain agreement with the State, the trial court suspended Marshall's 180-day jail sentence in favor of placing him on community supervision for twelve months. Marshall obtained permission to appeal and argues that the trial court erred in failing to suppress the evidence. Because we find that the officers had reasonable suspicion to detain Marshall, we overrule Marshall's sole point of error and affirm the trial court's judgment.

I. Officers Had Reasonable Suspicion to Detain Marshall

Marshall was pulled over by Corey Vanderwilt, a trooper with the Texas Department of Public Safety (DPS), and arrested after he admitted that he had been drinking.[1] In his only point of error, Marshall argues that Vanderwilt did not have reasonable suspicion to detain him. We find that information collectively known by Vanderwilt and Mark McKinney, an off-duty DPS trooper who observed Marshall before he was detained, established reasonable suspicion justifying Marshall's detention.

A. Standard of Review

"We review a trial court's ruling on a motion to suppress under a bifurcated standard of review, giving almost total deference to the trial court's determination of historical facts that turn on credibility and demeanor while reviewing de novo other application-of-law-to-fact issues." *Carrillo v. State*, 235 S.W.3d 353, 355 (Tex. App.—Texarkana 2007, pet. ref'd) (citing *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002); *Carmouche v. State*, 10 S.W.3d 323,

[1]At the suppression hearing, Marshall clarified that he did not challenge whether the arresting officer had probable cause for the arrest, but instead challenged only the existence of reasonable suspicion to initiate the traffic stop.

327 (Tex. Crim. App. 2000)). "Appellate courts should also afford nearly total deference to trial court 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 on an evaluation of credibility and demeanor." *Id.* (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). "Appellate courts may review mixed questions of law and fact not falling within this category on a de novo basis." *Id*. (citing *Guzman*, 955 S.W.2d at 89). "We must affirm the decision if it is correct on any theory of law that finds support in the record." *Id.* (citing *Osbourn v. State*, 92 S.W.3d 531, 538 (Tex. Crim. App. 2002)).

B. The Requirement of Reasonable Suspicion to Make a Traffic Stop

"A traffic stop constitutes a Fourth Amendment seizure, and reasonable suspicion is required to conduct such a stop." *Oringderff v. State*, 528 S.W.3d 582, 584–85 (Tex. App.—Texarkana 2017, no pet.) (citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005)). "When police conduct a warrantless search or seizure, the state has the burden to show that the officer had reasonable suspicion to believe that an individual was violating the law." *Arguellez v. State*, 409 S.W.3d 657, 663 (Tex. Crim. App. 2013). The United States Supreme Court held that

> "reasonable suspicion" necessary to justify such a stop "is dependent upon both the content of information possessed by police and its degree of reliability." *Alabama v. White*, 496 U.S. 325, 330 (1990). The standard takes into account "the totality of the circumstances—the whole picture." [*United States v.*] *Cortez*, [449 U.S. 411, 147 (1981)]. Although a mere "hunch" does not create reasonable suspicion, *Terry* [*v. Ohio*, 392 U.S. 1, 27 (1968)], the level of suspicion the standard requires is "considerably less than proof of wrongdoing by a preponderance of the evidence," and "obviously less" than is necessary for probable cause, *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

Oringderff, 528 S.W.3d at 584–85 (quoting *Navarette v. California*, 572 U.S. 393, 397 (2014)).

"[T]he officer must have specific, articulable facts that, when combined with rational inferences therefrom, lead him to reasonably conclude that a particular person actually is, has been, or soon will be, engaged in criminal activity." *Arguellez*, 409 S.W.3d at 663 (citing *Castro v. State*, 227 S.W.3d 737, 741 (Tex. Crim. App. 2007)). "This standard is objective, thus there need be only an objective basis for the stop; the subjective intent of the officer is irrelevant." *Id.* (citing *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001)). "The reasonable suspicion determination is made by considering the totality of the circumstances." *Id*. (quoting *Garcia*, 43 S.W.3d at 530).

"The detaining officer need not personally be aware of every fact that objectively supports a reasonable suspicion to detain; the cumulative information known to the cooperating officers at the time of the stop is to be considered in making the reasonable-suspicion determination." *Id.* (citing *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011)); *see Boyett v. State*, 485 S.W.3d 581, 590 (Tex. App.—Texarkana 2016, pet. ref'd). Therefore, the operative circumstances "include those collectively known by the officers or agents cooperating together at the time of the detention." *Boyett*, 485 S.W.3d at 590 (quoting *State v. Jennings*, 958 S.W.2d 930, 933 (Tex. App.—Amarillo 1997, no pet.)); *see McBride v. State*, 946 S.W.2d 100, 102 (Tex. App.—Texarkana 1997, pet. ref'd) ("When several officers are cooperating, their cumulative information is to be considered in determining whether reasonable suspicion exists at the time of the stop in connection with a subsequent search.").

C. Suppression Hearing Evidence Showed Officers Had Reasonable Suspicion

Here, reasonable suspicion to detain Marshall came from McKinney, who was stopped behind Marshall's yellow Can-Am Spyder motorcycle at a roadblock erected by DPS while

working the scene of an unrelated car accident. McKinney, who was off-duty at the time, "pulled up beside [Marshall] to speak with him, [and] say hello" to his golf buddy. According to McKinney, Marshall appeared lethargic and his speech was "very slurred" during the conversation.[2] From his training and experience, McKinney could tell Marshall was "obviously" intoxicated from "the look on [Marshall's] face and in his eyes." Because he was concerned for Marshall's safety and the safety of others, McKinney pulled forward through the roadblock to report the suspected DWI to Troopers Sandy Taylor, who was already at the scene of the car accident, and Vanderwilt, who arrived at the scene while McKinney was speaking to other officers.

McKinney testified that he told the troopers he had pulled up next to "somebody that [he] had . . . known a long time, and . . . quickly realized that [Marshall] was very intoxicated" because he had slurred speech. McKinney also told the troopers he could not "understand several of the words that [Marshall] even said." A dash-cam recording of Vanderwilt's arrival showed McKinney speaking to other officers.[3] The recording confirmed that McKinney told Vanderwilt, "I pulled up beside [Marshall] and said, Hey, man, what's going on? He was like, Uh, uh. I mean, y'all need to do something. It's bad." McKinney then identified Marshall as the person on the yellow motorcycle. The recording also showed that McKinney told Vanderwilt that Marshall was "known to do it," but had "just been getting lucky for a long time." Marshall characterized these statements as too vague. Yet, on the recording, Vanderwilt expressed his understanding that McKinney was reporting a DWI. As a result, he pulled Marshall over when the roadblock cleared.

[2]Marshall testified that McKinney only asked him one question and received one answer before driving past him. While he denied the exchange's characterization as a conversation, the trial court found that Marshall was not credible.

[3]McKinney testified that he relayed his observations first to Trooper Taylor before he talked to Vanderwilt and that "[t]here wouldn't have been any recording . . . [of his] first few statements."

Although he was off duty, McKinney was a cooperating officer at the time of the detention. McKinney testified that Marshall exhibited slurred speech and mumbled words and appeared from his face and eyes to be intoxicated. McKinney also knew that Marshall had a reputation for driving while he was intoxicated. We find that this evidence constituted "specific, articulable facts that were sufficient to provide a basis for a finding of reasonable suspicion to stop appellant's vehicle." *Arguellez*, 409 S.W.3d at 663. McKinney conveyed his opinion that Marshall was intoxicated to Vanderwilt.[4]

Based on the totality of the cumulative information known to the cooperating officers at the time of Marshall's detention, we conclude that the trial court did not err in finding that there was reasonable suspicion to detain Marshall. As a result, we overrule Marshall's sole point of error.

II. Conclusion

We affirm the trial court's judgment.

Ralph K. Burgess
Justice

Date Submitted: April 15, 2020
Date Decided: June 19, 2020

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[4]Even though McKinney's conclusion was based on his experience as a DPS officer, even a "lay witness may give an opinion as to intoxication." *Singleton v. State*, 91 S.W.3d 342, 351 (Tex. App.—Texarkana 2002, no pet.).