TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00120-CR

Thomas Davis, Appellant

v.

The State of Texas, Appellee

FROM THE 424TH DISTRICT COURT OF LLANO COUNTY
NO. CR7610, THE HONORABLE EVAN C. STUBBS, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

A jury convicted Thomas Davis of the first-degree felony offense of possession with intent to deliver a controlled substance (methamphetamine) in an amount of four grams or more but less than 200 grams and assessed his punishment, enhanced under the habitual-offender provision of the Texas Penal Code, at life imprisonment. *See* Tex. Health & Safety Code § 481.102(6), .112(d); Tex. Penal Code § 12.42(d). Davis appeals his conviction in two issues, contending that the district court erred by denying his pretrial motion to suppress evidence because his traffic-stop detention was unreasonably prolonged and that the district court erred by denying his motion to disclose the identity of a confidential informant.

We will affirm the district court's judgment of conviction.

BACKGROUND

After a grand jury indicted Davis for possession with intent to deliver a controlled substance (methamphetamine) in an amount of four grams or more but less than 200 grams, he filed a pretrial motion to suppress evidence obtained after his traffic detention. Davis also filed a motion to require disclosure of the identity of a confidential informant who assisted the police in connection with the offense. The district court held a hearing on the motions. Lieutenant Brad Evans and Sergeant Steven Sifford of the Llano County Sheriff's Department were the only witnesses who testified at the hearing.

As the State correctly notes, there was scant evidence at the hearing as to the timeline of the stop, detention, and arrest. Sergeant Sifford testified that he was "not exactly sure of the time," but acknowledged that "it was about an hour time between the initial stop and then the arrest for the traffic violation."

Lieutenant Evans testified that at approximately 12:15 a.m. on the date of the arrest, he received a tip from a confidential informant that Davis possessed narcotics.[1] Lieutenant Evans testified that the informant had previously provided him with reliable information about narcotics possession and trafficking leading to seizures of narcotics in the Llano County area. Lieutenant Evans shared the information he received with Sergeant Sifford, who was on patrol that evening. Sergeant Sifford initiated a traffic stop of Davis's vehicle after observing that Davis failed to signal the required distance in advance of a turn.[2] Davis appeared nervous and could not produce his driver's license. Sergeant Sifford conducted a driver's license

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[1] The confidential informant also told Lieutenant Evans where Davis lived.

[2] There was no audio or video of the stop. At the time, the patrol car video had not been working properly and had not yet been repaired.

and warrant check on Davis and then asked him to get out of the vehicle and patted him down "for officer safety." Sergeant Sifford noticed Davis's unusual behavior of "grabbing at his crotch area a lot after he was asked out of the vehicle, adjusting himself, wanting to sit down."

Sergeant Sifford called Lieutenant Evans, who is a canine handler, at approximately 1:05 a.m. and requested that he bring the narcotics-detection dog to the scene. While Lieutenant Evans accompanied the dog on an open-air sniff around the vehicle, Davis was behind the vehicle with Sergeant Sifford and Deputy Jackson Idol, who had also arrived at the scene. The dog alerted toward the rear portion of the vehicle, indicating the presence of an illegal substance. Lieutenant Evans put the dog back in his patrol car, and Sergeant Sifford searched Davis's vehicle but did not find any narcotics. Sergeant Sifford placed Davis under arrest for the misdemeanor offenses that he had observed, with the "strong belief that [Davis] was holding narcotics."

After the arrest, Lieutenant Evans asked Davis whether he possessed illegal narcotics, and Davis said no. After that denial, Lieutenant Evans informed Davis that he would be searched at the jail and that taking contraband into the jail "would be another charge." Davis then volunteered "that he had some methamphetamine in his—next to his penis." Sergeant Sifford searched Davis and found a bag of what was later determined to be methamphetamine. Lieutenant Evans believed that the methamphetamine weighed "32 grams" with the packaging.

When the witnesses finished testifying, the district court heard closing arguments on the motion to suppress and the motion to disclose the identity of the confidential informant. The district court subsequently signed orders denying both motions.[3] Davis proceeded to trial.

[3] Davis did not request that the district court make findings of fact or conclusions of law.

The jury convicted him of the charged offense and assessed punishment, and the district court entered judgment in accordance with the jury's verdict. This appeal followed.

DISCUSSION

Motion to suppress evidence

In his first issue, Davis contends that the district court erred by denying his motion to suppress evidence because his traffic-stop detention was unreasonably prolonged. Specifically, Davis contends that he was stopped and held for not using his turn signal for a sufficient length of time before turning, that the duration of his detention was unreasonable given the purpose of his initial detention, and that the State should not be permitted to rely on "an unnamed, uncorroborated statement of [a] confidential informant to establish reasonable suspicion to prolong the stop beyond its legally justified original initial purpose."

We review a trial court's ruling on a motion to suppress evidence using a bifurcated standard of review. *Lerma v. State*, 543 S.W.3d 184, 189-90 (Tex. Crim. App. 2018). Because the trial court is the sole trier of fact and judge of the credibility of witnesses and the weight to be given to their testimony at a hearing on a motion to suppress, we afford almost complete deference to the court's determination of historical facts. *Id.* at 190. But we review de novo whether the facts are sufficient to give rise to reasonable suspicion in a case. *Id.* When, as here, the trial court does not make explicit findings of fact, we view the evidence in the light most favorable to the trial court's ruling and presume that the court made implicit findings of fact supported by the record. *Id.* A trial court's ruling should not be reversed unless it is arbitrary, unreasonable, or outside the zone of reasonable disagreement. *State v. Cortez*, 543 S.W.3d 198, 203 (Tex. Crim. App. 2018). We sustain the trial court's ruling if it is correct under any

applicable theory of law. *Lerma*, 543 S.W.3d at 190. We consider only the evidence adduced at the suppression hearing. *Arguellez v. State*, 409 S.W.3d 657, 662 (Tex. Crim. App. 2013).

Here, Davis complains that law enforcement officers "claimed to have heard from an unidentified confidential informant that Davis was carrying a quantity of contraband" but that he was not arrested until an hour after he was detained for the traffic violation of failing to signal the proper distance in advance of his turn. In support of his contention that his detention was unreasonably prolonged, Davis analogizes this case to *Rodriguez v. United States*, 575 U.S. 348 (2015), which held that police may not extend an otherwise-completed traffic stop, absent reasonable suspicion, to conduct a dog sniff. *Id*. at 355. We disagree that this case is analogous.

A police officer has reasonable suspicion to detain a person when the officer has specific, articulable facts that, combined with rational inferences from such facts, would lead the officer to reasonably conclude that the detained person is, was, or soon will be engaged in criminal activity. *Ramirez-Tamayo v. State*, 537 S.W.3d 29, 36 (Tex. Crim. App. 2017). Under this standard, we consider whether there was an objectively justifiable basis for the detention. *Id*. We look to the totality of the circumstances in assessing the existence of reasonable suspicion and consider whether the officer who detained the person had a particularized and objective basis for suspecting wrongdoing. *Id*. Unlike in *Rodriguez*, at the hearing in this case Sergeant Sifford testified about his reasonable suspicion—what he called his "strong belief that [Davis] was holding narcotics"—and about how he noticed Davis's nervousness and "grabbing at his crotch area a lot after he was asked out of the vehicle, adjusting himself, [and] wanting to sit down." *See id.* (citing *Rodriguez* and noting that traffic stop may be prolonged beyond time necessary to conduct stop if officer develops reasonable suspicion of criminal activity apart from traffic violation).

Sergeant Sifford's reasonable suspicion was in addition to the probable cause he had to arrest Davis based on his observation of the two separate misdemeanor offenses.[4] *See Vafaiyan v. State*, 279 S.W.3d 374, 380 (Tex. App.—Fort Worth 2008, pet. ref'd) (noting that "a peace officer may arrest, without a warrant, a driver who commits a traffic violation because a violation of the Texas traffic laws constitutes probable cause to arrest the violator"). Further, Lieutenant Evans testified that a reliable informant told him that Davis was in possession of approximately an ounce of methamphetamine, that the informant provided information about Davis's location, and that the informant had previously provided him with reliable information about narcotics possession and trafficking leading to seizures of narcotics in the Llano County area. While an unverified tip to police, without more, might not provide justification for an arrest or a warrant, it may justify an investigative stop when the tip is from "a credible informant," like the one here, who was known to Lieutenant Evans from past reliable tips and was warning of "a specific impending crime." *See Adams v. Williams*, 407 U.S. 143, 146-47 (1972); *Ibarra v. State*, 479 S.W.3d 481, 490 (Tex. App.—Eastland 2015, pet. ref'd) (noting that confidential informant can provide requisite reasonable suspicion to justify investigative detention so long as additional facts are present to demonstrate informant's reliability). As the sole judge of the credibility of the witnesses, the district court could have reasonably concluded that Lieutenant Evans's testimony about the informant's past reliability provided sufficient reasonable suspicion to justify Davis's investigative detention. *See Lerma*, 543 S.W.3d at 190

[4] The Transportation Code requires "an operator" of a vehicle to "signal continuously for not less than the last 100 feet" before turning the vehicle right or left. Tex. Transp. Code § 545.104. Further, the Transportation Code requires that a person operating a motor vehicle in Texas must display a driver's license to a peace officer on demand and provides that the failure to comply with this provision is a criminal offense. *Id.* § 521.025. Any peace officer may arrest without a warrant a person found committing those traffic violations. *Id.* §§ 543.001, .004(a)(1).

(noting that at hearing on motion to suppress, trial judge is sole trier of fact and judge of credibility of witnesses and weight to be given to their testimony); *cf. State v. Duarte*, 389 S.W.3d 349, 357 (Tex. Crim. App. 2012) (noting that confidential informants may be considered "reliable tipsters" based on their "successful "track record" but that "tips from anonymous or first-time confidential informants of unknown reliability must be coupled with facts from which an inference may be drawn that the informant is credible or that his information is reliable").

Moreover, the informant's information was not relied on to establish probable cause to arrest Davis, as the State pointed out at the hearing:

> [L]et's assume for the sake of argument [the reason for the stop] is solely Lieutenant Evans saying I have an informant, he's given me information in the past, [and he] says [Davis]'s got dope on him right now. That gives him reasonable suspicion alone. Now, to have probable cause we'd have to go into how the [informant] knows it. We haven't gone there. We won't go there because how goes into disclosing facts . . . that might reveal an informant, so, therefore, we don't go [into] that.

Rather, Sergeant Sifford had probable cause to stop and arrest Davis for committing traffic offenses in his presence.[5] *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."); *Vafaiyan*, 279 S.W.3d at 380. The fact that the stop was in furtherance of an investigation for the possession of narcotics does not invalidate the stop. *See Arkansas v. Sullivan*, 532 U.S. 769, 772 (2001) (noting that traffic violation arrest is not rendered invalid because it was "a mere pretext for a narcotics search") (quoting *Whren v. United States*, 517 U.S. 806, 812-13 (1996)); *see also Jaganathan v. State*, 479 S.W.3d 244, 248 (Tex. Crim. App. 2015)

[5] *See* n.4.

("[a]s long as an actual violation occurs, law enforcement officials are free to enforce the laws and detain a person for that violation" (quoting *Garcia v. State*, 827 S.W.2d 937, 944 (Tex. Crim. App. 1992))).

Here, information provided information by a reliable confidential informant and the investigating officers' collective observations of Davis's nervousness and unusual behavior of "grabbing at his crotch area a lot after he was asked out of the vehicle, adjusting himself, [and] wanting to sit down" provided reasonable suspicion for Davis's temporary detention to allow the drug-detection dog to perform an open-air sniff.[6] *See Matthews v. State*, 431 S.W.3d 596, 603-04 (Tex. Crim. App. 2014) (noting that temporary detention may continue for reasonable period of time until officers have confirmed or dispelled their original suspicion of criminal activity and that one reasonable method of confirming or dispelling reasonable suspicion about whether vehicle contains drugs is to have trained drug dog perform "open air" search by walking around vehicle). When the dog alerted toward the rear of Davis's vehicle, indicating the presence of an illegal substance, law enforcement officers had probable cause to search the vehicle. *See id.* ("If the dog alerts, the presence of drugs is confirmed, and police may make a warrantless search."); *Branch v. State*, 335 S.W.3d 893, 901 (Tex. App.—Austin 2011, pet. ref'd) ("The law is well established that as soon as a drug-detection dog alerts on a car, officers have probable cause to search the car without a warrant."). Although the search of the vehicle did not uncover evidence of any narcotics, the officers reasonably suspected that Davis was concealing narcotics on his

[6] As we have noted, Lieutenant Evans testified that he was contacted to come to the scene of the stop to conduct the open-air sniff at approximately 1:05 a.m. He stated that he had been at the scene for about thirty minutes when Davis was placed under arrest for the misdemeanor offenses. Sergeant Sifford acknowledged that "it was about an hour time between the initial stop and then the arrest for the traffic violation." Sergeant Sifford also testified that Davis was handcuffed as soon as the drug-detection dog alerted on the vehicle.

person, given the information from the reliable informant, the drug dog's alert to the rear of the vehicle, Davis's presence toward the rear of the vehicle, Davis's nervous demeanor, his grabbing at his crotch, and his insistence on sitting instead of standing. Davis's arrest for the observed misdemeanor offenses was supported by probable cause, and the subsequent search of his person was a lawful search incident to arrest, conducted after Davis decided against concealing contraband when going into the jail and admitting that he was carrying narcotics near his genitals. *See McGee v. State*, 105 S.W.3d 609, 616, 618 (Tex. Crim. App. 2003) (affirming body-cavity search as reasonable search incident to arrest and noting that "each analysis will turn on the particular facts and circumstances of the underlying case").

The evidence adduced at the suppression hearing, *see Arguellez*, 409 S.W.3d at 662, when viewed in the light most favorable to the district court's ruling and with proper deference to the court's implicit determinations of historical fact and of the witnesses' credibility and demeanor, *see Lerma*, 543 S.W.3d at 190, shows that Davis's pre-arrest detention to pursue the narcotics investigation was not unreasonable, *see Parker v. State*, 297 S.W.3d 803, 810-12 (Tex. App.—Eastland 2009, pet. ref'd) (noting that drug dog alerted on vehicle about seventy minutes after law enforcement officer discovered criminal histories of driver and defendant passenger, stating that reasonableness of duration of detention depends on whether police diligently pursued their investigation, and concluding that seventy-minute detention was not per se unreasonable); *see also Windham v. Harris Cty*., 875 F.3d 229, 241 (5th Cir. 2017) (rejecting contention that length of traffic stop, "close to ninety minutes," transformed it into arrest, noting that "[t]here is . . . no constitutional stopwatch on traffic stops"). Thus, on this record, we conclude that the denial of Davis's motion to suppress the evidence obtained was not arbitrary,

unreasonable, or outside the zone of reasonable disagreement. *See Cortez*, 543 S.W.3d at 203. Accordingly, we overrule Davis's first issue.

Motion to disclose identity of confidential informant

In his second issue, Davis contends that the district court erred by denying his motion to disclose the identity of the confidential informant. At the hearing on the motion, defense counsel contended that he needed the "name and history" of the confidential informant to present a valid defense, to be effective at trial, and "to see if that source actually is credible." He also contended that if the stop was based on information from the confidential informant, that was "an issue for trial related to guilt or innocence and whether or not that confidential informant actually knew and how they knew that Mr. Davis had methamphetamine on him." On appeal, Davis relies on *Blake v. State*, 125 S.W.3d 717, 728 (Tex. App.—Houston [1st Dist.] 2003, no pet.), in support of his complaints that the prosecutor did not request in camera disclosure of the confidential informant's identity and that the district court did not determine whether the informant was reasonably credible.

The State contends that the requested information was not discoverable and that it could assert a privilege against disclosure of it because the confidential informant was "merely providing probable cause" but was not present at the scene, did not participate in the transaction being tried, and could not address the issue of guilt or innocence from knowledge about the case on trial. The State further contends that the district court implicitly found that the information the informant provided to law enforcement was reasonably believed to be reliable or credible.

Standard of Review

We review a trial court's denial of a motion to disclose the identity of a confidential informant under an abuse-of-discretion standard. *Taylor v. State*, 604 S.W.2d 175, 179 (Tex. Crim. App. 1980); *Coleman v. State*, 577 S.W.3d 623, 635 (Tex. App.—Fort Worth 2019, no pet.); *Haggerty v. State*, 429 S.W.3d 1, 8 (Tex. App.—Houston [14th Dist. 2013, pet. ref'd). The trial court's ruling will not be disturbed unless it falls outside the zone of reasonable disagreement. *Coleman*, 577 S.W.3d at 635; *Haggerty*, 429 S.W.3d at 8.

Texas Rule of Evidence 508 affords the State a privilege to withhold disclosure of the identity of a person who has provided information to a law enforcement officer that relates to or assists in the investigation of a possible violation of law. Tex. R. Evid. 508(a); *Coleman*, 577 S.W.3d at 635. The privilege against disclosure in Rule 508 is subject to certain exceptions. Tex. R. Evid. 508(c); *Bodin v. State*, 807 S.W.2d 313, 317 (Tex. Crim. App. 1991). Davis relies on the exceptions in subsections (c)(2) and (c)(3). *See* Tex. R. Evid. 508(c)(2), (3). The two-part exception in subsection (c)(3) allows the court to order disclosure if "information from an informer is relied upon to establish the legality of the means by which evidence was obtained" and if "the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible." *Id*. R. 508(c)(3)(A). The exception in (c)(2) states that the privilege against disclosure does not apply in a criminal case "if the court finds a reasonable probability exists that the informer can give testimony necessary to a fair determination of guilt or innocence." *Id*. R. 508(c)(2)(A). Further, "[i]f it appears that an informer may be able to give testimony required to invoke this exception [as to determination of guilt or innocence]" and if the State claims the privilege, the court must give the State an opportunity to show, in camera, facts

relevant to determining whether the informant can supply that testimony. *Id*. R. 508(c)(2)(C); *Haggerty*, 429 S.W.3d at 8.

"The defendant has the threshold burden of demonstrating that identity must be disclosed." *Bodin*, 807 S.W.2d at 318; *Coleman*, 577 S.W.3d at 635; *Haggerty*, 429 S.W.3d at 8. Before a court orders disclosure of the identity of the informant, the informant's potential testimony must be shown to significantly aid the defendant—mere conjecture about possible relevance is insufficient to meet the threshold burden. *Bodin*, 807 S.W.2d at 318; *Coleman*, 577 S.W.3d at 635; *Haggerty*, 429 S.W.3d at 8. A defendant seeking disclosure must make a plausible showing of how the informant's information may be important. *Bodin*, 807 S.W.2d at 318; *Coleman*, 577 S.W.3d at 635; *Haggerty*, 429 S.W.3d at 8. "Only after a defendant makes a plausible showing is the trial court required to hold an in camera hearing to determine whether disclosure is necessary." *Coleman*, 577 S.W.3d at 635; *Haggerty*, 429 S.W.3d at 8.

When it is shown that an informant was an eyewitness to an alleged offense, the informant can give testimony necessary to a fair determination of the issues of guilt or innocence. *Coleman*, 577 S.W.3d at 636; *Haggerty*, 429 S.W.3d at 8. But if the information from the informant was used only to establish probable cause for a search warrant or if the informant "merely provided information that led police to investigate a potential offense" and "was neither a participant in the offense for which the accused was charged nor present when a search warrant was executed or an arrest was made," then the informant's identity "need not be disclosed because the testimony is not essential to a fair determination of guilt or innocence." *Coleman*, 577 S.W.3d at 636; *Haggerty*, 429 S.W.3d at 8.

Disclosure Not Required Under Rule 508(c)

We disagree with Davis's contention that disclosure was required under either of the exceptions he suggests in Rule 508(c). The State asserted its privilege to refuse to disclose the informant's identity under Rule 508. Davis contended at the hearing that disclosure of the informant's identity was necessary to a fair determination of guilt or innocence—under the exception in subsection (c)(2)—because "there's a question of where the dope came from" and whether he "actually had dope on him[.]" But as the district court noted,

> where the dope came from is not an element of the offense that's charged. It's simply a question of did Mr. Davis . . . intend or know to have it [sic] within his care, custody, control, or management at the time of the stop. . . . So I don't see how the confidential informant, based on what the evidence has been presented [sic], would have any evidence as to whether he was guilty or not guilty of possessing it on that particular day.

Moreover, the evidence at the hearing showed that the confidential informant's involvement in this case was limited to providing information that led police to investigate a potential offense and that the informant was neither a participant in the offense for which Davis was charged nor present when Davis's arrest was made. Under such circumstances, the informant's identity "need not be disclosed because the testimony is not essential to a fair determination of guilt or innocence." *See Coleman*, 577 S.W.3d at 636; *Haggerty*, 429 S.W.3d at 8.

Davis further contended at the hearing that the informant's testimony was necessary to determine the legality of the stop that occurred before the evidence of methamphetamine was obtained:

> Both officers testified that the stop would not have been made if not for . . . the information from the confidential informant that Mr. Davis was in possession of methamphetamines, correct? . . . So if that's the reason for the stop, I mean, that's

> something that the jury would need to decide. Whether or not it's even a good stop is—it's an issue we could bring up in trial. If the reason for the stop—if it was based on the confidential informant's information, I think that's an issue for trial related to guilt or innocence and whether or not that confidential informant actually knew and how they knew that Mr. Davis had methamphetamine on him.

But as we have noted, subsection (c)(3) is a two-part exception, and the latter part of that rule allows the court to order disclosure if "the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible." Tex. R. Evid. 508(c)(3)(A)(ii). The rule "is written in discretionary terms" and "[o]nly if the trial court judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible may he require the identity of the informer to be disclosed." *Blake*, 125 S.W.3d at 728 (citing Tex. R. Evid. 508(c)(3)). "The test is whether the judge is satisfied that the informant was reasonably believed to be reliable or credible." *Id*. (citing *Thompson v. State*, 741 S.W.2d 229, 231 (Tex. App.—Fort Worth 1987, pet. ref'd)).

During the hearing below, the district court heard uncontroverted testimony from Lieutenant Evans about the confidential informant's reliability, including that Lieutenant Evans considered this informant's information to be reliable and that this informant had previously provided reliable information about narcotics possession and trafficking that led to seizures of narcotics in the Llano County area. Nothing in this record shows that Lieutenant Evans did not believe the confidential informant to be reliable or credible; rather, the only evidence is that the confidential informant was considered reliable and had proven reliable with information about past narcotics possession and trafficking. *See* Tex. R. Evid. 508(c)(3)(A); *Thompson*, 741 S.W.2d at 231 (concluding that defendant failed to meet his burden of showing that disclosure was required under Rule 508 where nothing in record indicated that officers did not believe

confidential informant to be reliable or credible); *see also Davis v. State*, No. 03-13-00456-CR, 2014 Tex. App. LEXIS 11094, at *14-15 (Tex. App.—Austin Oct. 8, 2014, no pet.) (mem. op., not designated for publication) (noting that testimony was presented establishing informant's reliability and that district court's ruling denying disclosure after considering such testimony established that court was satisfied that informant had sufficient reliability). The district court, as the sole judge of the credibility of the witnesses, implicitly found that Lieutenant Evans's testimony was credible, and thus, the court was not required to order disclosure of the informant's identity. *See Blake*, 125 S.W.3d at 728 (noting that trial court, as sole judge of credibility of witnesses, was entitled to believe officer's testimony and not obligated to require disclosure of informant's identity); *see also Bland v. State*, No. 14-11-00451-CR, 2012 Tex. App. LEXIS 6744, at *13 (Tex. App.—Houston [14th Dist.] Aug. 14, 2012) (mem. op., not designated for publication) ("Implicit in the trial court's denial of [defend]ant's motion to suppress, without requiring disclosure of the informant's identity, was a finding that the court was satisfied the informant was 'reasonably believed to be reliable or credible.'"), *aff'd*, 417 S.W.3d 465 (Tex. Crim. App. 2013).

Davis complains that the State did not request in camera disclosure of the confidential informant's identity and the district court did not determine whether the informant was reasonably credible. However, this argument is not persuasive because Rule 508(c)(3) requires an in camera hearing only if the trial court is not satisfied that the information was received from an informer who was reasonably believed to be reliable or credible and if the court orders disclosure of the informant's identity. *See* Tex. R. Evid. 508(c)(3); *Selph v. State*, Nos. 14-03-01112-CR, 14-03-01113-CR, 2005 Tex. App. LEXIS 2854, at *13-14 (Tex. App.—Houston [14th Dist.] Apr. 14, 2005, no pet.) (mem. op., not designated for publication) ("The

plain wording of Texas Rule of Evidence 508(c)(3) requires an in camera hearing only if the trial court requires the disclosure of an informant's identity."). By denying Davis's motion to disclose, the district court implicitly found that Lieutenant Evans provided credible testimony as to his belief that the informant was reliable and credible. *See Bland*, 2012 Tex. App. LEXIS 6744, at *13.

Because Davis failed to make a plausible showing that the confidential informant's testimony was necessary to a fair determination of guilt or innocence and because the record supports the district court's implicit finding that the informant was reasonably believed to be reliable or credible, we conclude that the denial of Davis's motion to disclose the identity of the confidential informant without an in camera hearing was not outside the zone of reasonable disagreement and, thus, was not an abuse of the district court's discretion. Accordingly, we overrule Davis's second issue.

CONCLUSION

We affirm the district court's judgment of conviction.

Gisela D. Triana, Justice

Before Chief Justice Rose, Justices Baker and Triana

Affirmed

Filed: June 26, 2020

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