Affirmed and Opinion filed February 3, 2000.

In The

Fourteenth Court of Appeals

———————————

NO. 14-99-00643-CR

———————————

GREGORY BARNETT JONES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 792,282

O P I N I O N

Gregory Barnett Jones (Appellant) was indicted for the first degree felony offense of possession of 400 grams or more of cocaine, with intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(f) (Vernon Supp. 1999). He pleaded not guilty. Following a non-jury trial on stipulated evidence, Appellant was convicted, fined $3,000 and sentenced to seventeen years' confinement in the Institutional Division of the Texas Department of Criminal Justice. *See id.* On appeal to this Court, Appellant assigns one point of error, contending that the trial court erred in denying his motion to suppress the evidence against him. We affirm.

STANDARD OF REVIEW

In *Guzman v. State*, 955 S.W.2d 85 (Tex.Crim.App.1997), the Court of Criminal Appeals outlined the standard of review appellate courts must follow in motion to suppress cases. We review the evidence in the light most favorable to the trial court's ruling. *See id.* at 89. We also afford almost total deference to a trial court's determination of the historical facts that the record supports. *See id.* Furthermore, the courts of appeals should afford the same amount of deference to the trial court's rulings on application of law to fact questions, referred to as mixed questions of law and fact, if the resolution of those ultimate questions turns on an evaluation of credibility and demeanor. *See id.* However, *de novo* review of these mixed questions of law and fact may be applied where the resolution thereof is not restricted to an evaluation of credibility and demeanor. *See id*. Determinations of whether reasonable suspicion or probable cause existed are generally mixed questions of law and fact for which a *de novo* review is applied. *See Guzman*, 955 S.W.2d at 90. In our *de novo* review of whether reasonable suspicion or probable cause existed, we examine the totality of the circumstances. *See id.* at 87, 90.

DISCUSSION

In his sole point of error, Appellant contends that the trial court erred in denying his motion to suppress because the evidence shows that the police officers lacked probable cause or reasonable suspicion to temporarily detain and search him.

Houston Police Officer Steven Guerra and his partner are assigned to Southeast Gang Task Force. Early one evening, while patrolling a residential neighborhood, they stopped a pick-up truck for a traffic violation near 7003 East Wood. After stopping his patrol unit, Officer Guerra noticed Appellant and another black male standing in a nearby carport. Officer Guerra testified the he detected an odor of PCP coming from where the two men were standing. After Appellant realized that the police officers' attention was drawn in his direction, Appellant began running. Officer Guerra yelled "stop" and ran after him. During the chase,

Officer Guerra saw Appellant place something inside his mouth. When he was apprehended by Officer Guerra approximately three minutes later, Appellant was holding a "small digital scale" in his hand. Officer Guerra noticed a white residue on the digital scale. In a field test, the residue tested positive for cocaine. Appellant was taken into custody and taken to Officer Guerra's patrol unit. After being placed inside the patrol unit, Appellant told the officers that we did not feel well. Appellant told Officer Guerra that he ate some "squares." Officer Guerra testified that "squares" are also know as "fry sticks," which are "small thin marijuana joints that are dipped in liquid PCP." Officer Guerra contacted an ambulance, which arrived five minutes later. The paramedics placed Appellant inside the ambulance. After Officer Guerra returned to his patrol unit, one of the paramedics "yelled" that Appellant "has got a gun." Officer Guerra returned to the ambulance. The paramedic directed Officer Guerra's attention to a hard object attached to Appellant's lower leg, concealed inside his pants. Using scissors, the paramedic cut open Appellant's pant leg and Officer Guerra saw "large brick of what looked like cocaine" taped to the inside of Appellant's leg. Officer Guerra removed and seized the controlled substance. Appellant was charged with possession of 400 grams or more of cocaine, with intent to deliver.

Appellant contends that because Officer Guerra did not actually see him commit any offense prior to chasing him, no reasonable suspicion nor probable cause existed for Officer Guerra to chase Appellant and seize the digital scale and cocaine. We disagree.

Initially, we note that probable cause exists where the police have reasonably trustworthy information sufficient to warrant a reasonable person to believe a particular person has committed or is committing an offense. *See id.* at 87. The determination of the existence of probable cause concerns "the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act." *See id.* Probable cause deals with probabilities; it requires more than mere suspicion but far less evidence than that needed to support a conviction or even that needed to support a finding by a preponderance of the evidence. *See id.* The rule of probable cause seeks to accommodate the sometimes opposing

interests of safeguarding citizens from rash and unreasonable police conduct and giving fair leeway to legitimate law enforcement efforts. *See id.*

Article 14.01 of the Code of Criminal Procedure provides that a peace officer may arrest an offender without a warrant for any offense committed in his presence. *See* TEX. CODE OF CRIM. PROC. ANN. art. 14.01 (Vernon 1977). The test for probable cause for a warrantless arrest is: "Whether at that moment the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing the arrested person had committed or was committing an offense." *Guzman*, 955 S.W.2d at 90.

Each search and seizure question must turn on the facts of that particular case. Our analysis of the facts surrounding this arrest begins with Officer Guerra's testimony that he detected an odor of PCP emanating from where Appellant and his co-defendant were standing. This factor, minimally, authorized Officer Guerra to approach and question Appellant. While a police officer must have probable cause for a full custodial arrest, the mere questioning of an individual for the purposes of investigation does not require such substantial justification. *See Gajewski v. State*, 944 S.W.2d 450, 451 (Tex.App.–Houston [14th Dist.] 1997, no pet.). Because a temporary detention is considered a lesser intrusion than a custodial arrest, a police officer may stop an individual if the officer has specific articulable facts which, in light of his experience and personal knowledge, together with other inferences from those facts, would reasonably warrant the intrusion on the freedom of the citizen detained for further investigation. *See id.* Thus, Officer Guerra's detection of an odor of PCP emanating from where Appellant was standing provided sufficient articulable facts to warrant the intrusion on Appellant's freedom for further investigation. We reject Appellant's contention that it was necessary for Officer Guerra to actually see Appellant committing an offense before Officer Guerra was authorized to approach and question him.

Several factors weigh in favor of a finding that the officers quickly developed probable cause to arrest Appellant. First, Appellant began running away from the police when he realized that their attention was drawn to him. The Court of Criminal Appeals has held that avoiding police officers is a factor to consider when determining probable cause. *See Guzman*, 955 S.W.2d at 90; *Pyles v. State*, 755 S.W.2d 98, 109 (Tex. Crim. App. 1988) (factors to consider when determining whether suspect may be committing an offense include flight when officers approach). Second, Appellant began eating a substance while he was running from Officer Guerra. The Court of Criminal Appeals has previously upheld arrests under article 14.01(b) when the police officers "personally observed behavior that although not overtly criminal, was, when coupled with the officers' prior knowledge, sufficient to establish probable cause that an offense was then occurring." *See id.* (citation omitted); *see also Goines v. State*, 888 S.W.2d 574, 578 (Tex.App.–Houston [1st Dist.] 1994, pet. ref'd) (police officers may take reasonable steps to preserve evidence in the absence of a search or arrest warrant).

Finally, Appellant was found in an area that is well-known for drug trafficking and gang activity. Although this fact alone is insufficient to find probable cause existed, it may become an important factor when considering the totality of the circumstances. *See id.* Under the totality of the circumstances, we conclude that after Officer Guerra apprehended Appellant and discovered in his possession a digital scale containing cocaine residue, he possessed probable cause to justify a warrantless arrest of Appellant. Consequently, the subsequent seizure of the more than 400 grams of cocaine from Appellant's person was lawful.

We find no trial court error in its decision to deny Appellant's motion to suppress the evidence against him.

The judgment is affirmed.

PER CURIAM

Judgment rendered and Opinion filed February 3, 2000.

Panel consists of Chief Justice Murphy, Justices Anderson and Hudson.

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