Affirmed and Opinion filed April 6, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00946-CR

ALLEN BERNARD HILL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause No. 738,514

O P I N I O N

Allen Bernard Hill appeals his conviction for possession of more than four grams and less than 200 grams of cocaine with the intent to deliver. After his motion to suppress was denied, appellant pleaded guilty pursuant to a negotiated plea agreement, and the trial court assessed his punishment at five years imprisonment. In two points of error, appellant contends the trial court abused its discretion in denying his motion to suppress because (1) his consent to search was involuntary, and (2) his consent to search was ineffective because it arose out of an illegal arrest. We affirm.

Officer Robert Muller (Muller) received information that a black male, who drove a silver car with "expensive rims," frequently delivered narcotics to a house on Lawler Street. The informant also said that

the dope was hidden under the dashboard. On November 21, 1996, Muller observed appellant driving a silver Buick with "expensive-looking rims" in the Lawler area. Because appellant and the car matched the descriptions given to him by the informant, Muller followed appellant. Appellant made a turn onto Belfort Street without signaling, and Muller stopped him for failing to signal his intent to turn. While pulling him over, Muller observed appellant lean down toward the floorboard. Muller stated he suspicioned that appellant was trying to conceal something. After stopping appellant's car, Muller put appellant and his passenger in the rear of the police car. Muller walked up to appellant's car, looked in, and observed a piece of white paper towel sticking out from underneath the carpet near the brake pedal. Muller then returned to the patrol car, asked appellant if he would consent to a search of his car, and appellant refused. Muller told appellant that he had a right to refuse the search, and that a narcotics dog was en route to check appellant's car. About 15 or 20 minutes later, appellant consented to Muller's search. Although appellant gave Muller written consent, the consent form was not introduced into evidence. Muller returned to appellant's car, pulled out the white paper towel, and found 10.04 grams of crack cocaine. Appellant presented no evidence at the hearing on his motion to suppress.

In two points of error, appellant contends the trial court abused its discretion in overruling his motion to suppress because his consent to search (1) was involuntary in that it was coerced, and (2) was invalid because it was obtained in exploitation of an illegal arrest. Appellant argues that he had been stuck in the back of a police car, and told it would take one and one-half hours for a drug dog to arrive. He claims he was not free to leave, and any consent to the search was a mere peaceful submission to a claim of authority. Appellant cites *Lopez v. State*, 663 S.W.2d 587, 590 (Tex.App.–Houston[1st Dist] 1983, pet. ref'd) as authority for his proposition that his consent was involuntary. Appellant further argues that Muller testified that he couldn't arrest appellant for failing to signal for a turn because he had a good driver's license. Muller stated his "sergeant would have said something about it." Therefore, appellant argues that his consent was invalid because it was a product of an illegal arrest, and cites *Cortez v. State*, 788 S.W.2d 89, 92-94 (Tex.App.–Houston[14th Dist.] 1990, no pet.) as authority.

In *Lopez*, the police heard a burglar alarm, and then observed appellant driving erratically away from the scene. *Lopez*, 663 S.W.2d at 589 The police temporarily detained appellant to investigate the possibility of a crime. *Id.* The officers did not stop Lopez for a traffic infraction. *Id.* At the hearing on

appellant's motion to suppress, the officer testified that Lopez consented to the search of his automobile, and Lopez said he did not consent. *Id*. The trial judge resolved the disputed facts in favor of the State. *Id.* at 591. We find *Lopez* is not applicable because it is factually dissimilar to this case.

In *Cortez*, this court found that the arrest of appellant was illegal, because the police had no probable cause to stop appellant's car. *Cortez*, 788 S.W.2d at 93. This court concluded that Cortez's consent to search his townhouse was invalid because the purpose underlying the illegal arrest was to procure the consent to search. *Id*. In that case, the police had received information that Cortez was selling large amounts of cocaine out of his townhouse. *Id*. at 91. The police watched the house for a few days, but did not see any transactions actually transpire. *Id.* They observed appellant and another man drive away from the townhouse. *Id*. The police followed and stopped appellant because they believed he had narcotics in the car and was selling dope out of the townhouse. *Id*. The police testified the whole idea in stopping appellant was to get his consent to search the townhouse. Thus, this court found the consent to search was "tainted" by the illegal arrest. *Id* at 94. This is not the case here, and we find *Cortez* is not applicable.

Appellant and the State stipulated that evidence heard in a companion case on appellant's motion in limine would be the evidence in this case in support of his motion to suppress. In his motion to suppress, appellant claimed that his consent to search his car was not free and voluntary and was the result of an unlawful detention. At the hearing on appellant's motion to suppress, the trial court accepted the record of the prior motion hearing in appellant's companion case as the stipulated evidence to support appellant's motion to suppress.

The basis for the trial court's decision to deny the motion is not included in the record; however, if the trial court's decision is correct on any theory of law applicable to the case, it will not be disturbed. *See Calloway v. State*, 743 S.W.2d 645, 652 (Tex.Crim.App.1988); *McLish v. State*, 916 S.W.2d 27, 31 (Tex.App.--Houston [1st Dist.] 1995, pet. ref'd). "To determine whether the trial court abused its discretion, the evidence is viewed in the light most favorable to the ruling." *Santos v. State*, 822 S.W.2d 338, 339 (Tex.App.--Houston [1st Dist.] 1992, pet. ref'd). The trial judge is the "sole fact finder at a hearing on the motion to suppress evidence and may choose to believe or disbelieve any or all of the

witnesses' testimony." *Johnson v. State*, 803 S.W.2d 272, 287 (Tex.Crim.App.1990); *McLish*, 916 S.W.2d at 31. *See also Franklin v. State*, 976 S.W.2d 780, 781 (Tex.App.-Houston[1 Dist.] 1998, pet. ref'd). Because the issue in this case is whether Officer Muller had probable cause to stop appellant, we will review the trial court's ruling *de novo*. *Guzman v. State*, 955 S.W.2d 85, 87 (Tex.Crim.App.1997).

In this case, Officer Muller testified he stopped appellant for failing to signal his intent to turn onto Belfort, a violation of § 545.104(a), Texas Transportation Code. Having observed a violation of the Transportation Code, Muller had probable cause to arrest appellant. "Any peace officer may arrest without warrant a person found committing a violation of this subtitle." TEXAS TRANSP. CODE ANN. § 543.001 (Vernon 1999 & Supp. 2000). Because he had probable cause to arrest appellant, Muller had a right to search his automobile. Once an officer has established probable cause for an arrest, the officer may conduct a "continued and more extensive search of the passenger compartment" of the suspect's car. *See Goodwin v. State*, 799 S.W.2d 719, 728 (Tex.Crim.App. 1990), *cert. denied*, 111 S.Ct. 2913(1991) (search of car after suspect is subject to arrest); *State v. McCall*, 929 S.W.2d 601, 604 (Tex.App.-San Antonio 1996, no pet.); *Flores v. State*, 895 S.W.2d 435, 444-45 (Tex.App.--San Antonio 1995, no pet.) (search of person and area within immediate control, including interior of car).

Appellant argues the arrest was unlawful because Officer Muller testified that he was not authorized to arrest appellant for failure to signal. Because appellant had a valid driver's license, Muller stated his sergeant would not approve of such an arrest. Appellant argues that Officer Muller's purpose in stopping appellant was to obtain his consent to search his car. Therefore, appellant argues the arrest was an illegal pretext arrest without probable cause invalidating the consent to search.

The Court of Criminal Appeals has rejected the pretext stop doctrine under both the federal and state constitutions. *See Crittenden v. State*, 899 S.W.2d 668, 674 (Tex.Crim.App.1995) (state constitution); *Garcia v. State*, 827 S.W.2d 937, 944 (Tex.Crim.App.1992) (federal constitution). In addressing a claim under the Texas Constitution, it held that "an objectively valid traffic stop is not unlawful under Article I, § 9 just because the detaining officer had some ulterior motive for making it." *Crittenden*, 899 S.W.2d at 674. In addressing a claim under the Fourth Amendment, the court held that "the validity

of an arrest or stop should be determined solely by analyzing objectively the facts surrounding the event." *Garcia*, 827 S.W.2d at 943. Further, the United States Supreme Court has recently held that the constitutional reasonableness of a traffic stop does not depend on the actual motivation of the individual officers involved. *See Whren v. United States*, --- U.S. ----, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). It is the objective facts in existence at the time of the arrest and not the subjective conclusions of the officer which the reviewing court must scrutinize to determine the existence of probable cause. *Amores v. State*, 816 S.W.2d 407, 415 (Tex.Crim.App. 1991). Therefore, the fact that Muller thought his stopping appellant for failure to signal would not be a legal arrest is inconsequential because we review whether the facts and circumstances known to the officer objectively constituted a lawful basis for arrest, regardless of the officer's subjective motivation or purpose of his actions. *See Blount v. State*, 965 S.W.2d 53, 55 (Tex.App.-Houston[1st Dist.] 1998, pet. ref'd)(citing *Garcia*, 827 S.W.2d at 944). We hold that Officer Muller had probable cause to arrest appellant for a traffic violation, and that his search of appellant's automobile was permissible as a search incident to arrest. The issues of appellant's consent to search are not relevant because Officer Muller had a legal right to search appellant's car without appellant's consent to search. Accordingly, we find the trial court did not err in overruling appellant's motion to suppress. We overrule appellant's points of error one and two concerning the validity of his consent to search.

We affirm the judgment of the trial court.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed April 6, 2000.

Panel consists of Justices Sears, Draughn, and Hutson-Dunn.*

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

* Senior Justices Ross A. Sears, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.