Affirmed and Opinion filed February 24, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-97-01262-CR

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MARK ERRICK DEROUSELLE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 744,736

O P I N I O N

Mark Errick Derouselle was convicted of possession of a controlled substance and sentenced to thirty years' confinement in the Texas Department of Criminal Justice, Institutional Division. In three issues, he argues the trial court improperly denied his motion to suppress. We affirm.

BACKGROUND FACTS

One night, Houston Police Officers Mora and Garza drove into a Houston hotel parking lot.[1] The hotel rents its rooms by the hour, and the officers believed it to be frequented by prostitutes and drug users. Once in the hotel parking lot, the officers began to check license plates of parked cars to see whether outstanding warrants existed for the cars' owners.

The officers found one existing municipal warrant, from their license plate check, which was issued for a black female. They obtained the room number of the owner for the vehicle from the hotel manager. With the room number of the vehicle owner in hand, the officers walked towards the room. Before reaching it, they saw Derouselle leaving the room that was registered to the car. Derouselle began to walk away from the officers.

The two officers stopped him and asked if he knew the black female they were seeking. Derouselle said he knew the girl because she was the girlfriend of the car's owner. The officers asked Derouselle if the black female was in the hotel room. Derouselle responded no. The officers then asked if they could search the hotel room, and Derouselle agreed. The police did not find anyone in the room.

After leaving the room, the officers asked Derouselle for his name. Derouselle gave them a false name. Then, Officer Mora asked if Derouselle would mind sitting in the back of the patrol car while Mora verified that the name Derouselle had given was indeed a licensed person in the State of Texas. Officer Mora testified Derouselle said that would be "fine."

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[1] We note at the outset the State's brief did not contain a statement of facts, but rather a short statement where it, pursuant to Appellate Rule 38.1(f), challenged all factual assertions by Derouselle. *See* TEX. R. APP. P. 38.1(f). Appellate Rule 38.1(f) does not require an appellee in a criminal case to make a broad catch-all statement to refute an appellant's version of the facts. *See id.* The Appellate Rules do however, require an appellee's brief to contain a statement of facts. *See* TEX. R. APP. P. 38.1(f); 38.2(a)(1). The State's failure to include a statement of facts will not prejudice its position in this case because the facts are undisputed.

Before Derouselle was placed in the back of the patrol car, Garza conducted a patdown search. During the patdown search, Garza told Mora, "There is something in the pocket." Mora reached into Derouselle's pocket and pulled out a plastic bag containing rocks, which were later found to be cocaine.

Immediately after Mora pulled out the bag of cocaine, Derouselle ran, but Mora quickly apprehended him.

STANDARD OF REVIEW

In a motion to suppress, the trial court is the sole and exclusive trier of fact. *See Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App.1990). We will reverse the trial court's decision only for an abuse of discretion, i.e., when it appears the trial court applied an erroneous legal standard, or when no reasonable view of the record could support the trial court's conclusion under the correct law and the facts viewed in the light most favorable to its legal conclusion. *See DuBose v. State*, 915 S.W.2d 493, 497-98 (Tex.Crim.App.1996); *Muñera v. State*, 965 S.W.2d 523, 526 (Tex. App.–Houston [14th Dist.] 1997, no pet.). Even if we would reach a different result, as long as the trial court rulings are at least within the "zone of reasonable disagreement," we will not intercede. *See id.* at 496. Furthermore, should the trial judge's determination be correct on any theory of law applicable to the case, it will be sustained. *See Romero*, 800 S.W.2d at 543.

An investigative detention is not permissible unless the circumstances on which the officers rely objectively support a reasonable suspicion that the person detained actually is, has been, or soon will be engaged in criminal activity. *See, e.g., Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995). To justify an investigative detention, the officer must have reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868; *Davis v. State*, 947 S.W.2d 240, 242-43 (Tex. Crim. App. 1997). Reasonable suspicion requires the officer to have "specific articulable facts," in the light of his experience and personal knowledge, combined with rational inferences from those facts, which reasonably warrant the intrusion on the freedom of the detainee for further investigation. *See Comer v. State*,

754 S.W.2d 656, 657 (Tex. Crim. App. 1986). In determining the existence of reasonable suspicion, the following objective standard is utilized: Would the facts available to the officer *at the moment of seizure or search* warrant a man of reasonable caution in the belief that the action taken was appropriate. *See Terry*, 392 U.S. at 21-22; *Davis*, 947 S.W.2d at 243.

The reasonableness of an investigative detention turns on the totality of the circumstances in each case. *See United States v. Mendenhall*, 446 U.S. 544, 557, 100 S. Ct. 1870, 1879, 64 L. Ed.2d 497 (1980); *Woods v. State*, 956 S.W.2d 33, 38 (Tex. Crim. App.1997); *Shaffer v. State*, 562 S.W.2d 853, 855 (Tex. Crim. App.1978). In this context, the United States Supreme Court has noted that reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by the police and its degree of reliability. Both factors, quantity and quality, are considered in the totality of the circumstances. *See Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416-17, 110 L. Ed.2d 301 (1990); *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 694-95, 66 L. Ed.2d 621 (1981).

In his first issue, Derouselle argues the trial court erred in overruling his motion to suppress because the detention was invalid. We disagree. Officers Garza and Mora were permitted to stop Derouselle outside the hotel room and ask him questions. *See Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382 (1991); *Hunter v. State*, 955 S.W.2d 102, 104 (Tex. Crim. App. 1997). This was a police-citizen encounter that is consensual as long as a reasonable person would feel free to disregard the police and go about his business. *See Bostick*, 501 U.S. at 434; *Hunter*, 955 S.W.2d at 104. Thus, the officers could question Derouselle, without any justification, until the evidence showed the encounter amounted to a detention or Derouselle decided to break off the contact. Derouselle agreed to let the officers search the hotel room. After the consenual search, the officers asked him for identification. *See Carey v. State*, 855 S.W.2d 85, 87 (Tex. App.–Houston [14th Dist.] 1993, pet. ref'd) (An officer "may briefly stop a suspicious individual to determine his identity or to maintain his status quo momentarily while obtaining more information."). Because he had no license and the officers thought he was going to drive a car without one, the officers were

permitted to detain him to verify his identity. Thus, Derouselle was detained when the officers requested Derouselle to sit in the back of the police car to verify his identity.

At the motion to suppress hearing, the officers gave four reasons to support Derouselle's detention: (1) to allow the officers to do a patdown for weapons; (2) "[i]n order for the officer to verify his identification;" (3) for "officer safety reasons;" and (4) to check his identity because he was about to get into to a car and drive without a license. We do not need to decide whether the first three reasons offered by the State at the hearing would support detaining Derouselle because the fourth reason, probable traffic violation, supports the detention. *See Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App.1982); *Valencia v. State*, 820 S.W.2d 397, 400 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd); *cf. Brown v. Texas*, 443 U.S. 47, 99 S. Ct. 2637 (1979) (A police officer may not support the detention of an individual with the claim the officer is solely seeking to verify the identity of the individual.). Thus, the officers had sufficient articulable facts to justify Derouselle's detention.

Accordingly, we overrule Derouselle's first issue.

In his second issue, Derouselle's argues the pat-down search was not warrranted because the officers did not articulate they experienced any specific fear of him. We disagree. The pat-down after the legal detention was warranted. *See Valencia*, 820 S.W.2d at 400. Additionally, in the course of an investigative detention, an officer may conduct a limited search for weapons where it is reasonably warranted for the officer's safety. *See Carey*, 855 S.W.2d at 87. Both officers stated they believed a pat-down was necessary for their safety. The officers stated they were in a high-crime area and were about to put Derouselle in the back of the car. Based on these reasons, a pat-down search was reasonably warranted for the officer's safety.

Accordingly, we overrule Derouselle's second issue.

In his final issue, Derouselle argues the seizure of the cocaine was not justified under the "plain feel" exception to the warrant requirement. We disagree.

In *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed.2d 334 (1993), the United States Supreme Court expanded the permissible bounds of a *Terry* search to include the discovery of contraband which the officer inadvertently, but "immediately," detects through the sense of touch, i.e., the "plain feel" exception to the warrant requirement. Specifically, the court stated:

> If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context.

Dickerson, 508 U.S. at 375-76, 113 S.Ct. 2130. After it acknowledging the "plain feel" exception, the *Dickerson* Court concluded the seizure was constitutionally invalid because the officer did not immediately recognize a lump he felt in the suspect's pocket to be cocaine. *Id*. at 377-78, 113 S.Ct. 2130. It was only through continued exploration of the suspect's pocket that the officer was able to determine the illegal nature of the lump. Thus, in order for a search to pass constitutional muster under *Dickerson*, there must be some evidence upon which to conclude that the incriminating nature of the contraband was immediately apparent to the searching officer. *Id*; *see In the Matter of L.R.*, 975 S.W.2d 656, 658-59 (Tex. App.–San Antonio 1998, no pet.).

At the suppression hearing, Garza described his pat-down search in the following way:

State: Did you conduct the patdown search?

Garza: Yes, I did.

State: How did you do that?

Garza: I started -- We got him up close to the vehicle, and as I started around his neck and chest area and outer garment area only, and as I grabbed his right pocket, I discovered the rocks in his pocket.

State: And when you say right pocket, was it jacket, pants, what was it?

Garza: Yes, ma'am. Right. Jacket that he was wearing, coat pocket.

State: Okay. What did you feel?

Garza: When I grabbed the pocket to feel for any sharp objects or weapons or anything like that, I felt that there were rocks in there. I knew from experience in dealing with it that's exactly what they were. And I looked over at Officer Mora and explained to him or told him he's got something in this pockets.

State: Let me slow you down a little bit and keep it in question and answer form. Okay?

Garza: Yes, sir. [sic]

State: You did not believe that to be a weapon, did you sir?

Garza: No.

State: Did you recognize it during your experience to be contraband?

Garza: Yes.

State: What specifically did you believe it to be?

Garza: Crack cocaine.

State: Why did you not pull it out of Mr. Derouselle's pocket?

Garza: Since I was training with Officer Mora, I wanted him to have sole custody of the narcotics.

State: And I believe that you testified to this, but the jacket that you recovered this from, was this on Mr. Derouselle's person?

Garza: Yes, ma'am.

State: Did Officer Mora recover what you had felt?

Garza: Yes.

State: Did he recover it from the specific location you had given him where you felt contraband?

Garza: Yes, ma'am.

State: What happened after he recovered the object that was in the pocket?

Garza: The defendant took off running.

State: Were you able to apprehend him?

Garza: Yes, ma'am.

Based on the foregoing testimony, we find the plain-feel exception applies in this case. The record supports the trial courts conclusion that Garza immediately recognized, based on his experience and training, the incriminating nature of the rocks when he patted down Derouselle's jacket. Accordingly, we overrule his third issue.

Having overruled all of Derouselle's issues, we affirm the trial court's judgment.

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Norman Lee
Justice

Judgment rendered and Opinion filed February 24, 2000.

Panel consists of Justices Draughn, Lee, and D. Camille Hutson-Dunn.*

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

* Senior Justice Joe L. Drauhgn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.