Affirmed and Opinion filed March 15, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-00960-CR &
NO. 14-99-00961-CR

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JASON ROBERT YOUNG, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 9
Harris County, Texas
Trial Court Cause Nos. 99-20031 and 99-20032

O P I N I O N

Appellant, Jason Robert Young, appeals the trial court's denial of his motion to suppress evidence. The State charged appellant with the misdemeanor offenses of possession of marihuana and possession of a controlled substance, diazepam. After the court refused to suppress evidence, appellant pled *nolo contendere* to the charges and was convicted of both offenses. He now challenges the court's pretrial ruling, alleging the police seized the controlled substance in an unlawful investigative stop made without reasonable

suspicion. Appellant also complains the police discovered the marihuana due to an illegal, warrantless arrest and unlawful search and seizure, all stemming from the allegedly unlawful investigative stop. We affirm.

I. BACKGROUND

"The Zoo," a bar located in an area known for problems with drugs, alcohol, weapons, and violence, hired off duty law enforcement officers to help disperse late night crowds of patrons and to keep them from loitering in the parking lot after the bar closed. On May 10, 1999, at the bar's regular closing time of 2:00 a.m., Officers Raymond Graham and Jason Scales were attempting to clear the parking lot. In dispersing the bar's patrons, the officers noticed a large crowd congregating around appellant's vehicle. When those gathered saw the officers approaching, they immediately began to disperse. Appellant reportedly looked very startled upon seeing the officers. Officer Graham testified that appellant's reaction upon seeing the police officers was that of "a deer caught in the headlights." Officer Scales testified that appellant's reaction was that of "a kid that got caught with his hand in the cookie jar." Both officers observed appellant making furtive movements toward his pocket. As the officers approached, Officer Graham saw appellant stuff a plastic baggie into his pocket. Officer Scales could not identify the object, but saw appellant stuff "something" into his pocket that created a "golf-ball shaped" bulge.

The police officers stopped appellant from getting into his vehicle and asked what he had just put into his pocket. Appellant responded "nothing" and "I don't know." Officer Graham testified that he asked for, and received, consent to search appellant's pockets, whereupon he found a baggie which contained a large number of blue pills, later determined to be diazepam, a controlled substance. When asked what the pills were, appellant responded that the pills were Valium. The officers arrested appellant and placed him into custody. As a routine part of the booking process, Officer Graham had appellant remove the contents of his pockets, his jewelry, his belt, and his shoes. Officer Graham found a clear

plastic bag of marihuana in one of appellant's shoes.

Charged by indictments with the misdemeanor offenses of (1) possession of a controlled substance, and (2) possession of marihuana, appellant filed a motion to suppress the evidence the officers had seized. As grounds for the motion, appellant alleged the officers unlawfully detained him without reasonable suspicion and, therefore, the marihuana and diazepam seized after the detention were inadmissible. The trial court denied the motion.

After waiving his right to a jury trial, appellant pled *nolo contendere* to both offenses. The trial court found him guilty. For possession of a controlled substance, the court assessed punishment at one year in the Harris County Jail, probated for two years, and imposed a $600.00 fine. For possession of marihuana, the court assessed punishment at two days in the Harris County Jail, and assessed a $100.00 fine.

II. Issues Presented

Appellant challenges the trial court's denial of the motion to suppress in two points of error, asserting that the officers seized and used evidence in violation of the United States and Texas Constitutions and the Texas Code of Criminal Procedure. *See* TEX. CONST. art. I, §§ 9, 10, 19; TEX. CODE CRIM. PROC. ANN. art. 38.23 (Vernon Supp. 1997); U.S. CONST. Amends. IV, XIV.

III. Analysis

In his first point of error, appellant argues that the court erred in overruling the motion to suppress because the evidence resulted from an illegal investigative stop, made without probable cause or reasonable suspicion. In articulating its reasons for denying appellant's motion to suppress, the trial court stated:

> Based on the drug activity that's known in the club and officers seeing him stuffing a baggie in his pocket and trying to walk away with a deer-in-the-

> headlight look or young man in the cookie jar or whatever phrase was used, I think that gave them enough reasonable suspicion to detain him at that time. I will deny the Motion to Suppress.

The record in this case contains the ruling but no findings of fact or conclusions of law. Therefore, we must presume the trial court found whatever facts were needed to support its ruling. *Butterfield v. State*, 992 S.W.2d 448, 458 (Tex. Crim. App. 1999); *State v. Stevenson*, 958 S.W.2d 824, 830 (Tex. Crim. App. 1997) (citing *Guzman v. State*, 955 S.W.2d 85, 88–89 (Tex. Crim. App. 1997)). We examine the evidence in the light most favorable to the trial court's ruling, and afford almost complete deference to a trial court's determination of historical facts, if supported by the record. *State v. Munoz*, 991 S.W.2d 818, 821 (Tex. Crim. App. 1999) (citing *Guzman*, 955 S.W.2d at 89). This deference is especially important here, where the findings are based on an evaluation of witnesses' credibility and demeanor. *See Guzman*, 955 S.W.2d at 89.

In a motion to suppress hearing, the trial judge is the sole trier of fact and may believe all or any part of the witnesses' testimony. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). Because the determinations of probable cause and reasonable suspicion in this case turn on the witnesses' credibility, we review the trial court's decision for abuse of discretion. *See Guzman*, 955 S.W.2d at 89; *Hunter v. State*, 955 S.W.2d 102, 105 n.4 (Tex. Crim. App. 1997). We may not reverse the court's decision unless we find a clear abuse of discretion. *Butterfield*, 992 S.W.2d at 458.

A. Reasonableness of Stop

To justify an investigative detention, and consequent intrusion on a citizen's freedom, the officer must have "reasonable suspicion" of criminal activity. Reasonable suspicion must be based upon specific, articulable facts, and their rational inferences, as informed by the officer's general experience and knowledge. *Brem v. State*, 571 S.W.2d 314, 318 (Tex. Crim. App. 1978). A suspect's behavior need not suggest the commission of a particular

offense; instead, any sufficiently suspicious criminal activity may justify a stop. *Molina v. State*, 754 S.W.2d 468, 473 (Tex. App.—San Antonio 1988, no pet.). However, the officer must possess more than an inarticulate hunch. *Troncosa v. State*, 670 S.W.2d 671, 676 (Tex. App.—San Antonio 1984, no pet.). The articulable facts upon which the officer relies must objectively support a reasonable suspicion that activity out of the ordinary is occurring or has occurred, that the detainee is connected to the unusual activity, and that the unusual activity is related to a crime. *Viveros v. State*, 828 S.W.2d 2, 4 (Tex. Crim. App. 1992). "If there are no facts that would make the conduct observed by the officer anything but innocuous, if there does not exist even a significant possibility that the person observed is engaged in criminal conduct, a detention of the person for further investigation is not constitutionally warranted." *Woods v. State*, 970 S.W.2d 770, 773 (Tex. App.—Austin 1998, pet. ref'd) (citing 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.4(b), at 149 (4th ed. 1996)).

Innocent behavior will frequently provide the basis for a showing of probable cause or reasonable suspicion. *Cook v. State,* 1 S.W.3d 722, 725 (Tex. App.—El Paso 1999, no pet.). In determining whether reasonable suspicion exists, the relevant inquiry is not whether particular conduct is innocent or criminal, but the degree of suspicion that attaches to particular types of noncriminal acts. *Id.* Objective facts, often meaningless to the untrained, when observed by trained law enforcement officers, can be combined with permissible deductions to create a legitimate basis for suspicion of a particular person. *Id.* at 722 (citing *Woods v. State*, 956 S.W.2d 33, 37–38 (Tex. Crim. App. 1997)).

To support his contention that the officers lacked reasonable suspicion to stop him, appellant relies primarily on two cases from the Texas Court of Criminal Appeals: *Gurrola v. State*, 877 S.W.2d 300 (Tex. Crim. App. 1994), and *Hawkins v. State*, 758 S.W.2d 255 (Tex. Crim. App. 1988). In both cases, the court found the detention was not based on reasonable suspicion. *Gurrola*, 877 S.W.2d at 303; *Hawkins*, 758 S.W.2d at 257. The facts

in *Gurrola*[1] and *Hawkins*,[2] however, are distinguishable from those presented by the record now before us. In *Gurrola*, the defendant was merely standing in a residential parking lot in the late afternoon, having an aggressive conversation; he was not suspected of any particular crime. *See Gurrola*, 877 S.W.2d at 303. In *Hawkins*, the defendant was the only person in the parking lot; he had not *done* anything other than try to walk away from the police. *See Hawkins*, 758 S.W.2d at 260; *Gurrola v. State*, 877 S.W.2d at 303; *Norman v. State*, 795 S.W.2d 249, 250 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd). In the record now before us, there was more than the accused's mere presence in an area known for criminal activity and for problems with drugs and weapons. In addition, there was (1) a late night encounter; (2) a startled look upon seeing law enforcement officers; (3) a crowd gathered around appellant, which dispersed immediately upon seeing the officers; (4) the stuffing of a baggie into a pocket; and (5) the turning to leave upon encountering the police.

Relying on these cases, appellant argues that his presence in a known drug venue cannot provide reasonable suspicion. While "[t]he high-crime or drug dealing reputation

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[1] In *Gurrola*, an unknown man alerted a police officer to a disturbance at a nearby apartment complex. *Gurrola*, 877 S.W.2d at 303. The officer knew the complex to be an unsafe location. *Id.* When the officer arrived, he saw three men and a woman engaged in an argument. *Id.* As he approached the group, they began to leave. *Id.* The officer then summoned them to return, and conducted a pat down search which yielded a handgun as well as a substance that later proved to be cocaine. *Id.* The appellant sought to suppress this evidence, alleging illegal seizure. *Id.* at 301–02. The *Gurrola* court found that the detention of a defendant, engaged in an argument in a parking lot, was not based on "reasonable suspicion" and, therefore, was an illegal detention. *Id.* at 303.

[2] In *Hawkins*, a patrol officer saw a known drug dealer in the parking lot of a club located in a high crime area. The officer pulled into the parking lot and as soon as the officer exited his patrol car, the defendant began to walk away. *Id.* The officer summoned the defendant back because he wanted to talk to him. *Id.* The defendant yelled something back and continued walking. *Id.* Two officers intercepted the defendant on the sidewalk as another officer approached from the opposite direction. *Id.* The defendant then pulled a paper bag from his pocket and threw it into a ditch. *Id.* at 257. The court held that the bag and its contents were inadmissible because (1) the police had no reasonable suspicion before approaching the defendant, and (2) in approaching him in the manner they did, they effectuated an investigative detention that was not justified by articulable facts. *Id.*

of the area cannot *alone* serve as a basis for an investigative stop,"[3] presence in a known drug venue is a factor which, when combined with other factors, may contribute to reasonable suspicion. *Guzman*, 955 S.W.2d at 90–91 (stating that a suspect avoiding officers or being found in drug prone areas are factors to consider in determining probable cause to believe a person is engaged in criminal activity). Being in a known drug traffic area "alone is insufficient to find probable cause existed, [but] it may become an important factor when considering the totality of the circumstances." *Id*.

Similarly, other factors considered alone might not provide the entire basis for reasonable suspicion, but when considered together are sufficient to justify an investigative detention. For example, "two people speaking on the street in daylight hours is much less suspicious than a circumstance occurring at late night or early morning hours." *Cook v. State*, 1 S.W.3d 722, 725 (Tex. App.—El Paso 1999, pet. ref'd.) (citing *Gurrola v. State*, 877 S.W.2d 300, 303 (Tex. Crim. App. 1994)). Therefore, the time of day in which the activity occurs is also a factor which, in conjunction with other factors, may contribute to reasonable suspicion.

Appellant argues that others in the group surrounding the vehicle also looked surprised to see the officers approaching and, therefore, a look of surprise could not be enough to arouse suspicion. Likewise, appellant argues, his trying to leave the scene was consistent with other patrons then leaving the parking lot and was, in fact, the officers' intended effect in dispersing the crowd. Finally, appellant argues that stuffing something into a pocket should not be suspicious to officers who do not know what the object is. Appellant asserts that the officers were merely curious about what appellant had stuffed into his pocket and did not believe it to be a weapon. As appellant correctly points out, any of these seemingly innocent acts, alone, would not likely support a reasonable suspicion of

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[3] In *Hawkins*, as here, the defendant was in the parking lot of a club located in a high crime district when officers spotted him. However, the defendant in *Hawkins* was the only person in the parking lot.

criminal activity; however, we do not analyze each circumstance in a vacuum. Instead, we consider the totality of circumstances, in conjunction with the officers' experience and knowledge, in determining whether the officers had a reasonable suspicion that appellant was engaged in criminal activity. *Saenz v. State,* 842 S.W.2d 286, 288 (Tex. Crim. App. 1992) (citing *Armstrong v. State*, 550 S.W.2d 25, 30–31 (Tex. Crim. App. 1977)). The totality of the circumstances in this case justifies the detention.

The bar had closed. The hour was late. The area was known for drug activity, weapons and alcohol violations. The police had instructed the patrons to leave, but a crowd had nonetheless congregated around appellant's vehicle. The crowd dispersed as the officers approached. The appellant looked surprised upon seeing the uniformed officers and immediately stuffed something into his pocket, creating a large bulge. Officer Scales testified that these events caught the officers' attention. Appellant's reaction made the officers suspicious. Although Officer Scales was unable to see what object appellant had stuffed into his pocket, Officer Graham testified that it was a clear plastic baggie. The objects in the baggie made a large bulge in appellant's pants, which the officers testified they found suspicious. Appellant gave inconsistent, vague explanations when asked about what he had put into his pocket, stating "I don't know" and "nothing."

We find the testimony from the motion to suppress hearing amply demonstrates that the officers were reasonably suspicious of appellant's movements and behavior. Under the totality of the circumstances, Officers Graham and Scales had a reasonable suspicion that appellant may be involved in criminal activity. Therefore, the investigatory detention was legal. Appellant's first point of error is overruled.

B. Consent To Search

In his second point of error, appellant argues the court erred in denying the motion to suppress because the evidence was seized in an illegal, warrantless arrest and an illegal search to which appellant gave no consent. Specifically, appellant asserts that he never gave

the officers consent to search his pants' pocket in the parking lot and that the testimony of Officer Scales casts doubt upon whether the search was consensual.

Consent to search is an established exception to the constitutional requirement for search warrants, arrest warrants, and probable cause. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). "'The constitutional test for a valid consent is that the consent be voluntary, a fact to be determined from the totality of the circumstances.'" *Ohio v. Robinette*, 519 U.S. 33, 40 (1996) (quoting *Schneckloth*, 412 U.S. at 248–49). Consent is not established merely by showing acquiescence to a claim of lawful authority. *Bumper v. N.C.*, 391 U.S. 543, 548, (1968).

The Texas Constitution requires the State to prove the voluntariness of a consent to search by clear and convincing evidence. *Carmouche v. State*, 10 S.W.3d 323, 331 (Tex. Crim. App. 2000). "If the record supports a finding by clear and convincing evidence that consent to search was free and voluntary, we will not disturb that finding." *Id.* Officer Graham testified that he asked appellant for consent to search his pockets and that appellant gave consent. While Officers Scales' testimony is not as clear on this issue, it does not contradict Officer Graham's testimony. Officer Scales testified:

> Q. What happened next?
>
> A. Then Officer Graham asked him – can I say what it is that he said?
>
> Q. Yes.
>
> A. And as he pulled it out it was a bag of pills. He asked what they were. He replied, "Valium."

It appears that Officer Scales did not give a complete answer to the question. Appellant points to no other evidence in the record that would suggest the search was involuntary.

We afford significant deference to the trial court's determination that there was valid consent, especially where, as here, the trial court evaluated the credibility and demeanor of the witnesses. *See id.* at 332. Accordingly, we find that the detention and consent to search

appellant in the parking lot were valid.

C. Warrantless Arrest

Next, appellant complains that his warrantless arrest was unlawful. Under Texas law, every arrest requires a warrant unless a statutory exception exists. *Anderson v. State*, 932 S.W.2d 502, 505 (Tex. Crim. App. 1996). To justify a warrantless arrest, the State must prove probable cause existed when the officer made the arrest. *Segura v. State*, 826 S.W.2d 178, 182 (Tex. App.—Dallas 1992, pet. ref'd). Probable cause to arrest exists at the precise moment facts and circumstances, known to the arresting officer, would warrant a reasonable and prudent person's belief that a suspect has committed or is committing a crime. *Smith v. State*, 739 S.W.2d 848, 852 (Tex. Crim. App. 1987); *Hill v. State*, 951 S.W.2d 244, 246, 248 (Tex. App.—Houston [14th Dist.] 1997, no pet.). Moreover, the Texas Code of Criminal Procedure, article 14.01(h), allows a warrantless arrest for any offense committed in an officer's presence or view. TEX. CODE CRIM. PROC. ANN. art. 14.01(h) (Vernon 1977). Having discovered a large number of blue pills in a baggie in appellant's possession, the officers had probable cause to believe appellant had committed a crime. Therefore, they were justified in arresting appellant without a warrant.

Because the investigatory stop and subsequent arrest were legal, the later discovery of marihuana while booking appellant was also valid. The search that uncovered the marihuana was conducted as part of the routine processing through the criminal justice system. *See Rogers v. State*, 774 S.W.2d 247, 264 (Tex. Crim. App. 1989). The United States Supreme Court has held it constitutional for the police to search the personal effects of an individual under lawful arrest, as a part of normal booking procedure. *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983). The underlying rationale for permitting such a search is the safety and security needed because of the arrested person's ability to injure themselves, or others, with contraband or drugs. *Id.* at 646; *Gonzalez v. State,* 990 S.W.2d 833, 836 (Tex. App.—El Paso 1999, pet. ref'd). Here, the officers discovered the marihuana during

a search that was conducted for purposes of safety and security, as part of the routine booking procedure.

We find that the investigative stop and warrantless arrest of appellant were valid and that the marihuana evidence derived as a result of the search was admissible. Accordingly, appellant's second point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed March 15, 2001.

Panel consists of Justices Yates, Wittig, and Frost.

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