AFFIRMED and Opinion Filed July 16, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00310-CR

DAVID HERRERA GARCIA, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F-1853582-J

MEMORANDUM OPINION

Before Justices Bridges, Pedersen, III, and Evans
Opinion by Justice Bridges

David Herrera Garcia appeals his unlawful possession of a firearm by a felon conviction. Appellant pleaded guilty and was sentenced, according to the terms of a plea agreement, to five years' confinement. In two issues, appellant argues the trial court erred in denying his motion to suppress because the officers prolonged the underlying traffic stop in the absence of reasonable suspicion, and his consent to the underlying search of his vehicle was not freely and voluntarily given. We affirm the trial court's judgment.

In May 2018, appellant was indicted on a charge of unlawful possession of a firearm by a felon. In September 2018, appellant filed a motion to suppress "any and all evidence seized or obtained as a result of illegal acts on behalf of the State." At a hearing on the motion to suppress in October 2018, Dallas police officer Brandon Anderson testified he was on patrol April 20, 2017 when he pulled over appellant for failing to signal when he turned left. Anderson and his partner, Officer Pruett, asked appellant to get out of the car because they saw that the ignition on the car appeared to be tampered with. Anderson testified he "didn't know if it was a stolen car or not." While appellant was sitting in the car, Anderson asked if appellant had any drugs or guns in the car. Appellant answered that he had no drugs, but he did not "answer the question if he has a gun." Appellant got out of the car, and Anderson asked appellant for his driver's license and proof of insurance, but he did not have either one. Anderson patted appellant down, but appellant had no weapons or drugs on his person. Anderson asked about appellant's tattoos, and appellant "said he was Tango Blast."[1] Anderson testified he asked appellant for consent to search his car. Specifically, Anderson said "You ain't got nothing illegal in the car? No drugs or guns?" Appellant answered, "No, sir. I've been trying to stay out of trouble." Anderson asked "Is it okay if I check just to make sure?" and appellant

[1] Tango Blast is "the name of a criminal street gang, one that began as a prison gang that was then 'brought to the streets.'" *Lara v. State*, No. 05-17-00467-CR, 2018 WL 3434547, at *7 (Tex. App.—Dallas July 17, 2018), petition for discretionary review refused (Dec. 12, 2018).

said "Yeah, check it." The State introduced the footage from Anderson's body camera and played the video in its entirety. Anderson confirmed that "at about the 7 minute and 15 second mark" appellant says "Yeah, check it" when Anderson asks appellant for consent to check his car. Anderson found a loaded handgun under the driver's seat of appellant's car.

Appellant testified that the police never told him why they stopped him. After telling appellant to get out of his car, the police told him to sit on a curb, and appellant felt like he had no choice but to comply with the officers' commands. When Armstrong asked to search appellant's car, appellant "kinda felt forced, saying kinda like a yes-or-no question." When asked if he felt "like the consent that he said you gave was voluntary," appellant answered, "No, it wasn't; it was more force than voluntary." Appellant testified that, when the officers asked where appellant got the car, he told them he bought the car the day before from an "impound thing." Appellant testified he believed Anderson already knew the car had not been stolen because Anderson "had run the plates and it was no stolen car." Appellant testified he told the police where he was coming from and where he was going.

On cross-examination, appellant admitted he was previously convicted of aggravated assault of a public servant in Dallas County and served an eight-year sentence. Appellant testified, "I did my time and I always get pulled over and they look at my record and they always mess with me." The trial court denied appellant's motion to suppress and made the following statement:

> The Court believes that the defendant was not under duress by any means and the defendant had the ability to say no in terms of consent to the search. He clearly said yes, search it. Whether he – whatever he thought, he thought the officers could open up his mind and figure out what he's thinking, but he clearly said, yes, search the car.

In March 2019, appellant filed a second motion to suppress "[a]ll written and oral statements made by [appellant] to any law enforcement officers or others in connection with this case, and any testimony by the police officers or any other law enforcement officers or others concerning any such statements" and "[a]ll wire, oral, or electronic communications intercepted in connection with this case."

At the hearing on appellant's second motion to suppress, Anderson again testified he pulled appellant over for failing to signal when turning left. The prosecutor objected, stating "We dealt with this at the first motion to suppress, whether or not it was a valid stop." The trial judge asked defense counsel to tell the court "what the issue is that is different than what I heard before." Defense counsel answered, "Delayed detention." Defense counsel continued to question Anderson, who agreed that, in order to pull appellant out of the car and do a *Terry* frisk, he had to have reasonable suspicion that a crime had happened or was about to happen. Defense counsel asked Anderson what articulable facts he could "tell this Court that a reasonable suspicion [he] had that a crime had happened or was about to happen." Anderson answered as follows:

> We believed the car was possibly stolen. We had reasonable suspicion due to he had no keys, no insurance, was using a screwdriver to start it,

> so he could have possibly just stole [sic] the car right before we pulled him over.

Anderson testified appellant said the car belonged to him and he had just bought it. Defense counsel asked if Anderson knew, when he sat appellant down on the curb, that the car was not stolen. Anderson testified that, when he ran appellant's license plates, "it did not pop up as stolen, but that doesn't mean that he didn't just steal it before we pulled him over." Defense counsel asked Anderson why he continued to question appellant, and Anderson testified appellant was "leaving Coldbrook which recently had–there had been a warrant on a house on that street." Anderson testified appellant "was leaving that street, he didn't signal, we pulled him over, we asked him questions and we ended up finding a gun, like we suspected." In response to further questioning, Anderson testified appellant "didn't quit talking so we kept talking to him." Anderson testified he determined that appellant was coming from the house on Coldbrook where a suspect in another crime lived:

> [the suspect] got arrested for guns and drugs, and there's been a lot of activity there with guns and drugs and [appellant] was leaving that street. Pull him over and he's leaving there, so now our suspicion why he's on that street came true. So that's why we asked him do you have any guns or drugs in the car, and he did.

Anderson testified that, when he pulled appellant over, all Anderson had was appellant's license plate, which he ran, but when Anderson saw the broken steering column, he took the time to compare the vehicle identification number to the license plate to make sure they matched. The prosecutor asked if it sounded right that seven

and a half minutes elapsed between the time Anderson reached appellant's car and the time Anderson arrested appellant. Anderson testified that "[s]ounds right." At the close of Anderson's testimony, defense counsel argued that the officers "went beyond the scope of the initial stop and the purposes of the stop." The prosecutor argued the entire traffic stop took "about seven and a half minutes," and there was no unreasonable detention in this case. The trial court orally denied the motion to suppress and stated the following:

> The Court does believe that there was no unreasonable length of detention. The scope of this investigation, the investigation begun as a result of a traffic violation. And until they wrote a ticket or dismissed him, they were investigating the traffic violation. In addition to the traffic violation, there were questions as to [appellant's] identity, there were questions as to whether the car was stolen. All those things were being investigated by Officer Anderson in the car. And when he left the car, he came out and asked [appellant] could he search his car and [appellant] said yes, and he searched the car and found the gun.

Appellant subsequently entered a guilty plea pursuant to a plea bargain agreement, and the trial court sentenced appellant to five years' confinement pursuant to that agreement. Appellant filed a request for findings of fact and conclusions of law with respect to the denial of his motion to suppress. The trial court filed the following findings and conclusions:

> Findings of Fact
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> Defendant complains that the Dallas police department conducted a search of his vehicle resulting in the discovery of a 9mm handgun under the driver's seat. It is uncontroverted that the Defendant, David Herrera Garcia, was the sole occupant and driver of the vehicle when it was stopped for failure to signal a left turn. Officers Pruett and Anderson

> approached the vehicle and noticed multiple gang tattoos. The Defendant did not have an ID and was hesitant about his name. Additionally, they noticed that the vehicle had a screwdriver in the ignition, the Defendant had no proof of insurance and no keys to the car. The Defendant was asked to exit the vehicle, was frisked for officer safety, and placed on the curb while Officer Anderson ran a computer check for warrants and to determine whether the car was stolen. All of this was captured on the officers [sic] body cameras admitted as Defense Exhibits #1 and #2 in the second hearing, including the actual record search done by Officer Anderson. Immediately upon completion of that search, the officer exited the police car, asked the Defendant whether he had any weapons or drugs. To which he replied no and the officer asked could he search the vehicle and the Defendant responded yes. Officer Anderson searched the vehicle and discovered the handgun under the driver's seat. Upon further investigation, it was determined that the Defendant was a convicted felon and a charge of Unlawful Possession of a firearm by a felon was filed.
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> Conclusions of Law
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> The Court finds that the officers made a valid traffic stop of the Defendant based upon their observations. Then the failure to provide ID, proof of vehicle insurance, and the screwdriver in the ignition gave the officers probable cause to detain and further investigate the Defendant. When that investigation was complete, the officers asked to search the car and the Defendant consented. Specifically, Mr. Garcia took the stand in the first hearing and admitted to giving the officers consent to search the car. The Court, therefore, finds that there was no coercion on the part of the officers and the detention was not unreasonable considering the totality of the circumstances and the camera footage.

This appeal followed.

In his first issue, appellant argues the trial court erred in denying his motion to suppress because the officers prolonged the underlying traffic stop in the absence of reasonable suspicion. In his second issue, appellant argues his consent to the

underlying search of his vehicle was not freely and voluntarily given. Because of the interrelated nature of appellant's issues, we address them together.

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *State v. Ruiz*, 577 S.W.3d 543, 545 (Tex. Crim. App. 2019). We give almost total deference to the trial court's determination of historical facts and review de novo the application of the law to the facts. *Id.* We view the record in the light most favorable to the trial court's ruling and uphold the ruling if it is supported by the record and is correct under any theory of the law applicable to the case. *Id.*

Where the trial court has made express findings of fact, an appellate court views the evidence in the light most favorable to those findings and determines whether the evidence supports the fact findings. *See State v. Rodriguez*, 521 S.W.3d 1, 8 (Tex. Crim. App. 2017); *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). An appellate court then proceeds to a de novo determination of the legal significance of the facts and will sustain the trial court's ruling if it is correct on any theory of law applicable to the case. *See Rodriguez*, 521 S.W.3d at 8; *Valtierra*, 310 S.W.3d at 447.

A traffic stop is a detention, and it must be reasonable under the United States and Texas constitutions. *See Davis v. State*, 947 S.W.2d 240, 245 (Tex. Crim. App. 1997). To be reasonable, the traffic stop "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *See Florida v. Royer*, 460 U.S. 491, 500 (1983); *Davis*, 947 S.W.2d at 245. Determining whether an investigative

detention is reasonable is a two-pronged inquiry, focusing first on whether the officer's action was justified at its inception and then on whether the action "was reasonably related, in scope, to the circumstances that justified the stop in the first place." *Kothe v. State*, 152 S.W.3d 54, 63 (Tex. Crim. App. 2004). This is a factual determination made by considering the totality of the circumstances existing throughout the detention. *Belcher v. State*, 244 S.W.3d 531, 538–39 (Tex. App.—Fort Worth 2007, no pet.). Also, an investigative stop that "is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope." *Davis*, 947 S.W.2d at 243;

As for the length of the detention, "the brevity of the invasion of the individual's Fourth Amendment interests is an important factor in determining whether the seizure is so minimally intrusive as to be justifiable on reasonable suspicion." *United States v. Place*, 462 U.S. 696, 709 (1983). But there is no rigid time limit. *See St. George v. State*, 237 S.W.3d 720, 727 (Tex. Crim. App. 2007); *State v. Taylor*, No. 05–15–01542–CR, 2016 WL 6135521, at *4 (Tex. App.—Dallas 2016, pet. ref'd) (mem. op., not designated for publication). Instead, the issue is "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly. . . ." *United States v. Sharpe*, 470 U.S. 675, 686 (1985).

The "tolerable duration" of the stop "is determined by the seizure's 'mission,' which is to address the traffic violation that warranted the stop and attend to related

safety concerns." *Rodriguez v. U.S.*, 575 U.S. 348, 354 (2015) (citation omitted). Consequently, during a routine traffic stop, police officers may request a driver's license and car registration to conduct a computer check on that information. *See Kothe*, 152 S.W.3d at 63. A request for insurance information, the driver's destination, and the purpose of the trip are also proper inquiries. *Mohmed v. State*, 977 S.W.2d 624, 628 (Tex. App.—Fort Worth 1998, pet. ref'd). However, an officer "may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Rodriguez*, 575 U.S. at 355. "[T]he stop may not be used as a 'fishing expedition for unrelated criminal activity.'" *Davis*, 947 S.W.2d at 243 (quoting *Ohio v. Robinette*, 519 U.S. 33, 41 (1996) (Ginsberg, J., concurring)).

Generally, a traffic stop investigation is fully resolved after the computer check is completed and the officer knows the driver has a valid license, no outstanding warrants, and the car is not stolen. *Kothe*, 152 S.W.3d at 63–64. The detention must end at this point and the driver must be allowed to leave unless there is another proper basis for the investigatory detention. *Id.* at 64. There must, in other words, be reasonable suspicion regarding a different offense to support further detention. *See Rodriguez*, 575 U.S. at 355; *Davis*, 947 S.W.2d at 243.

A police officer may make a warrantless stop on reasonable suspicion of a traffic violation. *See Jaganathan v. State*, 479 S.W.3d 244, 247 (Tex. Crim. App. 2016); *Derichsweiler v. State*, 348 S.W.3d 906, 913–14 (Tex. Crim. App. 2011).

The reasonable suspicion standard requires only "some minimal level of objective justification" for the stop and disregards an officer's actual subjective intent. *See United States v. Sokolow*, 490 U.S. 1, 7 (1989); *Brodnex v. State*, 485 S.W.3d 432, 437 (Tex. Crim. App. 2016).

A police officer has reasonable suspicion if he has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to believe that the person detained is, has been, or soon will be engaged in criminal activity. *See Brodnex*, 485 S.W.3d at 437; *Jaganathan*, 479 S.W.3d at 247; *Abney v. State*, 394 S.W.3d 542, 548 (Tex. Crim. App. 2013). These articulable facts must amount to more than a mere hunch or suspicion. *See Brodnex*, 485 S.W.3d at 437; *Abney*, 394 S.W.3d at 548.

Appellant argues that Anderson and Pruett improperly prolonged the traffic stop without any reasonable suspicion that appellant was involved in any criminal activity. Specifically, appellant argues that, once the officers verified that appellant "had no warrants out for his arrest and that the car he was driving was not stolen," appellant should have been permitted to leave. On the contrary, Anderson did not testify that he verified that the car was not stolen. Anderson did testify that, at some point, the investigation into whether appellant had any warrants and whether the car was stolen was "done," but Anderson also testified he had to investigate the totality of the traffic stop and the investigations into all aspects of the stop "all happened at the same time." Appellant had no identification, no proof of insurance, and no keys

to the car he was driving; appellant was using a screwdriver to start the car. Anderson testified that, even though a computer check did not show the car was stolen, it was possible the car had been stolen too recently to show up on the computer as stolen. While Anderson did a computer check, Pruett questioned appellant about where he was coming from. However, immediately after completing a records search in his patrol car, Anderson asked for appellant's consent to search his car, and appellant consented. Appellant was detained for approximately seven minutes and fifteen seconds before Anderson asked for consent to search appellant's car. Viewing the evidence in the light most favorable to the trial court's findings, the record shows Anderson had not verified that the car appellant was driving was not stolen and had not completed his investigation when he asked for appellant's consent to search the car. *See Rodriguez*, 521 S.W.3d at 8; *Valtierra*, 310 S.W.3d at 447.

As to whether appellant consented to the search of his car, the record shows, and the trial court found, that appellant testified in the first motion to suppress hearing that he consented to the search of his car. Appellant's consent to the search was recorded on Anderson's body camera. Again, viewing the evidence in the light most favorable to the trial court's findings, the record shows appellant consented to the search of his car. *See Rodriguez*, 521 S.W.3d at 8; *Valtierra*, 310 S.W.3d at 447. Because we have already concluded the officers' investigation was not complete when Anderson asked for consent to search appellant's car, we reject appellant's

argument that appellant's consent was not freely given because "the taint of the prolonged detention had not dissipated" by the time appellant consented; there was no "prolonged detention" in this case. Accordingly, we conclude the trial court did not err in denying appellant's motions to suppress. *See Ruiz*, 577 S.W.3d at 545. We overrule appellant's first and second issues.

We affirm the trial court's judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DAVID HERRERA GARCIA, Appellant	On Appeal from the Criminal District Court No. 3, Dallas County, Texas Trial Court Cause No. F-1853582-J.
No. 05-19-00310-CR V.	Opinion delivered by Justice Bridges. Justices Pedersen, III and Evans participating.
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered July 16, 2020